

GAHC010001342023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./17/2023

SHAHIDUL ISLAM
S/O- MOIN UDDIN AHMED, VILL- CHAKLA, P.O. CHAKLA, P.S.
ABHAYAPURI, DIST.- BONGAIGAON, ASSAM, PIN- 783384

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MR. M U MAHMUD

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

23.01.2023

Heard Mr. M.U. Mahmud, learned counsel for the petitioner as well as Mr. M.P. Goswami, learned Addl. P.P. appearing for the State.

The petitioner, namely, Shahidul Islam has filed an application under Section 439 Cr.P.C. with prayer for bail as he has been languishing in the jail

since 13.12.2022 in connection with Abhayapuri P.S. Case No. 528/2022, under Sections 468/471/420/409 IPC.

It is submitted that the petitioner is mentally harassed as three FIR's arising out of the same cause of action has been lodged in a sequence against him to wreak vengeance out of personal grudge.

It is submitted that the petitioner is aspiring to be appointed as a Principal of C.K. College and the contenders to the post of President of governing body and other posts at the C.K. College are displeased with the petitioner. C.K. College is to be regularized soon and is to be provincialized soon. The petitioner has drawn attention of this Court towards the series of FIR's lodged against him.

The 1st FIR is marked as Annexure-1, the 2nd FIR is marked as Annexure-4 and the present FIR is marked as Annexure-8.

It is submitted that the petitioner was granted bail under Section 438 Cr.P.C. in connection with the earlier FIR's. But unfortunately, the petitioner was arrested in connection with this present case being Abhayapuri P.S. Case No. 528/2022 (Annexure-8)

The FIR was lodged by Dal Pathak with allegations that rampant and ongoing corruption has been detected under the scheme of Ishan Udai Scholarship. Several colleges tried to siphon of the funds granted as Scholarship by submitting lists of fake students. These lists were verified by the authorities in the college in a clandestine manner. The Barpeta S.P. was apprised about such activities in the colleges. The present petitioner is the Principal of C.K. College, Barpeta and he was the Nodal Officer for the academic year 2020-21. On 07.01.2022, the list of students entitled for Ishan Udai Scholarship was decreased from 247 to 93, after a telephonic conversation between the informant and the present petitioner. An RTI also unearthed that the list clearly

reveals that 247 beneficiaries were afforded the Ishan Udai Scholarship and amongst these beneficiaries the names of the petitioners, two brothers, three wives and ex-driver were also included.

The learned counsel for the petitioner has vehemently denied that the petitioner has three wives.

It is admitted on behalf of the petitioner that the petitioner has one wife and being a student she has indeed received the Scholarship, but it has been vehemently denied that the petitioner's brother or the ex-driver has received Scholarships in a clandestine manner. It is also submitted that the petitioner is at present seriously ailing and his father-in-law is suffering from last stage of cancer.

I have seen the medical documents marked as Annexure-24 and Annexure-23 respectively.

The learned Addl. P.P. has raised serious objections stating that the petitioner is deeply involved with siphoning of funds.

It is an offence against the society. Not a single student has secured 85 % which qualifies the students to avail the benefit of the Ishan Udai Scholarship. It is submitted that the petitioner and two of his office staff were deeply involved in procuring identity cards and other documents to procure the Scholarship meant for students of the college under the Ishan Udai Scholarship. The deserving students have been deprived of the Scholarship and individuals who are not even students have siphoned off a huge sum of money for their own wrongful advantage.

The petitioner has also relied on the decision of the Hon'ble Supreme Court in ***Prem Chand Singh Vs. State of Uttar Pradesh and another*** reported in (2020) 3 SCC 54 wherein, it has been observed that:-

"11. It is, therefore, apparent that the subject-matter of both the FIRs is the same general power of attorney dated 02.05.1985 and the sales made by the appellant in pursuance of the same. If the substratum of the two FIRs are common, the mere addition of [Sections 467](#), [468](#) and [471](#) in the subsequent FIR cannot be considered as different ingredients to justify the latter FIR as being based on different materials, allegations and grounds."

The petitioner has also relied on the decision of the Hon'ble Supreme Court in ***Ravinder Singh Vs. Sukhbir Singh and Ors.*** reported in (2013) 9 SCC 245 wherein, it has been observed that:-

33. The High Court has dealt with the issue involved herein and the matter stood closed at the instance of Respondent 1 himself. Therefore, there can be no justification whatsoever to launch criminal prosecution on that basis afresh. The inherent power of the court in dealing with an extraordinary situation is in the larger interest of administration of justice and for preventing manifest injustice being done. Thus, it is a judicial obligation on the court to undo a wrong in course of administration of justice and to prevent continuation of unnecessary judicial process. It may be so necessary to curb the menace of criminal prosecution as an instrument of operation of needless harassment. A person cannot be permitted to unleash vendetta to harass any person needlessly. Ex debito justitiae is inbuilt in the inherent power of the court and the whole idea is to do real, complete and substantial justice for which the courts exist. Thus, it becomes the paramount duty of the court to protect an apparently innocent person, not to be subjected to prosecution on the basis of

wholly untenable complaint.”

The petitioner has also relied on the decision of Hon'ble Supreme Court in ***Upkar Singh Vs. Ved Prakash and Ors.*** reported in (2004) 13 SCC 292 wherein, it has been observed that:-

'17. It is clear from the words emphasised hereinabove in the above quotation, this Court in the case of T.T Antony v. State of Kerala has not excluded the registration of a complaint in the nature of a counter-case from the purview of the Code. In our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited under section 162 of the code. This prohibition noticed by this Court, in our opinion, does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident.”

I have given my anxious considerations to the submissions at the bar. The 1st, 2nd and 3rd aforementioned FIR's registered against the petitioner are indeed relating to the Scholarship under the Ishan Udai scheme.

The petitioner being the Nodal Officer was indeed responsible for sanctioning of the Scholarship to the individuals who posed as students to procure the Scholarships meant for 247 students as well as the Scholarships meant for 93 students of the C.K. College. Although the students can apply for the Scholarships online, yet the Principal is the Nodal Officer who is responsible

for sanctioning or certifying the Scholarship under the scheme to the deserving students. It has surfaced through the allegations and through the statement of witnesses that not a single student of the College have received the scholarship.

I have also considered the submissions at the bar that all the relevant documents under the custody of the petitioner have already been seized during investigation. The petitioner has also been languishing in the jail since 13.12.2022. The age of the petitioner is around 53 years.

I have also considered that he is ailing at present.

I have also considered the length of detention.

It appears that investigation may not be adversely affected if the petitioner is enlarged on bail. There is no scope of interpolation or manipulation of documents both digital or physical documents.

Considering all aspects, petition is allowed.

The petitioner, namely, Shahidul Islam is enlarged on bail in connection with Abhayapuri P.S. Case No. 528/2022, under Sections 468/471/420/409 IPC, on furnishing bail bond of Rs.35, 000/- with one suitable surety of like amount to the satisfaction of the learned Eleka Magistrate under the condition that:-

- (1) the petitioner will refrain from such activities with which he is alleged; and
- (2) the petitioner will not leave the jurisdiction of the trial Court without prior permission of the Eleka Magistrate, till completion of investigation.

The application stands disposed of.

Send back the case diary.

JUDGE

Comparing Assistant