

GAHC010026002023



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

Case No. : AB/407/2023

ABDUL MALEQUE
S/O- MOIN UDDIN AHMED, VILL.- AMBARI, P.O. AMBARI, P.S.
ABHAYAPURI, DIST. BONGAIGAON, ASSAM, PIN- 783384.

VERSUS

STATE OF ASSAM
REPRESENTED BY THE 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

Date : 23-02-2023

- 1.** Heard Mr. M.U. Mahmud, learned counsel for the petitioner and Mr. P.S. Lahkar, learned Additional Public Prosecutor for the respondent State of Assam.
- 2.** By this application under Section 438 of the Code of Criminal Procedure, 1973 [Cr.PC for short], the petitioner viz. Abdul Maleque has approached this Court seeking the benefit of pre-arrest bail, apprehending his arrest, in connection with Abhayapuri Police Station Case

No. 528/2022 registered for offences punishable under Sections 468/471/420/409 Indian Penal Code [IPC].

3. An FIR was lodged by a public spirited citizen namely, Dal Pathak contending *inter alia* that as a college teacher he has been fighting against rampant corruption regarding Ishan Uday Scholarship. Some beneficiaries were enlisted for the scholarship list dated 2020-21 selected before 07.01.2022 and another second list published on 07.01.2022. Several colleges tried to make illegal money by submitting fake students list by verifying the list themselves and forwarding the same to the UGC, Delhi. The D.C., Barpeta was apprised about several colleges under his jurisdiction and a magisterial enquiry committee was setup. The SP was also apprised regarding the anomalies. As investigation commenced in Barpeta, the Assam Police was also informed about the corrupt practices in C.K. College at Chakla. A letter was also sent to the Principal Saidul Islam of C.K. College, Chakla. He was Nodal Officer of 2020-21 academic year in his College. In case of C.K. College, the number of beneficiaries decreased surprisingly from 247 in the first list to 93 in the second list.

4. The informant also alleged that he received ID numbers of several beneficiaries of the Ishan Uday Scholarship of the C.K. College and also other colleges from 2016 to 2017 batch. The informant also submitted the photocopies of 247 beneficiaries enlisted for scholarship and these 247 students have received scholarship under the Ishan Uday Scheme. Several entries in the list have similar names like the Principal of the College, his two brothers, three wives, ex-driver etc. It is alleged that the Ishan Uday Scholarship was procured by fake students who are not actually students of the C.K. College, Chakla but are related to the Principal.

5. Per contra, it is submitted on behalf of the petitioner that he is an employee of the C.K. College, Chakla and the main accused is the Principal who has already been enlarged on bail. The learned counsel for 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:-

“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.”

6. The learned counsel for the petitioner has also relied on the decision of the Hon’ble Supreme Court in *Anju Choudhury v. State of Uttar Pradesh*, reported in (2013) 6 SCC 384 wherein it has been observed that –

“On the plain construction of the language and scheme of Sections 154, 156 and 190 of the Code, it cannot be construed or suggested that there can be more than one FIR about an occurrence. However, the opening words of Section 154 suggest that every information relating to commission of a cognizable offence shall be reduced to writing by the officer in-charge of a Police Station. This implies that there has to be the first information report about an incident which constitutes a cognizable offence. The purpose of registering an FIR is to set the machinery of criminal investigation into motion, which culminates with filing of the police report in terms of Section 173(2) of the Code. It will, thus, be appropriate to follow the settled principle that there cannot be two FIRs registered for the same offence. However, where the incident is separate; offences are similar or different, or even where the subsequent crime is of such magnitude that it does not fall within the ambit and scope of the FIR recorded first, then a second FIR could be registered. The most important aspect is to examine the inbuilt safeguards provided by the legislature in the very language of Section 154 of the Code. These safeguards can be safely deduced from the principle akin to double jeopardy, rule of fair investigation and further to prevent abuse of power by the investigating authority of the police. Therefore, second FIR for the same incident cannot be registered. Of course, the Investigating Agency has no determinative right. It is only a right to investigate in accordance with the provisions of the Code. The filing of report upon completion of investigation, either for cancellation or alleging commission of an offence, is a matter which once filed before the court of competent jurisdiction attains a kind of finality as far as police is concerned, may be in a given case, subject to the right of further investigation but wherever the investigation has been completed and a person is found to be prima facie guilty of committing an offence or otherwise, re-examination by the investigating agency on its own should not be permitted merely by registering another FIR with regard to the same offence. If such protection is not given to a suspect, then possibility of abuse of investigating powers by the Police cannot be ruled out. It is with this intention in mind that

such interpretation should be given to [Section 154](#) of the Code, as it would not only further the object of law but even that of just and fair investigation. More so, in the backdrop of the settled canons of criminal jurisprudence, re-investigation or de novo investigation is beyond the competence of not only the investigating agency but even that of the learned Magistrate. The courts have taken this view primarily for the reason that it would be opposed to the scheme of the Code and more particularly [Section 167\(2\)](#) of the Code. [Ref. [Rita Nag v. State of West Bengal \[\(2009\) 9 SCC 129\]](#) and [Vinay Tyagi v. Irshad Ali @ Deepak & Ors. \(SLP \(Crl\) No.9185-9186 of 2009 of the same date\)](#)].”

7. It is alleged by the learned counsel for the petitioner that two other FIRs have been lodged against the petitioner which is registered as Barpeta P.S. Case No. 1058/2022 and Abhayapuri P.S. Case No. 934/2021. The petitioner has also prayed for bail on the grounds of parity as he has been enlarged on bail vide order dated 22.03.2022 in Case No. AB 3684/2021 and vide Order dated 10.11.2022 in Case No. AB 3322 of 2022.

8. The learned Addl. P.P. has raised serious objection stating that the petitioner has not been named in the FIR relating to Barpeta P.S. Case No. 1058/2022 and it is falsely submitted that three FIRs have been lodged against the petitioner. This FIR is not regarding the same offence. This offence has been ongoing for several years and a huge amount of wealth was amassed by the accused named in the FIR. There are incriminating materials against the petitioner in this instant case. The witnesses as well as the co-accused have stated that the petitioner is complicit. The statements of witnesses under Section 161 Cr.PC clearly depicts that the petitioner has also procured benefit of the Ishan Uday Scholarship. He was handling the OTP through which the online proceedings were processed for obtaining the benefit of this scholarship. The students who are eligible for the scholarship has to score above 70% and not a single student of C.K. College, Chakla has secured above 70%.

9. I have perused the Case Diary. There are indeed cogent materials in the Case Diary against the petitioner. He is booked under Sections 468/471/420/409 IPC. It is true that he is not named in the FIR registered as Barpeta P.S. Case No. 1058/2022 and he was indeed granted bail in connection with the Barpeta P.S. Case No. 1058/2022.

10. The FIR against the petitioner being Abhayapuri P.S. Case No. 934/2021 is relating to an incident of Ishan Uday Scholarship but this FIR was lodged by Sohikul Islam who has alleged that his ATM Card was taken by the Principal of Chakla College and by Abdul Maleque,

an employee of Chakla College who used the same for procurement of scholarship money into his account and thereafter transferred the same into the accounts of Sohikul Islam and Abdul Maleque. The allegation in this case against the petitioner is that he duped the informant into opening a Bank account with the "Axis Bank" and without the knowledge of the informant this account was operated by the petitioner. His allegation is not similar to the allegation in the present FIR and this FIR cannot be said to be an FIR regarding the same incident as disclosed in the present case i.e. Abhayapuri P.S. Case No. 528 of 2022. The FIR relating to Abhayapuri P.S. Case No. 934/2021 was lodged on 01.11.2021 and the present FIR was lodged after one year i.e. on 12.11.2022. The allegations in the FIR dated 01.11.2021 is not similar to the present FIR dated 12.11.2022 although the transactions of money is regarding scholarship of Ishan Uday Scholarship.

11. Although submissions have been made that this case is the result of political vendetta, yet I could decipher no reason why and in what manner the present petitioner could be targeted to wreak vengeance on account of political vendetta. At present in this instant case the petitioner is booked under Sections 468/471/420/409 IPC. Huge amount of government fund is alleged to have been mis-utilised and siphoned off. I have considered the magnitude of the offence. This is an offence against the Society. Deserving students have been deprived of this scholarship which went into the accounts of individuals who are not even students. Provisions under Section 438 Cr.P.C. cannot be exercised in an untrammelled manner. I have taken into consideration the role of the petitioner as alleged. Investigation may be adversely affected if the petitioner is insulated from investigation by an order of anticipatory bail. I have considered the import of the Section. In view of my foregoing discussions and considering all aspects, the opinion of this Court is that there appears to be no prima facie case at this juncture which entitles the petitioner to bail.

Petition is rejected at this stage of investigation.

Send back the Case Diary.

JUDGE

Comparing Assistant