

GAHC010049612023



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

Case No. : AB/806/2023

ABED ALI
S/O NURUL ISLAM
VILL- CHAKLA PT.II,
P.S. ABHAYAPURI
DIST. BONGAIGAON, ASSAM
PIN-783392

VERSUS

THE STATE OF ASSAM
REP . BY THE PP, ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 22-03-2023

- 1.** Heard Mr. HRA Choudhury, learned Senior Counsel for the petitioner assisted by learned counsel Mr. A.M. Ahmed. Also heard Mr. P.S. Lahkar, learned Addl. P.P. for the State.
- 2.** The petitioner Abed Ali has filed an application under Section 438 Cr.PC with prayer for

pre-arrest bail as he is apprehending arrest in connection with Abhayapuri P.S. Case No. 528/2022 under Sections 468/471/420/409 IPC.

3. It is submitted that the petitioner's earlier bail petition under Section 438 Cr.PC was rejected vide order dated 23.01.2023 in Case No. AB 3840/2022. The petitioner has preferred this petition with a new ground. It is submitted that the actual facts of the case is that there are 700/800 students of C.K. College, Chakla. There are two streams in the college i.e. Arts and Commerce. Mr. Sahidul Islam is the Principal while his brother Abdul Maleque, was working as UDA in the same college. The present petitioner is also a Grade-IV employee in the same College. The Principal of the College in connivance with his own brother Abdul Maleque, brother-in-law Ziaul Hoque and his aunt Farida Khatun have siphoned off the money meant for scholarship under the Ishan Uday Scheme. The present petitioner was not named in the FIR but he has been become a victim of circumstances due to the misdeeds of the Principal and his family members. It is submitted that through his entire service the petitioner was not allotted or assigned with any work or responsibility relating to the scholarship under the Ishan Uday Scheme. The petitioner had assigned the work of scholarship to the UDA and three other Junior Assistants who are related to the Principal of the C.K. College.

4. I have considered the submissions at the Bar with circumspection. The FIR unfolds that rampant ongoing corruption was detected under the Scheme of Ishan Uday Scholarship. Several colleges tried to siphon off 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 SP was apprised about such activities in the colleges. An investigation commenced in Barpeta and the Assam Police was also informed about the corrupt practices in C.K. College at Chakla.

5. It is also submitted on behalf of the petitioner that he is the sole bread winner of the family. He is in no way connected with the anomalies in the Ishan Uday Scholarship. The informant is a third party.

6. The learned Addl. P.P. has raised serious objection stating that there are incriminating materials in the Case Diary against the present petitioner. It is submitted that the witnesses have stated under Section 161 Cr.P.C. that the petitioner is complicit. He was handling the

OTP along with Abdul Maleque 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 80% and not a single student of C.K. College, Chakla has secured above 70%.

7. There are indeed cogent materials in the Case Diary against the petitioner. It is true that his name is not in the FIR lodged by Dal Pathak. The petitioner is booked under a serious offence. This is an offence against the Society at large. The gravity of the offence is such that the bail petition has to be considered with circumspection. The provision under Section 438 Cr.PC cannot be exercised in an untrammelled manner. The concern of the prosecution as well as the concern of the petitioner has to be taken into consideration and a balance has to be struck. It appears that investigation may be adversely affected if the petitioner is insulated from investigation by an order of anticipatory bail. There appears to be no *prima facie* case to grant pre-arrest bail to the petitioner at this stage of investigation.

8. In view of my foregoing discussions and considering all aspects, petition is rejected at this stage of investigation.

Send back the Case Diary.

JUDGE

Comparing Assistant