

GAHC010063822023



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

Case No. : AB/1124/2023

SOFIOR RAHMAN AND 2 ORS.
S/O MOZAFFOR HUSSAIN
R/O VIOLL- BANGALIPARA
PART-I, P.S. BILSIPARA,
DIST. DHUBRI, ASSAM

2: ZAKIR HUSSAIN
S/O LATE AMATULLA SK.
R/O VILL- BORAGAON
P.O. AND P.S. BILASIPARA

DIST. DHUBRI
ASSAM

3: ASHRAFUL ALOM
S/O LATE MUZAMIL HOQUE
R/O VILL- CHALBANDA
DIST. DHUBRI
ASSA

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A CHAUDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT

Date : 27-03-2023

Heard Mr. A. Chaudhury, learned counsel for the petitioners and Mr. D.P. Goswami, learned Additional Public Prosecutor for the respondent State of Assam.

2. By this application under Section 438, Code of Criminal Procedure, 1973 [CrPC], the petitioners viz. [1] Sofior Rahman, [2] Zakir Hussain and [3] Ashraful Alom have approached this Court seeking the benefit of pre-arrest bail, apprehending their arrest, in connection with Bilasipara Police Station Case no. 350/2022, registered for offences punishable under Sections 120B/420/409/384, Indian Penal Code [IPC] for the second occasion after rejection of their earlier pre-arrest bail applications, A.B. no. 3494/2022 & A.B. no. 3584/2022, by a common order dated 22.12.2022, after perusal of the materials in the case diary produced on that date by the learned Additional Public Prosecutor.

3. The pre-arrest bail application, A.B. no. 3494/2022 under Section 438, CrPC was preferred on behalf of three petitioners with the petitioner no. 3 herein as the petitioner no. 1 therein and the petitioner no. 1 herein as the petitioner no. 3 therein. The pre-arrest bail application, A.B. no. 3584/2022 under Section 438, CrPC was preferred by the petitioner no. 2 herein.

4. On 22.12.2022, apart from the afore-mentioned two applications, two other applications, B.A. no. 3482/2022 [Jamser Ali @ Md. Jamsheer Ali vs. The State of Assam] and A.B. no. 3735/2022 [Abu Hussain vs. The State of Assam], were also taken up for consideration. All the applications had arisen out of Bilasipara

Police Station Case no. 350/2022.

5. The events which led to the institution of the First Information Report [FIR] in connection with Bilasipara Police Station Case no. 350/2022 by the Deputy Superintendent of Police, DSP, Dhubri on 15.11.2022, were as under :-

5.1. The First Information Report [FIR] in connection with Bilasipara Police Station Case no. 350/2022 was lodged by the Deputy Superintendent of Police [DSP], Dhubri on 15.11.2022 mentioning, the names of all the petitioners herein along with the remaining petitioners in the bail application and one Taufiqur Rahman, who is the son of the accused-petitioner in B.A. no. 3482/2022.

5.2. As per the FIR, a secret information was received at around 11-45 a.m. on 15.11.2022 to the effect that some irregularities were going on at Barkanda Peoples Academy Higher Secondary School, one of the centres for ASOS examination. On receipt of the information, the informant apprised his senior officials and as per the instruction received, he proceeded towards the place of occurrence i.e. Barkanda Peoples Academy Higher Secondary School along with deputed staff immediately. When the team led by the informant reached the centre, students were found trying to carry their mobile phones inside the examination centre. The informant instructed the police personnel who had gone with him, to take the mobile phones from the students appearing in the examination. When the mobile phones were checked, it was found that the candidates were using *WhatsApp* application in their mobile phones for the purpose of cheating. It came to the notice that different *WhatsApp* groups were created for different subject papers. It was found that two mobile phones bearing SIM numbers – [i] 9577131508, and [ii] 6002978390 – belonged to the Administrator of the *WhatsApp* groups and through them, answers scripts with

answers to the questions for different subjects were shared during the hours of the examination. On completion of the examination of 15.11.2022, the informant brought 14 nos. of mobile phones of the candidates to Nayahat Outpost and upon examination of those mobile phones, incriminating informations were revealed.

5.3. As per the FIR, the accused person, Jamser Ali [the accused-petitioner in B.A. no. 3482/2022], had extorted money through *PhonePe* registered in his mobile no. 7002416551. The other mobile no. 9577131508 belonged to the other Administrator of the *WhatsApp* groups. It is found that the answers to the question papers were shared in the *WhatsApp* groups by the accused person named Taufiqur Rahman, who is the son of the accused petitioner Jamser Ali.

5.4. The accused person, Jamser Ali is a former Principal of Barkanda Peoples Academy Higher Secondary School. Both the accused persons, Jamser Ali and Taufiqur Rahman had been apprehended and thereafter, they were taken to the Outpost for interrogation. On being interrogated, the said two arrested accused persons had disclosed the names of the persons who were involved in the alleged activity of sharing the answers scripts of ASOS examination and they were :- [i] Ashraful Alim, 4th Grade Staff of Barkanda Higher Secondary School [the petitioner no. 3 herein], [ii] Rafiqul Islam, L.D.A. of Barkanda Higher Secondary School; [iii] Jakir Hussain, Assistant Teacher, Morabari High School [the petitioner no. 2 herein]; [iv] Sofior Rahman, Demonstrator of Barkanda Higher Secondary School [the petitioner no. 1 herein]; and [v] Abu Hussain, Laboratory Bearer of Barkanda Higher Secondary School.

6. It is noticed that the petitioner no. 1 and the petitioner no. 3 herein are employees of Barkanda Peoples Academy Higher Secondary School and the

petitioner no. 2 herein is the Assistant Teacher in Morabari High School. It needs reiteration that all the three petitioners are named in the FIR [supra].

7. After hearing the learned counsel for the parties and after consideration of the materials available in the case diary, produced on that date, collected during the course of investigation carried out till then, this Court rejected the prayers for pre-arrest bail in respect of the petitioners herein, with the following observations :

7. The Assam Higher Secondary Education Counsel [AHSEC] conducts the Assam State Open School [ASOS] examinations at various centres each year. The School named Barkanda Peoples Academy Higher Secondary School, within the territorial jurisdiction of Bilasipara Police Station, is one of the centres for the ASOS examinations. The written examination of ASOS examinations for the current year started from 31.10.2022 and the same completed on 16.11.2022. The events leading to the institution of the FIR have already been adverted to hereinabove. The accused-petitioner, Jamsher Ali in B.A. no. 3482/2022 is a former Principal of Barkanda Peoples Academy Higher Secondary School. The ASOS examinations were/are being held at the centre, Barkanda Peoples Academy Higher Secondary School from a time when the accused-petitioner, Jamsher Ali was holding the post of Principal of the said School. He was involved in the process of admitting the students for ASOS examinations from an earlier point of time. In his statement, the accused-petitioner has stated that in the previous year, he admitted about 85 nos. of students for the ASOS examinations and collected various amounts in the name of admission fees and examination fees from those students. He has admitted that the amounts he had collected in the name of admission fees and examination fees were not actual admission fees and examination fees, but higher. Apart from collecting amounts in the name of admission fees and examination fees in cash, he used to collect such admission fees and examination fees also through *PhonePe*. He has admitted that though the candidates asked for money receipts for those amounts deposited by them, he did not issue any receipts to those candidates. The other petitioners in A.B. no. 3494/2022, A.B. no. 3584/2022 and A.B. no. 3735/2022 were also involved in collecting higher amounts from the candidates than the actual admission fees and examination

fees. He has, however, denied his involvement in providing answers to the questions for various subjects during the examination hours. He has implicated the other arrested accused person, Taufiqur Rahman was the person behind providing answers to the questions to the candidates during the examination hours by *WhatsApp*. Incidentally, the other arrested accused person, Taufiqur Rahman is the son of the accused-petitioner, Jamsher Ali. In his statement, Taufiqur Rahman has also admitted about admitting 85 nos. of candidates for the ASOS examinations and collection of amounts around Rs. 7,000/- to Rs. 8,000/- by Jamsher Ali from them either in cash or through *PhonePe*. Taufiqur Rahman has further stated that his father, Jamsher Ali does not know how to operate *WhatsApp* and it was he who helped his father, Jamsher Ali by providing the answers to the questions to the candidates admitted by Jamsher Ali for ASOS examinations during the examination hours. He has admitted that the mobile no. 9577131508 belongs to him and it was through that number he as an administrator of different *WhatsApp* group had provided the answers to the questions to the candidates during the examination hours. Taufiqur Rahman has further stated that the answers to the questions for ASOS examinations were not prepared by him and those answers were provided and sent to him by the petitioners in A.B. no. 3494/2022, A.B. no. 3584/2022 and A.B. no. 3735/2022. On receipt of the answers to the questions from the petitioners in A.B. no. 3494/2022, A.B. no. 3584/2022 and A.B. no. 3735/2022, he used to send the answers to the questions to the candidates, admitted by his father for ASOS examinations, through *WhatsApp*. Taufiqur Rahman has further mentioned that he got involved in the process only in order to help his father, Jamsher Ali. From the materials in the case diary, it has emerged that all the petitioners in A.B. no. 3494/2022, A.B. no. 3584/2022 and A.B. no. 3735/2022 were deeply involved in the entire transactions of collecting higher amounts than the actual admission fees and examination fees for ASOS examinations and in the process of supplying answers to the questions to the candidates appearing in ASOS examinations through *WhatsApp* during the examination hours. It further transpires from the materials in the case diary that all these petitioners had supplied the answers to the questions in respect of the subjects written examinations for which held earlier to 15.11.2022. The case diary also contains the specimen copies of the answers to the questions, provided to the candidates, from the ends of these petitioners. The case diary also contains a copy of the Statement of Accounts of a bank account of the accused-petitioner, Jamsher Ali maintained at Bilasipara Branch, State Bank of India. A

look at the entries in the Statements of Accounts reveals that during the period from 25.10.2022 up to 30.10.2022, that is, just one day prior to the date of start of ASOS examinations for the current year, there were frequent transactions unlike the other periods in that various amounts were being transferred to his account, by a number of transactions, in a suspicious manner. The case diary also contains statements of a number of candidates recorded under Section 161, CrPC, who appeared in the ASOS examinations at the instance of all these petitioners. In their statements, the candidates have mentioned that they collected the admit cards for the ASOS examinations from the houses of the petitioners. They have also mentioned about collection of higher amounts in the name of admission fees and examination fees than the actual admission fees and examination fees by the petitioners and non-issuance of money receipts by them, despite requests made by the candidates. They have also mentioned that though it is permitted to write answers in ASOS examinations by keeping the books in the examination hall, the petitioners herein have opened different *WhatsApp* groups where the administrator was Taufiqur Rahman, the son of Jamsher Ali. They were added in those *WhatsApp* groups and they appeared in the ASOS examinations by writing answers, which were received by them in their respective mobile phone's *WhatsApp* applications during the examination hours. From the above materials, available in the case diary, collected during the course of investigation carried out so far, it has clearly emerged that the conspiracy is a deep-rooted conspiracy and the conspiracy has been a well-planned one.

7. At this stage, it is apposite to refer to the observations made in paragraph 6 of the decision of the Hon'ble Supreme Court of India in Anil Sharma [supra], referred to by the learned Additional Public Prosecutor, :-

“6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favorable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he interrogated. Very often interrogation in such a condition

would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disinterring offences would not conduct themselves as offenders.”

8. From the materials in the case diary, it is noticed that the investigation of the case is still in progress. It has further emerged that the conspiracy is a well-planned and deep-rooted one and involving a number of other persons apart from the all these petitioners herein. The petitioners in A.B. no. 3494/2022, A.B. no. 3584/2022 and A.B. no. 3735/2022 are found to be not cooperating with the investigation of the case. Having regard to the nature of involvement of all these petitioners in the process of supplying answers to the questions to the candidates in ASOS examinations during the examination hours, this Court is of the considered view that none of the petitioners i.e. the accused-petitioner in B.A. no. 3482/2022 and the petitioners in A.B. no. 3494/2022, A.B. no. 3584/2022 and A.B. no. 3735/2022 are entitled for bail either under Section 439, CrPC or under Section 438, CrPC at this stage of investigation. This Court is of the view that it is a case where custodial interrogations of the petitioners herein is a necessity to unearth the conspiracy hatched which has the propensity to affect the very sanctity of the examination process related to ASOS examinations conducted by the Assam Higher Secondary Education Council [AHSEC] in an adverse manner. Prima facie the petitioners are found involved in the process by which few of the candidates, albeit of the petitioners’ choice, have gained wrongfully at the cost of the other candidates who have appeared in the ASOS examinations earnestly and in bonafide manner.

9. In the above-mentioned facts and circumstances obtaining in the case and for the reasons assigned therein, I find no merits in the cases of the petitioners. Consequently, all the bail applications are rejected.”

8. Mr. Chaudhury, learned counsel for the petitioners have submitted that

though the crime case has been registered for the offence under Section 409, CrPC, there were no allegations as regards misappropriation of Government money against the petitioners. He has further referred to the documents annexed to the application as Annexure-C series, to submit that these petitioners had deposited the amounts collected by them from the candidates in the account of Barkanda Peoples Academy Higher Secondary School and the School authority had, in turn, deposited the said amounts to the AHSEC authorities. It is further submitted that the petitions have been sought to be roped in merely on the basis of the statements of the arrested accused persons, recorded under Section 161, CrPC.

9. It is settled that after rejection of application for pre-arrest bail under Section 438, CrPC on merits, there is scope to file a subsequent bail application for pre-arrest bail only if there is a change in the fact situation or in law which requires earlier view being interfered with or where the earlier finding has become obsolete. In Criminal Appeal no. 938/2022 [Indresh Kumar vs. The State of Uttar Pradesh and another], decided on 12.07.2022, the Hon'ble Supreme Court of India has observed that the statements recorded under Section 164/161, CrPC may not be admissible in evidence, but are relevant in considering the prima facie case against an accused in an application for grant of bail.

10. As it has been recorded already in the order dated 22.12.2022 that these three petitioners were deeply involved in the entire transactions of collecting higher amounts than the actual admission fees and examination fees for ASOS examinations and in the process of supplying answers to the questions to the candidates appearing in ASOS examinations through *WhatsApp* during the examination hours, this Court does not find any good and sufficient reasons for

re-consideration of the earlier order dated 22.12.2022. The conspiracy hatched is a deep-rooted conspiracy and the conspiracy has been a well-planned one. By the earlier order, this Court having regard to the nature of involvement of these petitioners in the process of supplying answers to the questions to the candidates appearing in the ASOS examinations during the examination hours, found the case not to be fit one to extend the benefit of pre-arrest bail to these petitioners. The grounds cited in this second application on behalf of the petitioners do not appear to be of any substance for re-consideration of the earlier order dated 22.12.2022 passed in B.A. no. 3482/2022 and A.B. no. 3735/2022. As the conspiracy hatched which has the propensity to affect the very sanctity of the examination process related to ASOS examinations conducted by the Assam Higher Secondary Education Council [AHSEC] in an adverse manner, the instant application for pre-arrest bail does not deserve re-consideration and accordingly, the same is rejected.

JUDGE

Comparing Assistant