

GAHC010081202023



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

Case No. : Bail Appln./1215/2023

HERAMBA KUMAR DAS
S/O RATNA KANTA DAS R/O H. NO. 12 PUB NARAKASUR PATH VTC
KAHILIPARA P.O. KAHILIPARA P.S DISPUR DIST. KAMRUP M ASSAM PIN
781019

VERSUS

THE STATE OF ASSAM
REP. BY THE PP
ASSAM

Advocate for : MR. A K BHUYAN
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

21.04.2023

Heard Mr. A.K. Bhuyan, learned counsel appearing for the accused petitioner as well as Mr. M. Phukan, learned Public Prosecutor, Assam appearing for the state respondent.

2. By this petition under Section 439 Cr.P.C., the accused-petitioner, namely **Heramba Kumar Das** has prayed for grant of bail in connection with **CID P.S. Case No. 3/2023** u/s **120B/420/427/409** of the IPC read with Section **66B** of the I.T. Act, 2000.
3. The case diary is placed before the Court by the learned Public Prosecutor.
4. The brief facts of the case are that on 13.03.2023, complainant one Nayan Jyoti Sarmah, Controller of Examinations, Board of Secondary Education (SEBA), Assam lodged an FIR before the Officer-in-Charge of CID P.S., Assam through the Addl. D.G.P., CID, Assam alleging, *inter-alia*, that a news had appeared regarding leakage of handwritten model question paper of HSLC examination of General Science (C3) subject, which was scheduled to be held on 13th of March, 2023 (Monday) and available in the hands of some candidates. It was also alleged that the said question paper was circulated through social media platform. After examination of the hand written question paper by the concerned authority the contents of the same was found to be similar to the question paper prepared by SEBA for which the examination of the subject General Science had to be cancelled.
5. Mr. A.K. Bhuyan, learned counsel appearing for the accused petitioner, submits that in view of the nature of allegations made in the FIR and the additional information in respect of the aforesaid FIR, dated 13.03.2023 laid by the informant, Controller of Examinations, SEBA before the Officer-in-Charge of CID P.S., Assam indicates forging by some unknown officials entrusted with the responsibility of conducting the HSLC Examination which amounted to breach of trust at some level and that one Kabita Deka, District Elementary Education Officer (DEEO)-cum-Inspector of School, Dhemaji reported that an unknown

individual over phone provided information to her on 12.03.2023 that one Kishor Chungkran (UPI No. 6000712935) had been involved in selling answers to question paper of General Science in lieu of money. He reportedly purchased the answers to the question paper of General Science from said Kishor Chungkran after payment of money through UPI to latter by engaging some other person. The said individual also provided the screenshots to Kabita Deka and other officials of the SEBA. Mr. Bhuyan further submits that the question papers were all along kept at Dispur P.S. under CCTV surveillance and the present accused petitioner on request of the Principal of BDS School/Centre In-Charge of the said school accompanied her for verification and receiving the question papers and confidential documents of SEBA and beyond this, he did not do anything further. Mr. Bhuyan submits that there was no chance for the petitioner, who is a teacher of the said school and who was not entrusted with the aforesaid documents of SEBA to handle, he cannot be held to be criminally liable for the alleged offences under which the case is registered. Therefore, Mr. Bhuyan submits that as the accused was absolutely innocent, his detention in judicial custody for a prolonged period in the interest of the ongoing investigation is, perhaps, not desirable in law.

6. Strongly opposing the bail application, Mr. M. Phukan, learned Public Prosecutor, submits that the accused petitioner, who is the Assistant Teacher of BDS School, Kahilipara, Guwahati had accompanied the Officer-in-Charge of the said school Examination Centre, namely Jyoti Rekha Borgohain along with the arrested casual employee of the said school, namely Chitta Ranjan Roy to Dispur P.S. for receiving as well as sorting the papers of HSLC Examination, 2023 in gross violation of the standing instructions to Officer-in-Charge of Examinations from the SEBA that the officer-in-Charge only to receive the question papers in

presence of the assigned police officer and that he will ensure that the question papers received as per Form 200 (requisition of subject-wise question papers), that is, to ensure no shortage of question papers. In the aforesaid instructions, Mr. Phukan submits, at any cost Centre In-Charge must collect the question papers from the P.S./P.O.P. directly and authorization to collect question papers to any other person is strictly prohibited. However, Mr. Phukan submits, the unauthorized presence of the accused petitioner at the storeroom of Dispur P.S., where the papers were kept not only during receiving as well as sorting the papers of HSLC Examination papers of 2023, but also on various examination dates violated the aforesaid instructions of SEBA as he was neither the Officer-in-Charge of the examination centre nor he was authorized by SEBA to do so. Therefore, Mr. Phukan submits that at the present stage of investigation, the bail application of the accused petitioner may not be considered favourably.

7. It may be pointed out that it is a well established basic principle of bail that 'bail is rule, jail is exception.' The question of grant or refusal to grant bail depends on the result of scrutiny of the given facts and circumstances in each case justly, reasonably, fairly and objectively keeping in mind the precious right of the accused to life and liberty.

8. It is noticed that the accused petitioner has been in judicial custody since 14.03.2023, that is, for 39 days.

9. On scrutiny of the case diary, it is prima facie revealed that the present accused petitioner, who is an Assistant Teacher with long standing experience in handling HSLC Examinations related works, accompanied the co-accused, namely Jyoti Rekha Borgohain, the In-Charge Principal of BDS School, Kahilipara-cum- Examination Centre In-charge of the said school on the latter's

request for the purpose of providing assistance only. There is no prima facie evidence to show that the accused petitioner had leaked the question papers of General Science subject of the HSLC Examination, 2023 for any personal monetary gain or other personal benefits. No incriminating relevant document has been recovered and seized from his possession. The CCTV footage of the question paper storeroom of Dispur P.S. is yet to be seized and analyzed to see the actual transactions that had taken place in the aforesaid course of verification, storage and collection of the question papers in question under CCTV surveillance to get a clear picture in respect of the aforesaid anomalies. These prima facie presumptions are however, subject to final outcome in investigation.

10. The co-accused Principal of BDS School, Kahilipara, Guwahati is already directed to be released on bail vide order, dated 21.04.2023 passed in B.A. No.1410/2023.

11. In the premises, this Court is of the considered opinion that further continuation of detention of the accused petitioner is not needed in the interest of the ongoing investigation into the alleged HSLC Examination question paper leakage.

12. Accordingly, it is provided that the accused petitioner, named above, shall be released on bail of **Rs.50,000/- (Rupees Fifty Thousand)** with one surety of like amount to the satisfaction of the learned **C.J.M., Kamrup(M) at Guwahati.**

13. The above bail order shall, however, be subject to the following conditions-

- i) That the accused/petitioner shall co-operate in investigation as and when required;
- ii) That the accused/petitioner shall not directly or indirectly make any inducement, threat or promise to the remaining prosecution witnesses so as to dissuade them from disclosing such facts to the Police Officer or the Court; and
- iii) That the accused/petitioner shall refrain from committing any offences similar to the one of which he is suspected of commission.

Breach of any of the above conditions shall render cancellation of the bail in accordance with law.

Return the case diary.

This disposes of the bail application.

JUDGE

Comparing Assistant