

GAHC010073542023



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

Case No. : Bail Appln./1253/2023

KULDIP DOLEY AND 4 ORS
S/O RAJU DOLEY
VILL- BOGINODI (KHURACAK)
P.S. BOGINODI
DIST. NORTH LAKHIMPUR,

2: RAHUL SONOWAL
S/O BIDYUT SONOWAL
VILL- SORIONI GAON
P.S. BOGINODI
DIST. NORTH LAKHIMPUR

3: RANJAN PADI
S/O LAKHYANATH PADI
VILL- BHUR BANDHU JALBARI
P.S. BOGINODI
DIST. NORTH LAKHIMPUR

4: THAIRICHAN PAYENG
S/O ANIL PAYENG
VILL- MAJGAON
P.S. BOGINODI
DIST. NORTH LAKHIMPUR

5: PANKAJ CHINTEY
S/O SANJIB CHINTEY
VILL- MARIGOLD VILLAGE
P.S. BOGINODI
DIST. NORTH LAKHIMPU

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR J PAYENG

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR**

ORDER

21.04.2023

Heard Ms. A. Payeng, learned counsel appearing for the accused petitioners 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-petitioners, namely **1) Kuldip Doley (18 years) 2) Rahul Sonowal (18 years) 3) Ranjan Padi (18 years) 4) Thairichan Payeng (18 years) and 5) Pankaj Chintey (18 years)** have prayed for grant of bail in connection with **CID P.S. Case No. 3/2023 u/s 120B/420/427** of the IPC read with Section **66B** of the I.T. Act, 2000 and added Section **409** of the IPC.

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. Ms. A. Payeng, learned counsel appearing for the accused petitioners, submits that the accused petitioners are pursuing higher secondary course in different educational institutions and they have just attained the age of majority. Ms. Payeng further submits that they had no knowledge about the serious legal consequences of receiving and circulating the question papers of HSLC Examination, 2023 through WhatsApp messages. Therefore, Ms. Payeng submits that they being students of young age and as they have already undergone 38 days of detention in jail, justice will only be served if they are given the liberty of bail subject to any condition(s). Ms. Payeng submits that all the petitioners undertake to co-operate in investigation as and when required.

6. Opposing the bail application, Mr. M. Phukan, learned Public Prosecutor, submits that the petitioners are students pursuing higher secondary course in different educational institutions and the case diary show that they circulated question papers through their WhatsApp amongst each others.

7. It may be pointed out that it is 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 petitioners have been in judicial custody since 15.03.2023, that is, for 38 days.

9. A perusal of the case diary, it is prima facie revealed that the accused petitioners are members of a common WhatsApp group and they received and circulated amongst themselves the leaked question papers as they received. Thereafter, they formatted their mobile phones to destroy evidence of such leakage. There is indication of small amount of monetary transactions by some of the petitioners while exchanging the question papers amongst themselves. The original source of the leaked question papers is, of course, not clearly ascertainable in respect of their case, subject, of course, to final outcome in investigation. The accused petitioners have been co-operating in investigation.

10. In the premises, this Court is of the considered opinion that further continuation of detention of the accused petitioners, who are in the age group of 18 years and students of higher secondary, is not needed in the interest of the ongoing investigation into the alleged HSLC Examination question paper leakage.

11. Accordingly, it is provided that **each** of the accused petitioners, named above, shall be released on bail of **Rs.20,000/- (Rupees Twenty Thousand)** with one surety of like amount to the satisfaction of the learned **C.J.M., Kamrup(M) at Guwahati.**

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

- i) That the accused/petitioners shall co-operate in investigation as and when required;
- ii) That the accused/petitioners 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/petitioners shall refrain from committing any offences similar to the one of which they are 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