

GAHC010076082023



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

Case No. : Bail Appln./1410/2023

JYOTI REKHA BORGOHAIN
W/O SRI BADAN CH. PHUKON
R/O C/O SUBIR KR. DAS,
ADHARSHAPUR, MAHENDRA UPAPOTH, KAHILIPARA, GUWAHATI-19,
ASSAM AND PERMANENT RESIDENT OF VILL- NAGAKHILIA, P.O.
NAGAKHALIA, P.S. AND DIST. DHEMAJI, ASSAM
(SHE IS REP. HEREIN BY HER HUSBAND SRI BADAN CH. PHUKON, AGED
ABOUT 62 YEARS, SON OF BHADRESWAR PHUKON, R/O NAGAKHALIA,
P.S. AND DIST. DHEMAJI, ASSAM)

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR DEBA SARMAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

21.04.2023

Heard Mr. D. Sarmah, 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 **Smt. Jyoti Rekha Borgohain** 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. D. Sarmah, learned counsel appearing for the accused petitioner, submits that although it has been alleged in the accused Forwarding Report that the present accused petitioner and Graduate Teacher Herombo Kumar Das along with Chitta Ranjan Roy were in criminal nexus for having not followed the

mandatory directives of SEBA, whereas it has been disclosed that the question papers were kept at Dispur P.S. under CCTV surveillance but, the lock and key of the almirah(shelf) where the said question papers were kept, under the custody of the centre In-charge, that is, the accused petitioner, who is the Principal of Bhauri Devi Sarawgi Government Higher Secondary School for Hearing Impaired, Kahilapara, Guwahati. However, in the additional report, the informant stated that on receipt of the question papers, reported on 23.02.2023 through WhatsApp that she had received the question papers and confidential documents from SEBA at 10 a.m. and kept the same at Dispur P.S. and further, that she reported that one extra packet of question papers of Computer Science subject was received but, she did not report that she did not receive one packet less than the number shown in the Packing List for the Centre Code- B-23-0785, Dist. Code-27 in violation of the instructions issued by the SEBA in respect of safe custody papers. Mr. Sarmah submits that the only allegation against the accused petitioner was that she received 41 packets of question papers of General Science subject instead of 42 packets but, she omitted to inform the same to the informant, the Controller of Examinations, SEBA. According to Mr. Sarmah, learned counsel, the consignment of the question papers was initially received by the Officer-in-Charge of Dispur P.S. and from him the present accused petitioner received the consignment. Mr. Sarmah emphatically submits that the mastermind and the connected accused persons involved in HSLC question paper leakage scam have already been arrested by the investigating officer, and as such, in the absence of any evidence of direct involvement of the accused petitioner lady Principal of the school, in the aforesaid scam, continuation of her detention in the interest of investigation may, perhaps, be not needed. Mr. Sarmah submits that the accused petitioner is on the verge of

retirement in the month of November, 2023 and she did everything in presence of the Officer-in-Charge of Dispur P.S. under CCTV surveillance and therefore, being absolutely innocent, she may be directed to be released on bail

6. Strongly opposing the bail application, Mr. M. Phukan, learned Public Prosecutor, submits that the accused petitioner was designated as the Centre In-charge/ Officer-in-Charge of her school for HSLC Examination, 2023 by SEBA and as per the instructions of SEBA, the Officer-in-Charge was required to receive the confidential packets in presence of the assigned police officer and she was supposed to ensure that the question papers received as per Form 200 (requisition of subject-wise question papers) that there was no shortage of question papers and further, that at any cost, the centre In-charge must collect the packets of question papers from the P.S./O.P. directly strictly prohibiting authorization of any other person to collect the question papers. However, Mr. Phukan submits, the accused petitioner accompanied by Herombo Kumar Das, Teacher of BDS School, Kahilipara and another namely, Chitta Ranjan Roy, a casual employee of the school entered into the store room of Dispur P.S. to collect the question papers and they were present during sorting and collecting the question papers in utter violation of the SEBA instructions in this regard. Mr. Phukan further submits that the accused petitioner reported the informant, the Controller of Examinations, SEBA that she had received one packet extra of Computer Science subject for the HSLC Examination, 2023, but, did not inform anything about the General Science question papers. It has been submitted by Mr. Phukan that later, when the examination for General Science subject was cancelled by SEBA and the examination date was rescheduled due to leakage of the question papers, it came to light that one packet of General Science subject was missing from the allotted number of packets to BDS School, Kahilipara and

thus, she being a public servant, framed incorrect records. Therefore, Mr. Phukan submits that if the liberty of bail is granted to the accused petitioner the ongoing investigation into the case will be adversely affected.

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 petitioner has been in judicial custody since 14.03.2023, that is, for 39 days.

9. On scrutiny of the case diary, it is revealed that the accused petitioner lady is the In-Charge Principal and HSLC Examination Centre In-Charge of BDS School for Hearing Impaired, Kahilipara. It is revealed that on 21.02.2023, she accompanied by co-accused Herombo Kumar Das, an Assistant Teacher of the said school and one Chitta Ranjan Roy, a casual employee, who are experienced in handling HSLC question papers and the procedures for conducting the examination went to Dispur P.S. and after checking the question papers in sealed packets, the total number of packets received were found correct as per the record and accordingly, the accused petitioner reported to the informant, Controller of Examinations, SEBA. Thereafter, the accused petitioner kept the packets of question papers at Dispur P.S. under CCTV surveillance leaving the lock and key of the shelf where the packets of question papers were kept in safe custody with herself. The accused petitioner continued to retain the key of the shelf exclusively with her. However, on 13.03.2023, it was revealed that all the said trio went to Dispur P.S. for sorting the question papers and found that in

Computer Science subject, there were 13 numbers of packets instead of 12 and in General Science subject, there were 41 numbers of packets instead of 42 vide Anneure-5, the Packing List (Theory) Dist. Code- 27 Centre Code- B23-0785. However, the accused petitioner did not report the aforesaid anomaly to the informant, Controller of Examinations, SEBA. Prima facie, there was apparent breach of the relevant instructions issued to the Officer-in-Charge of Examination Centres from SEBA. Thus, it prima facie appears, as a whole, that there was gross violation of the aforesaid strict instructions in respect of initial verification and thereafter, collection of question papers of HSLC Examination Centre of BDS School. 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 to get a clear picture in respect of the aforesaid anomalies. There is no prima facie evidence to show that the accused petitioner misappropriated the missing packet of question papers and circulated the question papers contained therein. These prima facie findings are subject, of course, to final outcome in investigation.

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

11. Accordingly, it is provided that the accused petitioner woman 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.**

12. 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 she 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