

GAHC010076822023



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

Case No. : Bail Appln./1305/2023

MD. SARIFUL HAQUE
S/O- ABDUL SUBHAN
VILL- PANGPANI
P.O. MANSIRI
P.S. TEZPUR
DIST.- SONITPUR
ASSAM
PIN- 784105

VERSUS

THE STATE OF ASSAM
REP. BY P.P.
ASSAM

Advocate for : MR. L GOGOI
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

21.04.2023

Heard Mr. L. Gogoi, 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 **Md. Sariful Haque (20 years)** has prayed for grant of bail in connection with **CID P.S. Case No. 3/2023 (G.R. Case No. 1811/2023)** 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. L. Gogoi, learned counsel appearing for the accused petitioner, submits that the accused, who is an unemployed youth aged about 20 years, has been languishing in jail for last 37 days in spite of being innocent. Mr. Gogoi, however, submits that there is no denial that through WhatsApp the accused had received one handwritten model question paper of HSLC General Science subject for two-three candidates of his village. Mr. Gogoi further submits that the accused had

given the aforesaid paper to two three village candidates only but, was never involved in the leakage of question paper of General Science subject. Therefore, Mr. Gogoi submits that his further continuation of detention for the purpose of investigation may not be warranted.

6. *Per contra*, Mr. M. Phukan, learned Public Prosecutor, submits that the case diary indicates that the accused petitioner who was neither a student nor appeared in the HSLC Examination, 2023, had intentionally got involved in the leakage of question paper in association with the other prime accused persons for pecuniary benefit. The case diary clearly shows that the present accused received handwritten leaked question paper of General Science subject from the arrested co-accused person, namely Hira Nath Doley and thereafter, transmitted the same to the candidates using his own mobile phone. Mr. Phukan, therefore, submits that as the technical analysis of electronic gadgets of the accused petitioner is yet to be completed and he was being apparently involved in the conspiracy of leakage of circulation of question paper for personal pecuniary benefit, his bail application may not be accepted at the present stage of investigation.

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 17.03.2023, that is, for 36 days.

9. Perusal of the case diary reveals prima facie evidence as submitted by the learned Public Prosecutor. The investigation is yet to be completed on crucial aspects.

10. Now, having considered the submissions made by the learned counsel of both sides and the facts and circumstances as emerged from the case diary, this Court is of the opinion that if the liberty of bail is granted to the accused petitioner, the ongoing investigation into the case, which involves great public interest being pertaining to the scam of leakage and circulation of the question papers of HSLC Examination, 2023 conducted by SEBA leading to rescheduling of the date of examination at the cost of academic future of the candidates and huge expenditure of the state exchequer, will certainly be adversely affected.

11. Accordingly, the bail application of the accused petitioner stands **rejected.**

12. **As the accused has been in judicial custody, the investigating officer is directed to expedite the investigation.**

Return the case diary.

This disposes of the bail application.

JUDGE

Comparing Assistant