

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Judgment delivered on : February 22, 2016

+ CRL.M.C. 4023/2013
STATE GOVT. OF NCT OF DELHI

..... Petitioner

Through: Mr. Vinod Diwakar, Additional Public
Prosecutor for the State

versus

SUSHIL KUMAR

..... Respondent

Through: Mr. Sanjay Rathi, Advocate for
respondent

+ CRL.M.C. 4032/2013
STATE GOVT. OF NCT OF DELHI

..... Petitioner

Through: Mr. Vinod Diwakar, Additional Public
Prosecutor for the State

versus

ASHISH KUMAR

..... Respondent

Through: Mr. V. Modhokar and Mr. Dinesh
Sharma, Advocates

+ CRL.M.C. 4033/2013
STATE GOVT. OF NCT OF DELHI

..... Petitioner

Through: Mr. Vinod Diwakar, Additional Public
Prosecutor for the State

versus

PAWAN KUMAR

..... Respondent

Through: Mr. V. Modhokar and Mr. Dinesh
Sharma, Advocates

+ CRL.M.C. 5252/2013
STATE GOVT OF NCT OF DELHI

..... Petitioner

Through: Mr. Vinod Diwakar, Additional Public
Prosecutor for the State

versus

VIKRAM DAHIYA

..... Respondent

Through: Mr. K.K. Manan, Senior Advocate
with Mr. Kishan Bhardwaj, Ms. Nipun
Bhardwaj, Mr. Ankur Narang, Mr.
Raunak Sapathy, Advocates for
respondent

CORAM:
HON'BLE MR. JUSTICE P.S.TEJI

JUDGMENT

P.S.TEJI, J.

1. The aforesaid four petitions have been preferred by the State primarily for the purpose of cancelling the anticipatory bail granted to the accused – Sushil Kumar, Ashish Kumar and Pawan Kumar vide order dated 06.08.2013 passed by learned Additional Sessions Judge, Rohini, Delhi. However, petitioner - Vikram Dahiya has been granted anticipatory bail vide order dated 13.11.2013, passed by learned Additional Sessions Judge, Rohini, Delhi.

2. Since the cause of action as well as facts of all the aforesaid four petitions are same and the accused persons have been granted

anticipatory bail on the ground of parity with the main accused, who has already been granted bail in the present case, therefore the same were heard together and are being disposed of together.

3. In nutshell, the prosecution case is based on secret information regarding leakage of paper of Staff Selection Commission for the Combined Graduate Level Examination (All India Basis) which was to be held on 21.04.2013. It was informed that the persons involved are collecting heavy amount of money from the interested candidates in lieu of supplying answers to the candidates through electronic devices and the persons responsible and the beneficiaries are gathering in a house at Village Pooth Kalan on 21.04.2013. Accordingly, a raiding team was constituted and at the instance of the informer, the premises at Village Pooth Kalan, Delhi was raided. During the raid, 9 persons were found there and upon inquiry from one of them, i.e., Ashu Sharma son of Naresh Sharma, it was disclosed that they have gathered to supply the solved answer keys to the candidates of Combined Graduate Level Examination 2013. He further disclosed that one Bijender Chikara would be sending the answer key of morning shift examination through SMS. Thereafter, a SMS was received from the mobile of Bijender Chikara containing e-mail and password of the same. Another SMS from mobile No.9310441200 was received by Ajeet son of Devi Singh having email and password in respect of another key. The said mails were accessed on the laptop available in the room and the question paper uploaded on the email was printed out. The attachment consisted of 27 papers having code

011kpo-Part-A on front page containing 200 multiple questions. The said question papers were counter checked and verified from Examination Centre at Govt. Co-Ed Senior Secondary School, Sector 11, Rohini and the same question paper was found which was circulated to the candidates.

4. The prosecution has taken the printout of the question papers from the printer installed at the spot. Mobile phones, two laptops and one printer of Canon alongwith slips containing names of candidates, etc. were also seized. Thereafter the case was registered at Police Station Crime Branch, Delhi vide FIR No. 73/2013 under Section 120-B read with Sections 408, 420, 468, 471, 201, 511, 34 of IPC and Section 66 of I.T. Act. Nine persons found at the spot were arrested, when they were in the process of receiving question paper and answer keys for solving the paper. Subsequently, specific recoveries were affected from all the nine accused persons.

5. Ashu Sharma, one of the arrested person disclosed about Bijender Chikara working as LDC in MCD Office at Sector 5, Rohini, who can arrange question paper of SSC Combined Graduate level examination to be held on 21.04.2013 for both the shifts and the same can be sent through email at the cost of Rs.3.5 lac.

6. During investigation, it was revealed that Ajit was assigned to manage a place for execution of conspiracy and his friend Sushil was to arrange one house on rent. Ravinder was sent to Sushil for taking house on rent. Thereafter, the rent agreement was executed and all the

accused persons assembled at the rented accommodation in Pooth Kalan, Delhi.

7. During investigation, it was revealed that the URL logs, as provided by the franchisee Gaurav Bhardwaj were logged into the Gmail accounts at the time of uploading the SSC CGL 2013 question paper by the persons named – Pawan Kumar, Ashish Kumar, Sarvesh Saroha and Ashok Arya.

8. During investigation, it was also revealed that the internet connection of world Phone Internet Connection was being used at his shop for customer complaints and subsequently used by Ashish Kumar, Pawan Kumar and their relative Vikram Dahiya on weekends. The said fact was confirmed on the basis of the frequent cell phone conversation which took place amongst them as detailed in the call detail records of the said accused. The suspect/accused in conspiracy with Vikram Dahiya had facilitated his premises and his internet connection knowingly as to circulate the leaked SSC CGL 2013 question paper for monetary gains. During further investigation, disclosure statement of accused Bijender Chikara, analysis of mobile phone call detail records of arrested accused and Vikram Dahiya, Sushil Kumar, Pawan Kumar and Ashish Kumar (respondents herein) were found to be having direct nexus in conspiracy.

9. While arguing the present petitions, Mr. Vinod Diwakar, learned Additional Public Prosecutor for the State contended that the offences are not only serious but are targeted towards causing loss to

the public at large as the case relates to the leakage of question paper of Combined Graduate Level Examination 2013, illegal solving of the paper and then supplying the answers through answer keys, to the candidates appearing in the exam. It is further contended that none of the accused have direct relation to exam governing agency i.e. SSC, still the question paper and respective keys came in hands of the accused persons and there is every possibility of such leak with different examination centres where the question papers were supplied by SSC. It is further submitted that the question paper was leaked only after the question paper reached the examination centres and before the actual time of the start of the examination i.e. about 1.5 hours before the examination. Therefore, there is every possibility of involvement of school authorities and their officials, i.e. Principals, teachers, etc. in the said offence. It is further contended that the conspiracy is hatched by a group of several persons divided into several groups acting as an organized gang for the said purpose. Some of them procured the question paper, some arranged the prospective competitors, and some arranged their meeting and some solved the question paper. The racket was well organised in the way that they had even obtained mobile phones on fake and fictitious identities. The chain of circumstances in between are turning and are woven in such a manner that tampering at any stage will make the efforts to unearth the conspiracy, almost impossible.

10. Learned Additional Public Prosecutor for the State further contended that till the time of granting the bail by the learned

Additional Sessions Judge, the respondents/accused persons were absconding and non-bailable warrants were also issued qua their arrest but it was not taken into consideration by the concerned Court. Apprehension of respondents in manipulating and tampering with the crucial and sensitive evidence has been raised, and it has been submitted that the respondents were members of a well organized racket involved in leakage of question paper, therefore, they are not entitled to have the benefit of anticipatory bail.

11. Learned Additional Public Prosecutor for the State further drew attention of this Court to the impugned order in which the respondents were granted anticipatory bail on the ground of parity. In this regard, it is contended that the co-accused persons in the case were not granted anticipatory bail and rather they were given regular bail after remaining in custody for more than 60 days and that too, after filing of the initial charge sheet wherein the factum of the respondents absconding was clearly mentioned which resulted in issuance of NBWs against the respondents by the Court.

12. Learned Additional Public Prosecutor for the State further contended that one of the co-accused namely Vikram Dahiya having been denied anticipatory bail by the District Court had approached this Court for bail, but the same was also denied vide order dated 23.07.2013 passed in Bail Appl. No.1260/2013, wherein this Court had directed the accused to surrender before the concerned Court.

13. Learned Additional Public Prosecutor for the State further

contended that the custodial interrogation of the respondents is necessary for providing the following vital and important information:-

- The origin of the paper leak has to be ascertained from the accused.
- The examination centre, out of the various centres in Delhi, NCR, from where the paper was leaked has to be ascertained and identified.
- The involvement of the large number of students in the racket who have benefited from the leakage is also to be identified and ascertained at the instance of the accused/respondent.
- Electronic gadgets of the accused including cell phone, data cards or laptops, computer used etc., are to be recovered which are of utmost evidentiary value.
- The call detail records (CDR logs) have to be confronted with the accused for further identification of the person involved in the conspiracy.
- The IP logs also are required to be confronted with the accused.

- Hide outs of the co-accused at Jind, Gannaur, Sonapat and other places are to be visited with the accused in custody.
- The sustained interrogation of the accused/ respondent is required to be conducted which is necessary to unearth and expose the entire conspiracy behind the racket of leaking the concerned question paper.

14. Mr. Sanjay Rathi, counsel appearing for the respondent – Sushil Kumar has filed response to the petition filed by the State and contended that rejection of bail stands on one footing and cancellation of bail is a harsh order because it interferes with the liberty of the individual and hence it must not be resorted to lightly. The State has not made any ground or mentioned any reason for seeking cancellation of bail granted to the respondent. It has specifically been mentioned in the order of learned Additional Session Judge that the respondent shall join the investigation as and when required by the Investigating Officer and shall report to the Investigating Officer on every Saturday of English Calendar month. It is contended on behalf of respondent – Sushil Kumar that in view of the directions of learned Additional Session Judge, the respondent remained present at the office of the Investigating Officer on 10th August 2013 from 9AM to 7 PM, but no one in the office entertained the respondent. In this regard, the respondent had sent a written communication regarding his physical

presence to the Investigating Officer through courier on the same day. It is further contended that the respondent remained physically present at the office of Investigating Officer on 17.8.2013 from 11 AM to 6 PM but he was not entertained and the written communication about his physical presence was conveyed to the Investigating Officer through courier on the same day. Similar was the position on 24th August 2013, when the respondent remained present in the office of Investigating Officer from 10 am to 5.30 pm. Respondent again visited the office of Investigating Officer on 3rd September 2013, 7th September 2013 and 14th September 2013, but he was not entertained. Counsel for the respondent further relied upon the judgment of the Hon'ble Supreme Court in *Dolat Ram & Others v. State of Haryana, 1995 (1) CC Cases 66 (SC)* in support of his submissions and submitted that the bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of the bail during trial. Counsel for the respondent further contended that there is no averment in the petition filed by the State that the respondent has not joined investigation and did not cooperate with the Investigating Officer; or has mentioned that the respondent had tampered with evidence or pressurised or intimidated any witnesses or that the bail order had been obtained fraudulently, therefore, the petition filed by the State deserves to be outrightly dismissal. Counsel for the respondent further contended that the anticipatory bail granted to the respondent cannot be cancelled as the State failed to make out a

case for interference in the order passed by the learned Additional Session Judge under Section 438 of Cr. P.C.

15. While responding to the parawise contentions raised by the State in its petition, counsel for the respondent contended that it is a settled proposition of law that the disclosure statement of an accused during his custody is not admissible in law and cannot be read at all against the other accused persons. The Investigating agency is solely relying upon the alleged mobile phone call detail record and in the charge sheet the Investigating Officer has alleged that some alleged phone call was made by the accused Bijender Chhikara to the respondent on 22.04.2013 and further one SMS was sent by the accused Bijender Chhikara to the respondent on 22.04.2013. It is contended that it is the prosecution case that the alleged occurrence took place on 21.04.2013, while the alleged phone call details pertain to 22.04.2013. It is further contended by counsel for the respondent that as per the charge sheet, it is the case of the prosecution that one Ashu Sharma is the kingpin and was already arrested and the alleged offences were mainly committed between Ashu Sharma and Bijender Chhikara.

16. So far as the contention of the State that the co-accused person in this case has been denied bail, counsel for the respondent submitted that there can be different roles of various accused persons implicated and it cannot be a ground that one of the accused person has been denied bail so the bail granted to the respondent would also be cancelled. Moreover, it is not the case of the petitioner that the

respondent did not appear before the Investigating Officer in compliance of the directions passed by learned Additional Session Judge, rather it was the Investigating Officer who was not interested in investigation from the respondent and the interest of the State seems to be to somehow take the respondent into custody and to harass him and to ruin his entire life and for such ill motivated and malafide intentions, the petitioner is legally prohibited from seeking cancellation of bail of the respondent.

17. While arguing the case of the respondents – Ashish Kumar and Pawan Kumar, Mr. V. Madhokar, counsel for the respondents contended that in compliance of the directions given by learned Additional Session Judge, the respondents alongwith his surety and advocate visited the office of ACP, Crime Branch, Sector 16, Rohini on 10.08.2013, 17.08.2013 and 24.08.2013 and showed the order of learned Additional Session Judge to mark his presence and allow them to join the investigation, but they were not allowed to join the investigation and they were not even allowed to mark their presence. In support of his contention, counsel for the respondents relied upon the video clipping to show that the respondents had visited the office of the ACP, Crime Branch. Thereafter, the respondents reported the matter of Commissioner of Police and had also apprised the learned Metropolitan Magistrate, Delhi as well as to Sessions Court. Counsel for the respondents contended that even if the case of the prosecution is accepted as it is, still no offence punishable under Section 420/468/471/34 and Section 66 of IT Act is made out against them.

Counsel for the respondents further contended that it is not the seriousness/gravity of the offence only which is to be looked into by the learned Session Judge while entertaining the bail application but the specific role and the involvement of the accused is also to be considered and which the learned Additional Session Judge has rightly looked into and there is no infirmity in the order granting bail to the respondents. In support of his contention, counsel for the respondents relied upon the judgment of the Hon'ble Supreme Court in ***Bhagirath Singh Judeja vs. State of Gujrat, AIR 1984 SC 372***. Counsel for the respondents further contended that mere issuance of NBWs or filing of charge sheet is no ground to refuse anticipatory bail to the accused. In support of his contention, judgment of Hon'ble Supreme Court in ***Naturasu and other vs. The State, 1988 CriLJ 1762 and Bharat Choudhary and Anr vs. State of Bihar and Anr, AIR 2003 SC 4662*** were relied upon by counsel for the respondents.

18. Counsel for the respondents – Ashish Kumar and Pawan Kumar further contended that the prosecution has given clean chits to the other two accused namely Ashok Arya and Sarvesh Saroha against whom there are almost similar allegations and the prosecution is bent upon to send the respondents in jail. The prosecution has already raided the shop and seized the modem and the computer of the Institute, therefore there is no need of any custodial interrogation to make any recoveries from the respondents. It is further contended that there is no possibility of influencing any witnesses as most of the witnesses are officials of the police. The respondents were granted bail

on parity with the accused who were already granted bail in the case. So far as the contention of the prosecution that the respondents are not entitled to parity with the accused who first remained in jail and thereafter were granted bail is concerned, it is not the requirement of law that an accused person cannot be admitted on anticipatory bail on the ground that co-accused persons were denied anticipatory bail and they have to remain in jail for some time.

19. On behalf of respondent- Vikram Dahiya, Mr. K.K. Manan, Senior Advocate, apart from the legal principles settled by Hon'ble Supreme Court in catena of judgments, contended that the order granting anticipatory bail to the respondent does not call for interference as in compliance thereof, the respondent alongwith his surety and advocate visited the ACP Office, Crime Branch, Sunlight Colony Police Station on 23.11.2013 and the respondent was subjected to sustained and prolonged interrogation by a team consisting of ACP Raja Ram Yadav, Inspector Pawan Kumar, Inspector Surajbhan, one cyber expert and two other officials. The interrogation was conducted in writing and the replies were also given in writing and to a question whether respondent is ready for narco test, it was replied that since he is undergoing treatment for brain tumour, therefore he will consult his doctor. Thereafter the police official left the space blank and obtained the signature of the respondent on the statement. The mobile phone of the respondent was also thoroughly examined by the expert . It is further contended that during the prolonged and sustained interrogation nothing incriminating was

found against the respondent. Thereafter, the respondent again joined the investigation on 30.11.2013, 07.12.2013, 14.12.2013, 21.12.2013 and 28.12.2013. It is contended on behalf of the respondent that these facts have not been mentioned by the State in its petition therefore the same is liable to be dismissed for concealing these vital and important facts. The learned senior advocate appearing on behalf of the respondent – Vikram Dahiya contended that apart from the ground of parity the other main ground of the bail application of the respondent was that no offence under Section 420/468/671/34 of IPC and Section 66 of the IT Act are made out against the respondent even if the case of the prosecution is accepted as its face value and the State has failed to satisfy the learned Additional Session Judge that the offences are made out against the respondent. It is contended on behalf of respondent – Vikram Dahiya that the impugned order is not against proprietary and the learned Additional Session Judge has rightly interpreted and followed the order dated 01.11.2013 passed by this Hon'ble Court.

20. I have heard the contentions raised by learned Additional Public Prosecutor for the State as well as the respective counsel representing the case of the respondents. I have also gone through the impugned order passed by learned Additional Session Judge and also perused the documents placed on record.

21. The admitted facts of the case are that the charge sheet in this case has been filed and the necessary recoveries from the respective respondents have been seized by the prosecution. Perusal of the record

also shows that the petitioner has nowhere stated that the respondents have failed in discharging their obligation to join investigation or to provide any information as asked by the Investigating Officer. It is also not disclosed as to whether any respondents have tried to influence the witnesses of the case or flouted any direction passed by learned Additional Session Judge in its order granting anticipatory bail to the respondents.

22. The Hon'ble Supreme Court in ***Abdul Basit Vs. Abdul Kadir Choudhary, (2014)10SCC754*** held as under:-

18. Under Chapter XXXIII, Section [439\(1\)](#) empowers the High Court as well as the Court of Session to direct any accused person to be released on bail. Section [439\(2\)](#) empowers the High Court to direct any person who has been released on bail under Chapter XXXIII of the Code be arrested and committed to custody, i.e., the power to cancel the bail granted to an accused person.

Generally the grounds for cancellation of bail, broadly, are, (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive.

Where bail has been granted under the proviso to Section [167\(2\)](#) for the default of the prosecution in not completing the investigation in sixty days after the defect is cured by the filing of a charge sheet, the prosecution may seek to have the bail cancelled on the ground that there are reasonable grounds to believe that the accused has committed a non-bailable offence and that it is necessary to arrest him and commit him to custody. However, in the last mentioned case, one would expect very strong grounds indeed. (Raghubir Singh and Ors. etc. v. State of Bihar 1987 Cri. LJ 157)”

23. This Court observes that the learned Additional Sessions Judge had granted the bail to the respondents on the ground that the main accused persons have already been admitted to bail, even the chargesheet has been filed and also in view of the settled principles for admitting the respondents/accused on bail. This Court also observes that in the earlier chargesheet filed by the prosecution, the name of the respondents were not mentioned in the list of accused, but as suspects only.

24. This Court also observes that the anticipatory bail was granted to the respondents by the learned Additional Sessions Judge in the year 2013, and till date neither any investigation has been conducted by the prosecution from the respondents nor any efforts were made to collect the material information from the respondents.

25. This Court observes that there is specific averment on behalf of the respondents in their replies to the present petitions that they had approached the Investigating Officer for performing their part of

obligation, but it is the prosecution, who did not conducted the investigation. No explanation or any reason to this effect is offered on behalf of the State. Even the State has not raised any contention against the accused/respondents that they have misused the concession of bail.

26. It is also observed that on the one hand, the State has urged for the recoveries and the other material informations from the respondents in this case and on the other hand, they have also not produced any material on record to show that the respondents did not cooperate in the investigation or they have defaulted in complying with the directions given by the Trial Court vide impugned order. This Court is of the opinion that at best, the investigating officer should have started the investigation and during investigation, if he would have found any clue of respondents hiding any material information or found some concrete reason for not cooperating the investigation, then it was open for the Investigating Officer to approach the Court passing the order of anticipatory bail in favour of the respondents, for cancellation of the impugned order. The real position is that the State has preferred to take steps to file petition for cancellation of the bail granted to the respondents, rather than to comply with the order of learned Additional Sessions Judge.

27. In view of the aforesaid observations and discussion and in the peculiar facts of the present case, this Court does not find any ground to interfere in the impugned order passed by the learned Additional Session Judge. Finding no merit in the present petitions filed by the

State, the same are hereby dismissed.

28. It is made clear that any observations made hereinabove, shall not have any bearing on the merits of the case.

29. The petitions filed by the State are accordingly disposed of.

(P.S.TEJI)
JUDGE

FEBRUARY 22, 2016
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