

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.32127 of 2017

Arising Out of PS.Case No. -44 Year- 2017 Thana -AGAMKUAN District- PATNA

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1. Atal Bihari Rai, Son of Sri Ganesh Rai, R/o Village Post- Barkagaon
Mansingh Patti, P.S.- Buxar, District- Buxar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Vigilance Department through S.P. Vigilance, Patna.

.... Opposite Party/s

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with

Criminal Miscellaneous No.24035 of 2017

Arising Out of PS.Case No. -44 Year- 2017 Thana -AGAMKUAN District- PATNA

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1. Shri Awdhesh Kumar S/o Shri Radha Prasad resident of South Gandhi
Nagar, P.S. - Sadar, District - Hazaribagh (Jharkhand) at presently residing
at Professors Quarter No 13, Saidpur, P.S. - Bahadurpur, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The State of Bihar through Vigilance, Patna.

.... Opposite Party/s

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with

Criminal Miscellaneous No.23833 of 2017

Arising Out of PS.Case No. -44 Year- 2017 Thana -AGAMKUAN District- PATNA

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1. Guddu Kumar S/o Laldeo Singh @ Laldev Singh, Resident of Village-
Vishunpura Narayanpur, P.S.- Obra, District- Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar through Vigilance, Bihar, Patna

.... Opposite Party/s

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with

Criminal Miscellaneous No.25907 of 2017

Arising Out of PS.Case No. -44 Year- 2017 Thana -AGAMKUAN District- PATNA

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1. Anish Kumar @ Golu Son of Mahendra Saw, Resident of
Village/Mohallah- Paschimi Mohan Bigha, Near Lagan Mandal, P.S.- Dehri
On Sone, District- Rohtas at Sasaram (Bihar).

.... Petitioner/s

Versus

1. The State of Bihar.
2. D.I.G. Vigilance Department , Patna , Bihar.

.... Opposite Party/s

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with



Criminal Miscellaneous No.25814 of 2017

Arising Out of PS.Case No. -44 Year- 2017 Thana -AGAMKUAN District- PATNA

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1. Avinash Kumar aged about 30 years Son of Mahima Sharan Singh R/o
Sipara, P.S.-Beur, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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with

Criminal Miscellaneous No.27611 of 2017

Arising Out of PS.Case No. -44 Year- 2017 Thana -AGAMKUAN District- PATNA

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1. Mukesh Kumar Son of Mahabir Rajak, Resident of Mohalla- Kurji,
Bhagra Aashram, Police Station- Digha, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The State of Bihar through Vigilance, Patna.

.... Opposite Party/s

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with

Criminal Miscellaneous No.31100 of 2017

Arising Out of PS.Case No. -44 Year- 2017 Thana -AGAMKUAN District- PATNA

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1. Om Prakash Gupta son of Ganesh Prasad Gupta resident of village
Pathara, P.S. Gararu, District Gaya at present East Ashok Nagar, Road No.
14, House of Rajendra Prasad, P.S. Kankarbagh, District - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Vigilance, Patna.

.... Opposite Party/s

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with

Criminal Miscellaneous No.25151 of 2017

Arising Out of PS.Case No. -44 Year- 2017 Thana -AGAMKUAN District- PATNA

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1. Arun Kumar Son of Sri Jagdeo Ram, Resident of L.I.G.-16/563,
Hanuman Nagar, P.S. Patrakarnagar Town and District Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Vigilance, Patna

.... Opposite Party/s

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with

Criminal Miscellaneous No.27285 of 2017

Arising Out of PS.Case No. -44 Year- 2017 Thana -AGAMKUAN District- PATNA

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1. Niti Ranjan Pratap, son of late Rampukar Singh, Resident of Village/Mohalla- Bishunpur, P.S.- Wazirganj, District- Gaya, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through Vigilance, Patna.

.... Opposite Party/s

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with

Criminal Miscellaneous No.22376 of 2017

Arising Out of PS.Case No. -44 Year- 2017 Thana -AGAMKUAN District- PATNA

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1. Sudhir Kumar S/o Shri Radha Prasad, Resident of South Gandhi Nagar, P.S.- Sadar, District- Hazaribagh (Jharkhand) Presently residing at Officers Flat, Bailey Road, Patna, P.S.- Shastri Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Vigilance Patna

.... Opposite Party/s

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with

Criminal Miscellaneous No.33675 of 2017

Arising Out of PS.Case No. -44 Year- 2017 Thana -AGAMKUAN District- PATNA

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1. Ramsumer Singh, son of Late Subray Singh, R/o Village Chakan Bigha, P.S.- Barun, District- Aurangabad, at present residing at Rajiv Nagar Road No.9, House of Hirday Rai, P.S.- Rajiv Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.

2. The Vigilance Department, Bihar, Patna through S.P. Vigilance, Patna.

.... Opposite Party/s

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with

Criminal Miscellaneous No.35081 of 2017

Arising Out of PS.Case No. -44 Year- 2017 Thana -AGAMKUAN District- PATNA

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1. Gauri Shankar Singh aged about 34 years S/o Shri Chandrika Prasad R/o Village - Bindusar Buzurg, P.S. Muffasil Siwan, District - Siwan and at present Rajeev Nagar, House No. 1, Road No. 16, Patna - 800024.

.... Petitioner/s

Versus

1. The State of Bihar.

2. Additional Director General, Deptt. of Vigilance, Govt. of Bihar, Patna.

.... Opposite Party/s

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with

Criminal Miscellaneous No.33259 of 2017

Arising Out of PS.Case No. -44 Year- 2017 Thana -AGAMKUAN District- PATNA

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1. Dinesh Kumar Azad @ Dineshwar Azad @ Dineshwar Paswan, Son of



Shri Sita Ram Paswan, Resident of Mohalla- New Matwarpur Dhalaiya
Road, P.S.- Parsa Bazar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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with

Criminal Miscellaneous No.22807 of 2017

Arising Out of PS.Case No. -44 Year- 2017 Thana -AGAMKUAN District- PATNA

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1. Manju Kumari @ Manju Devi W/o Shri Awdhesh Kumar, Resident of
South Gandhi Nagar, P.S.- Sadar, District- Hazaribagh (Jharkhand) at
presently residing at Professors Quarter No. 13, Saidpur, P.S.- Bahadurpur,
District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar

2. The State of Bihar through Vigilance Patna.

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.32127 of 2017)

For the Petitioner/s : Mr. Siddharth Harsh

For the Opposite Party/s : Mr. Ramakant Sharma (L.O.,Inc.,Vigilance)
Mr. Ajay Mishra

(In Cr.Misc. No.24035 of 2017)

For the Petitioner/s : Mr. Dhananjaya Nath Tiwari

For the Opposite Party/s : Mr. Ramakant Sharma (L.O.,Inc.,Vigilance)
Mr. Ajay Mishra

(In Cr.Misc. No.23833 of 2017)

For the Petitioner/s : Mr. Rakesh Singh

For the Opposite Party/s : Mr. Ramakant Sharma (L.O.,Inc.,Vigilance)
Mr. Ajay Mishra

(In Cr.Misc. No.25907 of 2017)

For the Petitioner/s : Mr. Rakesh Kumar

For the Opposite Party/s : Mr. Ramakant Sharma (L.O.,Inc.,Vigilance)
Mr. Ajay Mishra

(In Cr.Misc. No.25814 of 2017)

For the Petitioner/s : Mr. Arvind Kumar

For the Opposite Party/s : Mr. Ajay Mishra

(In Cr.Misc. No.27611 of 2017)

For the Petitioner/s : Mr. Uday Chand Prasad

For the Opposite Party/s : Mr. Ramakant Sharma (L.O.,Inc.,Vigilance)
Mr. Ajay Mishra

(In Cr.Misc. No.31100 of 2017)

For the Petitioner/s : Mr. Nilesh Kumar

For the Opposite Party/s : Mr. Ramakant Sharma(L.O.,Inc.,Vigilance)
Mr. Ajay Mishra



(In Cr.Misc. No.25151 of 2017)

For the Petitioner/s : Mr. Amar Nath Mishra
For the Opposite Party/s : Mr. Ramakant Sharma(L.O.,Inc., Vigilance)
Mr. Ajay Mishra

(In Cr.Misc. No.27285 of 2017)

For the Petitioner/s : Mr. Gajendra Kumar Singh
For the Opposite Party/s : Mr. Ramakant Sharma (L.O.,Inc., Vigi.)
Mr. Ajay Mishra

(In Cr.Misc. No.22376 of 2017)

For the Petitioner/s : Mr. Saket Tiwary
For the Opposite Party/s : Mr. Ramakant Sharma (L.O.,I/C Vigi)
Mr. Ajay Mishra

(In Cr.Misc. No.33675 of 2017)

For the Petitioner/s : Mr. Sharda Nand Mishra
For the Opposite Party/s : Mr. Ramakant Sharma (L.O.,Inc., Vigilance)
Mr. Ajay Mishra

(In Cr.Misc. No.35081 of 2017)

For the Petitioner/s : Mr. Krishna Chandra
For the Opposite Party/s : Mr. Ramakant Sharma (L.O.,Inc., Vigilance)
Mr. Ajay Mishra

(In Cr.Misc. No.33259 of 2017)

For the Petitioner/s : Mr. Anuj Kumar
For the Opposite Party/s : Mr. Ajay Mishra

(In Cr.Misc. No.22807 of 2017)

For the Petitioner/s : Mr. Dhananjaya Nath Tiwari
For the Opposite Party/s : Mr. Ramakant Sharma (L.O.,Inc., Vigilance)
Mr. Ajay Mishra

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA**
ORAL ORDER

14 06-12-2017

Heard both sides.

The petitioners seek bail in Special Case No.11 of 2017 arising out of Agamkuan P.S. Case No.44 of 2017 registered under Section 419, 420, 467, 468, 471, 34, 120B of the Indian Penal Code, 66D of the I.T.Act and Section 7, 8, 9, 13(i)(a)(d)(e) read with Section 13(2) of the Prevention of Corruption Act.

The informant, Dhirndra Kumar Singh, A.S.I. of



Agamkuan P.S. alleged that in the night at about 10.00 on 03.02.2017, he received a secret information that in the house of Dinanath Singh situated in Mohalla Mahatma Gandhi Nagar, Kanti Factory Road, Pawan Kumar and Atul Ranjan Sinha were involved in cheating, getting questions and transmitting questions and answer sheets of the examination conducted by Bihar Staff Selection Commission for recruitment on different posts in the offices of the Govt. of Bihar. The accused persons are indulged in taking money from different candidates for giving them answer sheets of the questions and transmitting them through electronic devices after taking huge amount from many candidates. The informant having received such information informed the superior officers and after constituting search-cum-raiding team proceeded to the place to verify the genuineness of the information. The police arrived at first floor of the house occupied by Pawan Kumar and Atul Ranjan Sinha on rent but three persons seeing the police started fleeing away but they were apprehended on chase. The apprehended accused persons disclosed their names as Pawan Kumar, Vipin Kumar and Navnit Kumar. On interrogation, Pawan Kumar and Vipin Kumar disclosed that they in collusion and in connivance with Atul Ranjan Sinha, Gorelal @ Kaushik and Bhola @ Nitish were indulged in leaking the questions and answer sheets



of the examination held by Bihar Staff Selection Commission for recruitment of different posts. They used to take Rs.6 lacs from different candidates. The accused persons further disclosed the mode of their operations for realizing money from different persons for transmitting of questions and answer sheets through electronic devices by use of Bluetooth. They used to forward correct answers of the questions in the examination hall as well as before the beginning of the examination. Many electronic devices small Bluetooth, battery of Bluetooth, battery, cash, mobile phones and many original certificates of candidates, who had approached the accused, were recovered from the place.

Mr. Y.V.Giri, the learned senior counsel appearing on behalf of petitioner, Sudhir Kumar, in Cr. Misc. No.22376 of 2017 has firstly made two folds argument before making argument on merit. Mr. Y.V.Giri has firstly contended that since this Court carries biasness on account of the fact that this Court has disposed of Cr. Misc. No.20500 of 2017, bail petition of Vinit Kumar and others v. State of Bihar and Cr. Misc. No.21091 of 2017(Vipin Kumar v. State of Bihar), therefore, this case be transferred to any other court. The learned counsel further submits that bias may be defined as a pre-conceived opinion or pre-disposition or pre-determination to decide a case or an issue in a particular manner



so much so that such pre-disposition does not lead the mind open to conviction. The learned counsel has placed his reliance on a Division Bench judgment of this Court in Prathmik Adhyapak Sangh V. State of Bihar and others reported in 2003(2) PLJR 305. Of course, the sole basis of alleging biasness is that this Court has disposed of bail petition of some of the accused persons as noted above. Admittedly, from perusal of the records of different bail petitions, it appears that earlier bail petition arising out of the present F.I.R. were heard by different Benches and when this fact was brought to the notice that the bail petitions of some of the accused were disposed of by this Court, all the bail petitions were transferred to this Court by the order of Hon'ble the Chief Justice. Of course, bias may be of different forms, such as, pecuniary bias, personal bias, bias as to subject matter in dispute or policy bias, bias on account of judicial obstinacy but the learned counsel for the petitioner could not be able to point out that the Court is suffering from any sort of biasness save and except this fact that this Court disposed of the bail petition of some of the accused persons on the basis of the materials available on record. From perusal of the judgment of Prathmik Adhyapak Sangh(supra) on which the learned counsel for the petitioner placed his reliance, it appears that there was a dispute with regard to pay scale of



different categories of teachers such as, trained, untrained, intermediate and graduate primary teachers and a fitment committee was constituted in order to resolve the disputes with regard to pay scales. The Hon'ble Judge was Chairman of the fitment appellate committee and he, after hearing, recommended for different pay scales to different category of primary teachers. Some of the categories of teachers being aggrieved with the recommendation of fitment appellate committee filed CWJC and the same was placed before the Hon'ble Judge who was the Chairman of the fitment appellate committee and on such, it was held that there was biasness on the part of the Hon'ble Judge because he had dealt with the matter and made recommendation of different categories of pay scales but the present case relates with the disposal of bail petition. In a particular case, there may be so many accused persons, the prayer for bail of those persons may be disposed of by different Benches or by a Single Bench. Some of the accused persons may be granted bail or some of the accused persons may not be granted bail. The grant of bail depends upon nature of allegations, gravity of offence and the materials available on record against particular accused. If a Judge or a Bench allows the bail petition of a particular accused or grant bail to a particular accused, he cannot be said to be having biasness of any kind,



therefore, I do not find any force in the submission of the learned counsel for the petitioner.

Mr. Y.V.Giri, the learned senior counsel for the petitioner Sudhir Kumar further submits that the petitioner was the Chairman of the Bihar Staff Selection Committee at the relevant time. The investigating officer submitted chargesheet under different Sections of the I.P.C. and I.T. Act besides under Sections 7, 8, 9, 13(i)(a)(d)(e) of the Prevention of Corruption Act but the sanction was not granted against the petitioner as required under Section 19(1) of the Prevention of Corruption Act. No sanction was obtained before submission of the chargesheet. The learned Special Judge however took cognizance under different Sections of the Prevention of Corruption Act besides different Sections of the I.P.C. and I.T. Act. Therefore, the order of cognizance and remand subsequent to the order taking cognizance is bad.

It is further contended that upon institution of the case, if the accused is arrested, the accused is remanded to the custody under Section 167(2) of the Cr.P.C. but after submission of charge sheet, the remand is made under Section 309(2) of the Cr.P.C. but the condition precedent for remand under Section 309(2) of the Cr.P.C. is that the Court must have taken cognizance against the accused. At the time of taking cognizance, the Magistrate or a



Special Judge has to look into the facts and the provisions as contained in Section 195 to 197 of the Cr.P.C. and any other Special Act as to whether he is competent to take cognizance or not, if without sanction no Court can take cognizance under the Special Act such as Prevention of Corruption Act. The Special Judge by virtue of taking cognizance under the I.P.C. cannot remand the accused under Section 309(2) of the Cr.P.C. It is further submitted that once the remand is illegal, the petitioner is entitled to get bail even under Section 439 read with Section 440 of the Cr.P.C. Special Judge, of course, is empowered to take cognizance of offences also under the I.P.C. but if he cannot take cognizance of offences under the Prevention of Corruption Act or Special Act in absence of sanction, he is not at all competent to take cognizance only under the different Sections of the I.P.C. The learned counsel for the petitioner placed his reliance on the judgment of Division Bench of this Court in Ahmad Ashfaq Karim v. State of Bihar through Vigilance and others reported in 2015(1) PLJR 178. The learned counsel placed reliance in the case of Sri S.K.Lal, Special Judge C.B.I.(AHD), Patna v. Lalu Prasad & Ors. reported in 1998(1) PLJR 782.

Contending the submission of Mr. Y.V.Giri, Mr. Ajay Mishra, learned counsel for the State submitted that if there is any



illegality or irregularity in an order taking cognizance due to lack of sanction under Section 19(1) of the Prevention of Corruption Act, the same cannot be looked into in a petition filed under Section 439 and 440 of the Cr.P.C.(hereinafter referred to as the “Code”) for grant of bail. If the petitioners are at all aggrieved by the order taking cognizance in absence of sanction, the petitioner may file revision or quashing petition under Section 482 of the Code.

The learned Additional P.P. further submits that besides Sudhir Kumar, the Chairman of Bihar Staff Selection Commission, many other employees of the State Govt. were working in the Bihar Staff Selection Commission and they were also found involved in leakage of question papers of examination held for appointment on different posts at district levels of the Govt. of Bihar. No sanction is required to prosecute them as they have already been dismissed from service and the Court has rightly taken cognizance under different Sections of the Indian Penal Code as well as different Sections of the Prevention of Corruption Act and I.T. Act. Therefore, the case of the petitioner, Sudhir Kumar cannot be separated from the case of others and even if the cognizance order under Prevention of Corruption Act against Sri Sudhir Kumar is illegal or irregular, the Special Judge



has got power to put him on trial along with other accused persons and the order taking cognizance under different Sections of the I.P.C. against Sri Sudhir Kumar is not illegal. Therefore, after taking cognizance, remand of all the accused under Section 309(2) of the Code cannot be said to be illegal. It is further submitted that in the facts of the present case, no sanction as contemplated under Section 19(1) of the Prevention of Corruption Act, 1988 is necessary in as much as sanction would be required under Section 19(1) of the Prevention of Corruption Act, 1988, if an offence is committed under the Prevention of Corruption Act, 1988, in discharge of his official duty by a public servant or in purported discharge of his official duty. In the present case, the officials who are found to be involved in leaking the question papers of a competitive examination for appointment on different posts cannot be said to be done in pursuance of official duty and, therefore, sanction for his prosecution is not warranted.

It is no doubt that if an accused is arrested during the course of investigation after institution of a case, the remand of the accused is made under Section 167(2) of the Code but after submission of charge sheet, the Court has to take cognizance before remanding the accused to custody under Section 309(2) of the Code as has also been held by a Division Bench of this Court



in the case of S.K.Lal(supra).

In the present case also, the Special Judge has also taken cognizance against all the accused persons including those who were working as a Govt. servants in the Bihar Staff Selection Commission under different Sections of the I.P.C., I.T. Act and Prevention of Corruption Act.

In view of sub-section (3) of Section 4 of the Prevention of Corruption Act, the Special Judge is also empowered to try any offences under different Sections of I.P.C. other than the offences specified in Section 3 with which the accused may be put on trial after framing of charges in the same trial against whom charges under different Sections of Prevention of Corruption Act is framed. Under sub clause (a), (b) of sub-section (1), the Special Judge is also empowered to try the offences relating to any conspiracy to commit or any attempt to commit or any abatement of any of the offence specified in clause (a). Clause (a) of Section 3(1) says with regard to trial of the offence under the Act. Therefore, in view of these facts, I find that the Special Judge is competent to remand the petitioner, if cognizance under different Sections of the I.P.C. is taken against him and the remand of the petitioner cannot be said to be illegal even if the cognizance against the petitioner under different



Sections of the Prevention of Corruption Act is illegal for want of sanction or irregular on any technical ground.

Therefore, if at all any illegality or irregularity was found in taking cognizance against the petitioner Sri Sudhir Kumar under Prevention of Corruption Act, his remand or trial along with other accused persons against whom cognizance was taken under different Sections of I.P.C. and Prevention of Corruption Act also cannot be separated from other accused persons. Therefore, in my view, the remand of the petitioner cannot be held to be illegal.

The learned counsel appearing on behalf of the petitioner, Atal Bihari Rai of Cr. Misc. No.32127 of 2017 submits that the petitioner is not named in the F.I.R. The name of the petitioner figured in confession of Saroj, Alok and Niti Ranjan Pratap. The petitioner was appointed as teacher of Maths in A.V.N. school and he is alleged to have taken different photographs of the question papers and transmitted the same through Whatsapp to different examinees. The petitioner has already resigned from the post of teacher of A.V.N. school and he has been selected a teacher in Rajkiya Madhya Vidyalaya, Aurangabad. Petitioner is in jail since 12.02.2017.

The learned counsel appearing on behalf of the



petitioner, Avinash Kumar of Cr. Misc. No.25814 of 2017 submits that the petitioner was working as D.E.O. in Bihar Staff Selection Commission. Petitioner is not named in the F.I.R. The petitioner is found to have talked with Ramesh @ Rameshwar. Ramesh @ Rameshwar happens to be neighbour of the petitioner and save and except this fact, there is no other allegation against the petitioner. Petitioner is in jail since 08.02.2017.

The learned counsel appearing on behalf of the petitioner Arun Kumar in Cr. Misc. No.25151 of 2017 submits that the petitioner is also not named in the F.I.R. His name appeared in confession of Ashish Kumar, the elder brother of the petitioner but nothing has been recovered from the possession of the petitioner.

The learned counsel appearing on behalf of the petitioner Niti Ranjan Pratap in Cr. Misc. No.27285 of 2017 submits that the petitioner is not named in the F.I.R. Petitioner was working as I.T. Manager. The petitioner was found talking with Parmeshwar Ram, Secretary of Bihar Staff Selection Commission. Petitioner is said to have confessed his guilt but save and except confession, there is no material against the petitioner and petitioner is in jail since 24.02.2017.

The learned counsel appearing on behalf of the



petitioner Om Prakash Gupta in Cr. Misc. No.31100 of 2017 submits that the name of the petitioner is not figured in the F.I.R. Name of the petitioner figured in the case on confession in para 11. No Whatsapp message was found in the mobile of the petitioner.

The learned counsel for the petitioner, Anish Kumar submits that the name of the petitioner also figured during the course of investigation in the confessional statement of Dinesh. Anish disclosed that Dinesh supplied the answer sheets of the question on his mobile and on the mobile no.970832775 of Saroj. There is no direct involvement of the petitioner.

The learned counsel appearing on behalf of the petitioners, Ram Sumer Singh in Cr. Misc. No.33675 of 2017, Gauri Shankar Singh in Cr. Misc. No.35081 of 2017, Dinesh Kumar Azad in Cr. Misc. No.33259 of 2017, Mukesh Kumar in Cr. Misc. No.27611 of 2017 and Guddu Kumar in Cr. Misc. No.23833 of 2017 submits that they are not named in the F.I.R. and they have been made accused on the basis of certain conversation. Similarly situated co-accused persons have already been granted bail.

The learned counsel appearing on behalf of the petitioner Manju Kumari @ Manju Devi and Awdhesh Kumar in



Cr. Misc. No.22807 of 2017 and Cr. Misc. No.24035 of 2017 submits that they are innocent and they have falsely been implicated in the case only because they happens to be brother and brother's wife of Sudhir Kumar, Chairman of the Bihar Staff Selection Commission.

Mr. Y.V.Giri, learned senior counsel appearing on behalf of petitioner Sudhir Kumar in Cr. Misc. No.22376 of 2017 has submitted that petitioner is innocent and he has in fact, committed no offence. It has nowhere come in the entire case diary that the question was leaked at the level of the Chairman or at the instance of the Chairman of the Bihar Staff Selection Commission. No offence under any Section of the I.P.C. is made out against the petitioner. At best, offence under Bihar Conduct Examination Act can be made out which is bailable. The petitioner was made chairman of the Bihar Staff Selection Commission on 21.01.2016. His relatives such as Arun Kumar, Anish Kumar, sons of his sister had already applied in competitive examination before joining of the petitioner as Chairman of the Bihar Staff Selection Commission. Charge sheet has already been submitted and there is no chance of tampering with the evidence. The petitioner is in jail for more than 9 months. On such ground, the learned counsel for the petitioners prayed to enlarge the petitioner on bail.



Mr. Ajay Mishra, learned counsel appearing on behalf of the State submits that petitioner, Avinash Kumar, Niti Ranjan Pratap were D.E.O. and I.T. Manager of Bihar Staff Selection Commission. The petitioners, Atal Bihari Rai, Ram Sumer Singh, Gauri Shankar Singh, Dinesh Kumar Azad, Mukesh Kumar, Guddu Kumar are working in the A.V.N. school as teacher or D.E.O. and they are connected with each other. Petitioner, Avinash and Arun are the nephew of Sri Sudhir Kumar, Chairman of Bihar Staff Selection Commission. Petitioner, Awdhesh Kumar is the younger brother of Sri Sudhir Kumar and petitioner, Manju Devi is the wife of Awdhesh Kumar. It is submitted that informant got information about leakage of question and transmission of question papers to different examinees and distribution of answer sheets through electronic media. The raid was conducted at the house of Dina Nath Singh. Three persons namely Vipin Kumar, Pawan Kumar and Navnit Kumar were arrested. Pawan Kumar and Atul Ranjan Sinha had taken the house on rent. Huge quantity of admit cards, mark sheets of different candidates, blue chips, other electronic articles were recovered. During the course of disclosure made by the accused persons, it transpired that Avinash Kumar and Niti Ranjan Pratap, the I.T. Manager of Bihar Staff Selection Commission also involved in the leaking of question



papers of the examination through Pawan Kumar, Navnit Kumar, Atul Ranjan Sinha. They used to send the answer sheets to the examinees who had paid money to them. The learned counsel for the State further referred paragraphs of the case diary and evidence coming after examination of their mobile SIM cards and other electronic gadgets from Forensic Science Laboratory that all the members of the gang were well connected and had talk with each other immediately before the examination. The question papers were leaked by the gang in collusion with the staffs of Bihar Staff Selection Commission (BSSC), Secretary and Chairman. It has also come during the course of investigation that the Director of all the staffs of the A.V.N. is involved in leaking the question papers from the Centre at A.V.N. school.

It is further submitted that to unearth the scam of leaking of question papers of the examination conducted by Bihar Staff Selection Commission for appointment on different posts in the Collectorate and different Govt. offices of State of Bihar, S.I.T. was constituted. Many investigating officers were appointed. The investigating officers collecting the C.D.R.(call detail report) of mobile numbers, Whatsapp message of mobile numbers of the accused persons. The entire F.S.L. reports are attached with the voluminous case diary. It is further submitted



that during the course of investigation, it transpired that the questions were leaked primarily from three groups. In the first group of Pawan Kumar, Atul Ranjan Sinha, Vipin Kumar, Navnit Kumar, Bhola @ Nitish and many others including many of the petitioners were involved and from the raid, three apprehended accused namely Pawan Kumar, Vipin Kumar and Navnit Kumar disclosed the entire racket. On the basis of disclosure made by them, different levels of the scam were revealed. It transpired that Data Entry Operator, I.T. Manager(Avinash Kumar and Niti Ranjan Pratap) and other officials of Bihar Staff Selection Commission were also involved in transmitting question papers to the members of the gang after getting otherwise consideration. The members of the gang led by Atul Ranjan Sinha, Pawan Kumar, Vipin Kumar and others used to sell answer sheets of the questions after getting heavy amounts from different candidates and that is why admit cards, account number and address of different candidates and many other electronic devices were recovered from the possession of Pawan Kumar, Vipin Kumar and Navnit Kumar from the house of Dinanath Singh.

It is further submitted that the second point for leaking the question was A.V.N. school where the Centre for examination was fixed. From the disclosure made by Atal Bihari Rai, Ram



Sumer Singh, Rameshwar Singh and others who used to took photographs of the questions half an hour before the commencement of the examination and they used to transmit the question papers to different persons to get answer sheets for the candidates appearing at the A.V.N. school. The teachers and other officials of the school were indulged by using unfair means for getting undesired candidates selected by supplying correct answers to them after getting heavy amounts.

Mr. Ajay Mishra, learned counsel for the respondent further submits that the third source of leakage of questions and answer sheets was high officials of the Bihar Staff Selection Commission including Sri Sudhir Kumar, Chairman of Bihar Staff Selection Commission. It is further submitted that Sudhir Kumar was solely responsible for setting of the question papers and printing works. Sudhir Kumar disclosed in his answers to the questionnaires by which he was confronted by the investigating officer. Sri Sudhir Kumar disclosed that question was set by one Das Gupta, a Professor of I.I.T. Delhi but during investigation, no person was found. Only one Tapan Das Gupta was found in IIT Delhi as an Assistant Professor in Mechanical Engineering but he denied to have set the question papers for any examination of Bihar Staff Selection Commission. It is further submitted that



Sudhir Kumar entrusted the printing work to Vinit Kumar, Director of Confisc Pvt. Ltd., GIDC, Ahmedabad, Gujarat but during the course of investigation, it transpired that there was no agreement between the Chairman and the printing press. It has come that two or three days before commencement of examination, the question papers were transmitted through electronic gadgets to different persons. Arun Kumar, Avinash Kumar, Awdhesh Kumar and Manju Devi(nephew, brother and wife of brother of Sudhir Kumar) disclosed in their statement that they got the answer sheets and question papers from the house of the father of Sudhir Kumar. It has come that 135 answers of the questions were found correct. Arun Kumar and Avinash Kumar also disclosed that they transmitted the question papers and answer sheets to different persons in order to earn money. Awdhesh Kumar and Manju Devi, brother and sister-in-law of Sudhir Kumar also confessed their guilt and disclosed that they also took part in supplying the answer sheets after getting it.

It is further submitted that in similar case bail of one co-accused, Anand Sharma was rejected by a co-ordinate Bench of this court vide order passed in Cr. Misc. No.35956 of 2017. In the topper scam case, bail granted to one Amit Kumar @ Baccha Rai was cancelled by the Apex Court in S.L.P. 2015(1) PLJR 178



stating that in such a serious case bail should not have been granted.

It is further submitted that the prayer for bail of Vinit Kumar, owner of the printing press, Ajay Kumar @ Ajay Kashyap, Manager of the printing press and Vipin Kumar who was apprehended by the police along with Navnit Kumar and Pawan Kumar at the first instance was rejected by this Court on 03.07.2017. Therefore, the petitioners do not deserve bail.

Perused the records and the case diary. The informant at the first instance disclosed that he got information that Pawan Kumar and Atul Ranjan Sinha were distributing questions and answer sheets to the examinees of Bihar Staff Selection Commission. The examination was scheduled to be held in four phases. First examination to be held on 29.01.2017. The second examination was to be held on 05.02.2017. The police on such information raided the rented house in which Pawan Kumar and Atul Ranjan Sinha were residing. From the house, Pawan Kumar, Navnit Kumar and Vipin Kumar were apprehended. The police recovered different articles mobiles, Bluetooth, admit cards of different candidates. Pawan Kumar disclosed the name of many persons namely Kaushal Kishore Singh, Rameshwar Singh, Avinash Kumar, Data Entry Operator of Bihar Staff Selection



Commission. Pawan Kumar disclosed that Avinash Kumar, Data Entry Operator supplied question papers and answer sheets to them for supply to different candidates. They used to supply question papers, answer sheets through electronic apparatus to the candidates after realizing Rs.6 lacs to them. During the course of investigation, Prashant Kumar, Vidyanand Bharti, Sikandar came and disclosed before the investigating officer that they also received Whatsapp message containing answer sheets on their mobiles with regard to examination to be held on 05.02.2017. It also transpired during the course of investigation that Avinash Kumar, Data Entry Operator of Bihar Staff Selection Commission and Parmeshwar Ram are also indulged in leaking the question for illegal gain. Avinash Kumar, petitioner was apprehended and he disclosed the entire facts revealing the scam going on in Bihar Staff Selection Commission. Ramesh @ Rameshwar Kumar also got questions and answer sheets of the examination and he also disclosed the same in his statement before the police. Many mobiles were seized. During the course of investigation, Ramashish Singh, Director of A.V.N. school and his relative, Ram Sumer Singh, petitioner were also found involved in the scam of leaking questions and answer sheets. They disclosed that how the teachers and other staffs of A.V.N. were involved in taking



photographs of the question papers before the commencement of the examination and transmitting it to different persons to get answers for supplying to the candidates of their choice from whom they collected money. On the basis of the disclosure made by Ramashish Singh, Ram Sumer Singh, Gauri Shankar Singh, Anand Sharma, Om Prakash Gupta, Dinesh Kumar, Atal Bihari Rai and Mukesh Kumar, petitioners were also found involved and it transpired that many candidates got questions and answer sheets before the scheduled time of examination. It further transpired that the role of Sri Sudhir Kumar, Chairman of Bihar Staff Selection Commission and other staff including the Data Entry Operator, Avinash Kumar and Niti Ranjan Pratap, I.T. Manager were suspected and they were found involved. They supplied the questions and answer sheets to their relatives. Of course, Sri Sudhir Kumar, Chairman of Bihar Staff Selection Commission denied to have played any role in the scam but when he was confronted with the questionnaire, he disclosed that questions were printed by Vinit Kumar. Ajay Kumar, Manager of the printing press used to carry the manuscript. He disclosed that one Das Gupta of IIT, Delhi set the question papers but during the course of investigation, it transpired that one Tapan Das Gupta was found working in Mechanical Engineering, IIT, Delhi but he



denied to have set any question for any examination of Bihar Staff Selection Commission. It has further come that Awdhesh Kumar, brother of Sri Sudhir Kumar, Manju Devi wife of Awdhesh Kumar, Ashish and Arun, sons of sisters of Sudhir Kumar were also involved and they were arrested. Ashish and Arun disclosed that their maternal uncle left the question papers at his parental house situated at Hazaribagh. They got the answer sheets from maternal grandfather and father of Sudhir Kumar. They also disclosed that they supplied the answer sheets to different candidates in order to earn money. Awdhesh Kumar and his wife, petitioners are also found involved in circulating the answer sheets.

From perusal of the entire case diary, C.D.R. and entire reports of Forensic Science Laboratory after examination of mobile and Whatsapp message, it appears that all the accused persons were in regular touch with each other before the commencement of the examination. Even the secrecy of setting the questions and answer sheets was not maintained at any level and even the staffs of lower strata of Bihar Staff Selection Commission such as, Data Entry Operator and I.T. Manager had access to the question papers and answer sheets and there are materials that they also involved in the scam of leaking the



questions and answer sheets.

The learned counsel for the petitioner submits that Sajjad Ahmad was granted bail by a co-ordinate Bench of this Court and the State was not heard while granting bail in Cr. Misc. No.32916 of 2017. The State has also filed the petition for cancellation of bail of Sajjad Ahmad.

Considering the facts aforesaid, I am not inclined to enlarge the petitioners on bail. Accordingly, the same is rejected.

(Prabhat Kumar Jha, J)

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