

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14578 of 2020

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

Sudhir Kumar, Aged about 58 years, Male, 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.
2. The State of Bihar through Vigilance, Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner	:	Mr. Bindhyachal Singh, Advocate
For the SIT	:	Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 22-06-2020 Heard Mr. Bindhyachal Singh, the learned counsel for the petitioner, Mr. Ajay Mishra, the learned counsel for the SIT and the learned counsel appearing on behalf of the vigilance through video conferencing.

The petitioner seeks bail in Special Case No.11 of 2017, arising out of Agamkuan P.S. Case No.44 of 2017, registered under Sections 419, 420, 467, 468, 471, 120B and 34 of the Indian Penal Code, under Section 66D of the Information Technology Act as well as under Sections 7, 8, 9, 13(1) (c) (d) read with Section 13(2) of the Prevention of Corruption Act.

The prosecution case, in short, as alleged by Dhirendra Kumar Singh, ASI of Agamkuan P.S., in his written



report is that in the night of 03.02.2017, the informant got information that in the first floor of the house of Dina Nath Singh situated in Mohalla Kanti Factory Road, Mahatma Gandhi Nagar, Pawan Kumar and Atul Ranjan Sinha were involved in a racket/scam for getting meritless candidates passed through in the competitive examination to be held by Bihar Staff Selection Commission (for brevity 'BSSC') for recruitment in different Muffasil offices, Government of Bihar by getting question and answer sheets and making them available to such candidates who had already paid hefty amount to Pawan Kumar, Atul Ranjan Sinha and their partners. On such information, a raid was conducted. Three persons, namely, Pawan Kumar, Bipin Kumar and Navnit Kumar were apprehended and they disclosed the names of Atul Ranjan Sinha, Gorelal @ Kaushik and Bhola @ Nitesh who were their partners in the scam for getting such candidates selected in the competitive examination. On search, electronic devices, such as bluetooth, mobile phones, laptop, printer, ATM cards and cash were recovered. They disclosed that they used to get the answer sheets prior to commencement of the competitive examination and transmit the same to the candidates who had paid to them Rs.6,00,000/- through electronic gazettes before commencement



of the examination.

Mr. Bindhyachal Singh, the learned counsel for the petitioner submits that prayer for bail of the petitioner was earlier rejected by this Court vide order dated 06.12.2017, passed in Cr. Misc. No.22376 of 2017. The petitioner also moved before the Hon'ble Supreme Court in Special Leave Petition No.1855 of 2018. The Hon'ble Apex Court was pleased to reject the bail petition of the petitioner on 12.03.2018. Thereafter the petitioner again moved the Special Court for grant of regular bail which was rejected on 01.05.2019. Thereafter the petitioner moved before this Court in Cr. Misc. No.47301 of 2019 and same was dismissed as withdrawn on 06.11.2019. The petitioner again moved before the Special Court for grant of bail and the same was rejected on 19.12.2019. Thereafter the petitioner moved the present petition for grant of bail. It is submitted that the case relates to leakage of questions and answer sheets in the first two phases of Inter level competitive examination of 2014 held on 29.01.2017 and 05.02.2017 conducted by the BSSC. Admittedly three persons were apprehended on the basis of information that some persons are involved in the leakage of question papers and they disclosed the name of Atul Ranjan Sinha, Gorelal @ Kaushik



and Bhola @ Nitesh. The petitioner was arrested on 24.02.2017 and for more than three years, the petitioner is in judicial custody. The petitioner is senior most IAS Officer but charges have not yet been framed. Even most of the documents have not been supplied to the petitioner. The petitioner being the Chairman of BSSC is alleged to have supplied the question papers and answer sheets to his nephews, Ashish Kumar and Arun Kumar. It is alleged that the petitioner left the question papers and answer sheets at his parental house from where the nephews of the petitioner collected the same. Ashish Kumar is said to have made the question papers and answer sheets available to Ranjan and Hari Om distant relatives of the petitioner. When Rameshwar contacted the nephew of the informant, he is said to have asked Rameshwar to meet Ranjan at Ara and collect the question and answer sheets. Rameshwar accordingly collected the question and answer sheets and made the same viral over Whatsapp. It is submitted that Ranjan is said to have owned SIM No.7870477656 of Airtel network but the same was issued in the name of Vivek Kumar Sah of Siwan but the Investigating Officer did not enquire Vivek Kumar Sah. It is further submitted that one Prof. Dasgupta is said to have denied that anybody contacted him for setting the question papers of



Intermediate Level Competitive Examination. The Investigating Officer contacted Dasgupta on 20.02.2017 but his written statement of denial was signed on 19.02.2017. It is further submitted that from perusal of advertisement of examination, It would appear that the examination was on the basis of open book system. The candidates were allowed to carry three books, one is for each sections and there was negative marking for each wrong answers. The Investigating Officer did not enquire about the performance of the relatives of the petitioner. The question papers are said to have been viral through Whatsapp but there is no material that the petitioner made the question papers and answer sheets viral through any electronic devices. At best the offence under Sections 3 to 9 of the Bihar Conduct of Examination Act, 1981 is made out and for which under Section 10 of the Act, maximum sentence is six months with fine. It is further submitted that no case of cheating, forgery and corruption is made out against the petitioner. The prosecution has not yet obtained sanction under Section 19 of the Prevention of Corruption Act. Only Section 467 of the Indian Penal Code attracts life term and punishment and sentence under other Sections of the Indian Penal Code, as alleged against the petitioner, are seven years or less. The arrest of the petitioner



itself is against the guidelines established by the Hon'ble Supreme Court in the case of Arnesh Kumar vs. State of Bihar, reported in (2014) 8 SCC 273. It has further been submitted that it is time and again reiterated by the Hon'ble Apex Court that the court should consider the nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence, reasonable apprehension of tampering of the witness or apprehension of threat or tampering with the evidence. The co-accused, namely, Kaushal Singh @ Kaushal Kishore was granted bail vide order dated 22.11.2019, passed in Cr. Misc. No.70260 of 2019. Anand Sharma was granted bail on 01.10.2019 vide order passed in Cr. Misc. No.51573 of 2019. Co-accused Guddu Kumar and Anantpreet Singh Brar were granted bail vide order passed in Cr. Misc. No.47740 of 2019 and Cr. Misc. No.30399 of 2019 on 13.08.2019 and 17.08.2019 respectively. Ajay Kumar @ Ajay Kashyap, who was the Manager of the printing press, was granted bail vide order dated 10.07.2019, passed in Cr. Misc. No.72651 of 2018. Kaushlendra Kumar @ Kaushik @ Gorelal was granted bail vide order dated 17.01.2020, passed in Cr. Misc. No.55077 of 2019. Hence, the petitioner may also be enlarged on bail.

Mr. Ajay Mishra, the learned Additional P.P. opposed



the prayer for bail and submitted that Bipin Kumar, Pawan Kumar and Navnit Kumar were firstly arrested and from their possession besides the electronic gazettes, huge numbers of Admit Cards and marksheets of different examinees were recovered. On their disclosure, the involvement of Avinash Kumar and Niti Ranjan Pratap, the I.T. Manager came to surface in leakage of question papers. The mobile, SIM cards and other electronic gazettes recovered from the accused persons were sent to FSL and it transpired that all the members of the gang were well connected and they had talked prior to holding of the examination. The gang get the question papers in collusion with the staff of the BSSC, Secretary and Chairman. The Director and other staff of AVN School were also found involved in leakage of question papers and answer sheets. The entire FSL reports are on record and the FSL reports transpire that Pawan Kumar, Atul Ranjan Sinha, Bipin Kumar, Navnit Kumar and many others were in regular touch with each other. The Data Entry Operator, the I.T. Manager, Avinash Kumar and Niti Ranjan Pratap and other officials of BSSC were also found involved in transmitting the question papers and answer sheets to the members of the gang. The first point of leakage of question papers was the Chairman, the petitioner himself. The



Chairman was responsible for setting the question papers in order to maintain secrecy but it transpired on the basis of the statement made by the accused persons that the Chairman himself left the question papers and answer sheets to the house of his parent situated in Hazaribagh. A message was left to Awadhesh Kumar, the brother of the Chairman who instructed Arun Kumar and Ashish Kumar, the nephews, sons of the sisters of the Chairman to pick up the question papers and answer sheets from Hazaribagh. Hari Om, one of the relatives of the Chairman and his family, also accompanied Arun Kumar and Ashish Kumar. Thereafter the nephews of the Chairman made the question papers available to one Rameshwar who runs a coaching institute and on the request of Manju Kumari, wife of brother of the Chairman, the question paper was also made available to Ranjan, her relative. The second point for leakage of question papers is AVN School where the centre for examination was fixed. From disclosure made by the accused persons, namely, Atal Bihari Rai, Ramsumer Singh @ Ramsunder Singh and others that they photographed the question papers half an hour before commencement of the examination and they used to transmit the question papers to different persons to get answer sheets. The teachers and other



officials were involved in using such unfair means for getting the candidates of their choice selected for appointment. It is further submitted that the third source of leakage was printed question papers as the same was also made viral on Whatsapp before commencement of the examination. The petitioner being the Chairman of the BSSC disclosed in his answer to the questionnaire of the Investigating Officer that question was set by one Dasgupta, a Professor of I.I.T., Delhi, but during investigation, it transpired that no person in the name of Dasgupta was the Professor in I.I.T., Delhi. One Tapan Das Gupta was found in I.I.T. Delhi as an Assistant Professor in Mechanical Engineering but he denied to have set the question papers for any examination of BSSC. Mr. Sudhir Kumar being the Chairman entrusted the printing work to Vinit Kumar, Director of Confisc Pvt. Ltd., GIDC, Ahmedabad, Gujarat but there was no agreement between the BSSC and Vinit Kumar. It is further submitted that the persons who were granted bail are not the source of leakage of question papers but they are mostly the examinees who obtained the question papers and answer sheets after paying hefty amount and on consideration of the period already spent in jail by them but the prayer for bail of the petitioner has been rejected by the Hon'ble Supreme Court,



therefore, the petitioner does not deserve bail.

Perused the records. On the basis of the records, it appears that after the arrest of Pawan Kumar, Bipin Kumar and Navnit Kumar, they disclosed the names of some of the staff of the BSSC and during the course of investigation, it transpired that the first source of leakage of question papers was the Chairman of BSSC, the petitioner himself as it was he who was to keep the question papers and answer sheets secret but it appears that the question papers and answer sheets were known to the Data Entry Operator, I.T. Manager, Secretary of the Commission and other staff who were in regular touch with the scamesters such as Bipin Kumar, Pawan Kumar, Navnit Kumar and their gang members. It also transpired that one Rameshwar who runs a coaching institute got the question paper and answer sheets from the nephews and relative, namely, Ranjan Kumar of the Chairman who obtained the question papers and answer sheets from the parental house of the Chairman, the petitioner. The second source of leakage was the Director and teachers of AVN school who used to get the centre fixed in their school and they used to photograph the question papers before commencement of the competitive examination. The teachers and other staff including the Director of the school sent the



question papers to different persons through Whatsapp and got the answer sheets and they supplied the same to the candidates of their own choice after realizing huge amount from such examinees. It also appears from the examination report of the FSL after examination of different electronic devices that the members of the gang were well knit and they were talking with each other. They also supplied the question papers and answer sheets to the examinees of their choice. From the facts aforesaid, it appears that the entire sanctity of the examination was destroyed and the entire competitive examination appears to have been fixed by the Chairman and other staff of the Commission. The nature of offence are so grievous that it appears that the future of thousands of meritorious students who deserve to be selected were denied the opportunity of being selected as the staff and a group of scamesters were involved in leaking the question papers and answer sheets to such candidates who had paid huge amount to them. The case of the petitioner is quite different and not similar to other accused persons who have been granted bail. Moreover the prayer for bail of the petitioner has already been rejected by the Hon'ble Supreme Court.

Having considered the facts aforesaid, I am not



inclined to enlarge the petitioner on bail. Accordingly, the prayer
for bail of the petitioner is rejected.

(Prabhat Kumar Jha, J)

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