

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34434 of 2019

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

Hari Om @ Hariom Prasad, Son of Nageshwar Prasad, Resident of Chandanpur, Police Station- Tilauthu, District- Rohtas

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Bindhyachal Singh, Advocate Mr. Saket Tiwary, Advocate
For the State	:	Mr. Ajay Mishra, APP
For the Vigilance	:	Mr. Arvind Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

7 28-05-2020 The matter has been taken up through virtual Court proceeding.

Heard Mr. Bindhyachal Singh, learned counsel for the petitioner, Mr. Ajay Mishra, learned counsel for the State and Mr. Arvind Kumar, learned counsel appearing for the Vigilance.

The present application has been filed on behalf of the petitioner, languishing in custody since 15.07.2017, for grant of bail in connection with a case registered for the offences punishable under Sections 419, 420, 467, 468, 471/34, 120B of the Indian Penal Code, Section 66(D) of the Information Technology Act and Sections 7, 8, 9, 13(1)(c)(d)(e) read with 13(2) of the Prevention of Corruption Act, 1988.



The prosecution case as per the written report of Dhirendra Kumar Singh, Sub-Inspector of Police, Agamkuan Police Station submitted to the Station House Officer of Agamkuan Police Station on 04.02.2017 is to the effect that on 03.02.2017 at 10.00 P.M. the informant received a secret information that one Pawan Kumar along with Atul Ranjan Sinha on the first floor of the house of Dina Nath Singh S/o late Subedar Singh situated at Kanti Factory Road are realizing huge amount of money for getting candidates appointed in the examination being conducted by Bihar Staff Selection Commission by use of electronic means, consequently, a raid was laid and three persons namely, Pawan Kumar, Vipin Kumar and Navneet Kumar were apprehended. The apprehended accused confessed that they, in league with Atul Ranjan Sinha, Gorelal @ Kaushik and Bhola @ Nitesh used to facilitate cheating by candidates during the competitive examination conducted by the commission through electronic mode for which they used to realize Rs. Six lakhs from each candidates and the same is being distributed among all the facilitators. The apprehended accused also disclosed that they used to write down the details of the candidates in a diary and used to keep their original certificates with them which were usually returned



to them after getting the fixed amount on their being declared successful. However, in case of failure they used to grab the money of the candidates by giving them fake appointment letters. They further disclosed that they used to fix electronic devices in the vest of the candidates by use of blue tooth through wireless they used to transmit the correct answers of the questions in the examination halls to the concerned candidates. During search electronic devices, some of which were fixed in the vest and some of which were kept for fixing, small blue tooth, battery of blue tooth, printer, laptop, ATM cards, cash, mobile phones and several original certificates were recovered, leading to registration of the case.

The petitioner is not named in the FIR. The FIR was registered against six accused persons. During investigation the name of the petitioner transpired to the effect that the examination was to be conducted by the Bihar Staff Selection Commission for appointment on various posts which was scheduled to be held on 15.02.2017 but the OMR sheets with answers thereon went viral through electronic mode on 29.01.2017. It is alleged against the petitioner that one Arun Kumar along with the petitioner and others went to Hazaribagh and brought OMR answer sheets and subsequently, it was found



that the petitioner was also to appear at the same examination and out of 150 answers, 90 answers of the petitioner tallied with the viral OMR answer sheets which gets reflected from the FSL report marked as Ext- A/17. Initially, the name of the petitioner sprang up on the confession of co-accused Ashish Kumar @ Golu, who confessed that on 23rd January as per instruction of co-accused Awadhesh Kumar he along with his younger brother Arun Kumar and the petitioner went to Hazaribagh and brought handwritten copy of question and answers in two sets. The other material collected during investigation against the petitioner is that he was in constant touch with the co-accused persons as gets reflected from the call detail report.

It is submitted by learned counsel for the petitioner that the petitioner was not named in the FIR. The apprehended accused did not name the petitioner but maliciously at much subsequent stage with oblique motive the petitioner has been framed in the present case. However, except the confession of the co-accused no cogent material has been collected during investigation against the petitioner. The petitioner was to appear at the examination but out of 150 answers went viral only 90 answers got tallied with the OMR sheets with the petitioner which suggests that the petitioner was not party to the leakage



and leakage, if any, was made from M/s Confisee printing press where the OMR sheets were printed. The employee of the printing press co-accused Ajay Kumar @ Ajay Kashyap has been granted bail by Co-ordinate Bench of this Court vide order dated 10.07.2019 passed in Cr. Misc. No. 72651 of 2018 on the ground of investigation being concluded. The petitioner surrendered on 15.07.2017 and now he is in custody since about three years. A statement has been made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent. It is further submitted that the investigation has already been concluded but till date charges have not been framed, as a result, there is no likelihood of trial being concluded in near future. Similarly co-accused Vinit Kumar, whose named sprang up during investigation, has been granted bail by Hon'ble Supreme Court vide SLP (Crl) Diary No. 2331 of 2020 on the ground that since the charge sheet has been submitted and there is no likelihood of trial being concluded in near future. Similarly situated other co-accused persons have also been granted bail, like, Anand Sharma has been granted bail vide order dated 01.10.2019 passed in Cr. Misc. No. 51573 of 2019, co-accused Guddu Kumar vide order dated 13.08.2019 passed in Cr. Misc. No. 47740 of 2019 and co-accused Anantpreet Singh Brar vide



order dated 17.08.2019 passed in Cr. Misc. No. 30399 of 2019.

Mr. Arvind Kumar, learned counsel appearing for the Vigilance submits that since the investigation has been made by Special Investigation Team and hence, Mr. Ajay Mishra, learned counsel is representing the said investigating agency, hence, counsel for the Vigilance has to support the contentions of learned counsel for the State.

Mr. Ajay Mishra, learned counsel for the State submits that though the petitioner was not named in the FIR but his name transpired during investigation. It was found during investigation that the petitioner along with other co-accused persons was instrumental in bringing the OMR answer sheets from Hazaribagh, he was himself a candidate and 90 of his answers tallied with the OMR answer sheets which went viral through electronic mode. Moreover, his mobile tower location was found near the vicinity of other co-accused persons, who were indulged in illegal activities. The apprehended accused accepted that they used to realize huge money for allowing the candidates to appear and the answers have been transmitted in the examination hall to the concerned candidates through electronic mode. Moreover, prayer for bail of other similarly situated co-accused persons, like Awadhesh Kumar, Ashish



Kumar, Manu and Arun have been rejected. Moreover, the petitioner's case cannot be treated as similar to that of co-accused persons who have been granted bail.

Considering the rival submissions of the parties, keeping in view the fact that the petitioner was not apprehended from the place from where the fraudulent operations are being conducted at Kanti Factory Road nor any incriminating article has been recovered from the conscious physical possession of the petitioner, the investigation has already been concluded, he has remained in custody for about three years and above all, since the charges have not been framed there is no likelihood of trial being concluded in near future, coupled with the statement made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent, let the petitioner above named be released on bail for a period of three months for the present on furnishing one surety to the satisfaction of the learned Special Judge, Vigilance 1st, Patna in connection with Special Case No. 11 of 2017, arising out of Agamkuan P.S. Case No. 44 of 2017.

However, in view of the present pandemic COVID-19, it will be open for the learned Court below to accept the bail bond upon furnishing an undertaking by the



surety, on photo copy of his Aadhar Card, to the effect that he is ready to become the bailor of the petitioner which may be transmitted by such surety to the learned Court concerned through e-mode.

The provisional bail of the petitioner will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) with two sureties, including one surety given at the time of provisional bail, of the like amount each to the satisfaction of the learned Special Judge, Vigilance 1st, Patna in connection with Special Case No. 11 of 2017, arising out of Agamkuan P.S. Case No. 44 of 2017.

The learned Court below is at liberty to further extend the period of provisional bail if the lock down is not over in next three months.

(Dinesh Kumar Singh, J)

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