

GAHC010026882021



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

Case No. : Bail Appln./399/2021

SAROJ SARMA
S/O LT. BALABHADRA SARMA R/O VILL. AND P.O. BHOGPUR, P.S
PHATACHARKUCHI, PRESENTLY RESIDING AT KAHILIPARA JATIYA,
SHIVASAKTI PATH, GUWAHATI-6

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A BHATTACHARYA

Advocate for the Respondent : PP, ASSAM

Linked Case : Bail Appln./2801/2020

DIBAN DEKA
S/O SRI BHUBAN DEKA
R/O GIRIPATH
HOUSE NO. 5
ZOO NARENGI ROAD
POLICE STATION-GEETANAGAR
DIST. KAMRUP (M)
ASSAM
PIN 781021

VERSUS

THE STATE OF ASSAM
REPRESENTED BY PP
ASSAM.

Advocate for : MR N DUTTA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

Linked Case : Bail Appln./2806/2020

DIBAN DEKA
S/O SRI BHUBAN DEKA
R/O GIRIPATH
HOUSE NO. 5
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DIST-KAMRUP(M)
ASSAM
PIN-781021

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

Advocate for : MR N DUTTA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

JUDGMENT

Date : 25-06-2021

Since all the three bail applications have arisen out of the same FIR, they are being disposed of by this common judgment and order.

2. Heard the learned Sr. Counsel Mr. N. Dutta, learned counsel Mr. B.K. Mahajan, appearing for the petitioners. Also heard Mr. P.P. Baruah, learned P.P., Assam assisted by Mr. D. Das, learned Addl. P.P. for the State of Assam.

3. The petitioners, namely, Sri Saroj Sarma and Diban Deka have prayed for releasing them on bail under Section 439 Cr.PC, who are in detention in connection with Crime P.S. Case No. 13/2020 under Section 120B/418/420 IPC.

4. The factual matrix leading the arrest of the petitioners - the State Level Police Recruitment Board published an advertisement seeking on-line application from the eligible candidates for filling up 597 posts of S.I. of Police in Assam Police. The advertisement was published on 06.011.2019. More than 90,000 candidates filed their applications. Out of them, about 66,000 candidates downloaded the E-Admit cards for appearing in the examination, but before that, the question papers were leaked and circulated in WhatsApp, as a result of which, the written test was cancelled. The Chairman of the State level Police Recruitment Board lodged the FIR alleging the aforesaid facts. The informant has mentioned in the FIR that he got the information about the leakage through a WhatsApp message sent to him by a person called Sri Gautam Mech.

5. The police conducted an investigation. Several persons were arrested. Finally, police filled charge sheet. It may be mentioned that some persons, who

are shown as accused in the charge sheet, were never arrested by police. They received summons from the court below and were released on bail. In fact, 26 persons, who are charge sheeted were already released on bail by the Special Judge, Assam. The bail application of the petitioner, Saroj Sarma was rejected by the court below.

6. The specific allegation against the present petitioners, Saroj Sarma and Diban Deka are as follows:

Sri Saroj Sarma

He is found to be one of the prime accused persons along with accused Rubul Hazarika, Prasanta Kumar Dutta, Kumar Sanjit Krishna and others, who are involved in the offence of leaking the question paper of the written examination for the post of SI(UB) of Police and circulated the leaked question papers through Whatsapp messages and by other means to candidates in exchange of huge sum of money. In furtherance of the conspiracy, he along with Rubul Hazarika met Kumar Sanjit Krishna, the then Superintendent of Police, Karimganj & Chairman, District Level Selection Committee, at Karimganj on 12/09/2020. They conspired thereto leak the question paper prior to the scheduled examination date i.e. 20-09-2020 from the custodian of question papers, i.e. Kumar Sanjit Krishna. As desired by Kumar Sanjit Krishna, he arranged secret mobile handsets and fake SIM card for use by Kumar Sanjit Krishna and other perpetrators to keep their conspiracy as secret. He also provided his white colour Google mobile phone and necessary materials like sealing wax, blade, cutter, adhesive tape etc. for opening and resealing the packets of question papers to Rubul Hazarika on 18/09/2020 at the time of proceeding from Guwahati to Karimganj. Accused Rubul Hazarika took photograph of the leaked question papers from the custodian, i.e. Kumar Sanjit Krishna, the then Superintendent of Police, Karimganj & Chairman, District Level Selection Committee, Karimganj, in exchange of rupees forty lakhs. As per the instruction of Saroj Sarma, his employee Jitul Jyoti Sandilya delivered the money as demanded by Kumar Sanjit

Krishna in a backpack to Subrata Sarkar, husband of Sukanya Sarkar, near Chung-fa restaurant, on Mother Teresa Road, Geetanagar at the night of 18/09/2020. On receipt of the leaked question papers from Nipu Phukan, he got the answers of the questions papers printed in the house of Hira Choudhury. At the instruction of Saroj Sarma, his employee. Jitu Jyoti Shandilya shared the leaked question papers with tick marks on the correct answers with perpetrators including Rakibul Islam of Barpeta. Saroj Sarma and his associates in connivance with Prasanta Kumar Dutta arranged/provided rooms & leaked question papers to several candidates at Hotel Bhargav Grand in the night of 19-09-2020, where mock test was held for candidates with leaked question papers. In order to conceal the design, Saroj Sarma kept back the mobile phone of Rubul Hazarika with him for the period from 18-09-2020 morning to 19-09-2020 morning as an alibi whereas Rubul Hazarika proceeded to Karimganj on 18-09-2020 morning and returned to Guwahati 19-09-2020 morning. Saroj Sarma used his employees namely- Jitul Jyoti Shandilya, Nipu Phukan and Imran Hussain to execute the conspiracy. A copy of Admit Card in the name of a candidate of SI(UB) exam was recovered from his rented house. He collected huge sum of money in inducing various candidates through his network of middlemen including Rakibul Islam, Kumud Kalita and Hira Choudhury etc. The evidence gathered during the course of investigation shall establish the complicity of the accused in the crime.

Sri Diban Deka

He got a set of leaked question papers from his close associate Saroj Sarma. He prepared model question papers by including the actual questions from the leaked question paper. He cleverly added some additional questions in the model question papers to avoid drawing of undue attention and to conceal his criminal activity. The model question papers were handed over by him to Pranab Bora and Pranjal Sarma who are partners of Thank You Lodge. With these, model question papers, mock test was held in the Thank You Lodge on 19 th Sep., 2020. He has induced several candidates by promising them job of SI(UB) of Police in exchange of huge amount money. He was constant touch with the other conspirators of this crime. Arrested accused Sanjib Kumar Sarma had approached Diban Deka for providing job of SI(UB) to few candidates and

Dibon Deka had linked Sanjib Kumar Sarma with Saroj Sarma for the purpose of providing job illegality. Dibon Deka also disposed his mobile phone with malafide intention to destroy evidence. The evidence gathered during the course of investigation shall establish the complicity of the accused in the crime."

7. Both the petitioners, namely, Saroj Sarma and Diban Deka have pleaded that their period of detention already undergone in judicial custody deserves to be taken as a ground for releasing them on bail.

8. On behalf of the present petitioners, learned counsel relied upon the following decisions:

(2014) 8 SCC 273 : Arnesh Kumar Vs. State of Bihar & Anr.

(2020) 10 SCC 616 : Bikramjit Singh Vs. State of Punjab

(2002) 9 SCC 372 : Laloo Prasad @ Laloo Prasad Yadav Vs. State of Jharkhand

2020 SCC Online SC 964 : Arnab Manoranjan Goswami Vs. State of Maharashtra & Ors.

(2019) 14 SCC 599 : Achpal @ Ramswaroop & Anr. Vs. State of Rajasthan

(2012) 1 SCC 40 : Sanjay Chandra Vs. Central Bureau of Investigation

9. Mr. D. Das, learned Addl. P.P., Assam relied upon the following decisions:

(1989) 1 SCC 235 : Sube Singh & Ors. Vs. State of Haryana & Ors.

(1969) 3 SCC 429 : Mohd. Hussain Umar Kochra & Ors. Vs. K.S. Dalipsinghji

& Ors.

AIR 1961 SC 1241 : The State of Andhra Pradesh Vs. Kandimalla Subbaiah & Ors.

10. I have given my anxious consideration to the submissions made by the learned counsel for both sides.

11. In **Kalyan Chandra Sarkar Vs. Rajesh Ranjan** reported in **(2005) 2 SCC 42**, the Supreme Court has observed that “under the criminal laws of this country, a person accused of offences which are non bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of [Article 21](#) since the same is authorised by law. But even persons accused of non bailable offences are entitled for bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so.”

12. Now let me have a discussion on the issue of bail under Section 439 CrPC. In **Prahlad Singh Bhati Vs. NCT. Delhi & Anr** reported in **(2001) 4 SCC 280**, the Supreme Court has held as under:

“The jurisdiction to grant bail has to be exercised on the basis of well settled principles having regard to the circumstances of each case and not in an arbitrary manner. While granting the bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing of the accused, circumstances which are peculiar to the accused,

reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the Legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not excepted, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."

13. In ***Ram Govind Upadhyay Vs. Sudarshan Singh & Ors.*** reported in ***(2002) 3 SCC 598***, the Supreme Court has observed as under:

"3. Grant of bail though being a discretionary order but, however, calls for exercise of such a discretion in a judicious manner and not as a matter of course. Order for Bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the Court and facts however do always vary from case to case. While placement of the accused in the society, though may be considered but that by itself cannot be a guiding factor in the matter of grant of bail and the same should and ought always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic consideration for the grant of bail more heinous is a crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter."

"4. Apart from the above, certain other which may be attributed to be relevant considerations may also be noticed at this juncture though however, the same are only illustrative and nor exhaustive neither there can be any. The considerations being:

(a) While granting bail the Court has to keep in mind not only the nature of the accusations, but the severity of the punishment, if the accusation entails a conviction and the nature of evidence in support of the accusations.

(b) Reasonable apprehensions of the witnesses being tampered with or the apprehension of there being a threat for the complainant should also weigh with the Court in the matter of grant of bail.

(c) While it is not accepted to have the entire evidence establishing the guilt of the accused beyond reasonable doubt but there ought always to be a prima facie satisfaction of the Court in support of the charge.

(d) Frivolity in prosecution should always be considered and it is only the

element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail."

14. In **Vaman Narain Ghiya Vs. State of Rajasthan** reported in **(2009) 2 SCC 281**, the Supreme Court has observed as under:

"Bail" remains an undefined term in the Cr.P.C. Nowhere else the term has been statutorily defined. Conceptually, it continues to be understood as a right for assertion of freedom against the State imposing restraints since the U.N. Declaration of Human Rights of 1948, to which Indian is a signatory, the concept of bail has found a place within the scope of human rights. The dictionary meaning of the expression 'bail' denotes a security for appearance of a prisoner for his release. Etymologically, the word is derived from an old French verb 'bailer' which means to 'give' or 'to deliver', although another view is that its derivation is from the Latin term baiulare, meaning 'to bear a burden'. Bail is a conditional liberty. Strouds' Judicial Dictionary (Fourth Edition 1971) spells out certain other details. It states:

"When a man is taken or arrested for felony, suspicion of felony, indicated of felony, or any such case, so that he is restrained of his liberty - And being by lawailable, offence surety to those which have authority to bail him, which sureties are bound for him to the Kings use in a certain sums of money, or body for body, that he shall appear before the Justices of Goale delivery at the next sessions etc. Then upon the bonds of these sureties, as is aforesaid, he is bailed, that is to say, set at liberty until the day appointed for his appearance."

Bail may thus be regarded as a mechanism whereby the State devolutes upon the community the function of securing the presence of the prisoners, and at the same time involves participation of the community in administration of justice."

15. In **Prasanta Kumar Sarkar Vs. Ashis Chatterjee** reported in **(2010) 14 SCC 496**, the Supreme Court has observed as under:

"9. We are of the opinion that the impugned order is clearly unsustainable. It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of

decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:

- (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
- (ii) nature and gravity of the accusation;*
- (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail. (See: State of U.P. through CBI Vs. Amarmani Tripathi²; Prahlad Singh Bhati Vs. NCT, Delhi & Anr.³; Ram Govind Upadhyay Vs. Sudarshan Singh & Ors.⁴)”*

16. In ***Ramesh Bhavan Rathod Vs. Vishanbhai Hirabhai Makwana Makwana (Koli) & Anr.*** reported in ***2021 SCC OnLine SC 335***, the Supreme Court has held as under:

“42. The grant of bail is a matter which implicates the liberty of the accused, the interest of the State and the victims of crime in the proper administration of criminal justice. It is a well-settled principle that in determining as to whether bail should be granted, the High Court, or for that matter, the Sessions Court deciding an application under [Section 439](#) of the CrPC would not launch upon a detailed evaluation of the facts on merits since a criminal trial is still to take place. These observations while adjudicating upon bail would also not be binding on the outcome of the trial. But the Court granting bail cannot obviate its duty to apply a judicial mind and to record reasons, brief as they may be, for the purpose of deciding whether or not to grant bail. The consent of parties cannot obviate the duty of the High Court to indicate its reasons why it has either granted or refused bail. This is for the reason that the outcome of the application has a significant bearing on the liberty of the accused on one hand as well as the public interest in the due enforcement of criminal justice on the other. The rights of the victims and their families are at stake as well. These are not matters involving the private rights of two individual parties, as in a civil proceeding. The proper enforcement of criminal law is a matter of public interest.....”

17. In paragraph-43 of **Ramesh Bhavan Rathod** (supra), the Supreme Court has observed as under:

“43. Grant of bail under Section 439 of the CrPC is a matter involving the exercise of judicial discretion. Judicial discretion in granting or refusing bail – as in the case of any other discretion which is vested in a court as a judicial institution – is not unstructured. The duty to record reasons is a significant safeguard which ensures that the discretion which is entrusted to the court is exercised in a judicious manner. The recording of reasons in a judicial order ensures that the thought process underlying the order is subject to scrutiny and that it meets objective standards of reason and justice. This Court in Chaman Lal v. State of U.P.⁸ in a similar vein has held that an order of a High Court which does not contain reasons for prima facie concluding that a bail should be granted is liable to be set aside for non-application of mind. This Court observed:

“8. Even on a cursory perusal the High Court's order shows complete non-application of mind. Though detailed examination of the evidence and elaborate documentation of the merits of the case is to be avoided by the Court while passing orders on bail applications. Yet a court dealing with the bail application should be satisfied, as to whether there is a prima facie case, but exhaustive exploration of the merits of the case is not necessary. The court dealing with the application for bail is required to exercise its discretion in a judicious manner and not as a matter of course.

9. There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted particularly where an accused was charged of having committed a serious offence.”

18. The learned counsel for the petitioners tried to compare the present allegation against the petitioners with the infamous scams that have taken place in our country. The learned Sr. Counsel Mr. Dutta as well as Mr. Mahajan have similarly submitted that some persons, who are charge sheeted have been released on bail and the petitioners are not released on bail.

19. Regarding the principle of parity, the Supreme Court in ***Neeru Yadav Vs. State of U.P.*** reported in **(2014) 16 SCC 508** has held that while applying the principle of parity, the High Court cannot exercise its powers in a capricious manner and has to consider the totality of circumstances before granting bail.

20. In the case in hand dozens of persons are booked as each of them had played different roles in the alleged act. So, if one person is released on bail, the other is not entitled to claim a similar view.

21. In *Ajmer Singh Vs. State of Haryana* reported in (2010) 3 SCC 746 the Supreme Court has held as under:

“23. The principle of parity in criminal case is that, where the case of the accused is similar in all respects as that of the co-accused then the benefit extended to one accused should be extended to the co-accused. With regard to this principle, it is important to mention the observation of this court in the case of [Harbans Singh v. State of Uttar Pradesh and Ors.](#), [(1982) 2 SCC 101]. In that case it was held, that, in view of commutation of death sentence of one of the accused, who was similarly placed as that of appellant, award of death sentence to appellant was unjustified and, hence, the death sentence of the appellant was stayed till the decision of the President on commutation of sentence.”

*“26. The Court of Appeal Alberta, Canada in *R. v. Christie* [2004 Carswell Alta 1224 Alberta Court of Appeal, 2004] discussed the meaning of the principle in connection with sentencing in criminal cases. The Court of Appeal stated:*

"40. Parity is a principle which must be taken into account in any sentence, and particularly where the offence was a joint venture. There will, of course, be cases where the circumstances of the co-accused are sufficiently different to warrant significantly different sentences, such as where one co-accused has a lengthy related criminal record or played a much greater role in the commission of the offence."

Thus, expressing its view on 'parity in sentencing' the Court observed:

"43. What we must strive for is an approach to sentencing whereby sentences for similar offences committed by similar offenders in similar circumstances are understandable when viewed together, particularly in cases involving joint ventures."

"28. The Court of Appeal of the Supreme Court of Victoria, Australia in the case of R v Hildebrandt [187 A Crim R 42 2008 WL 3856330; [2008] VSCA 142] observed:

"Judicial expositions of the meaning of the parity principle are not entirely uniform. The term "the parity principle" is used in at least two senses in the relevant authorities. First, to express the recognition that like cases should be treated alike (itself an emanation of equal justice). Secondly, the phrase is used to describe the requirement to consider the "appropriate comparability" of co-offenders, and in that sense, comprehends the mirror propositions that like should be treated alike, and that disparate culpability or circumstances may mandate a different disposition."

29. In the case Postiglione v The Queen [(1997) 189 CLR 295; 94 A Crim R 397] Dawson and Gaudron JJ stated:

"The parity principle upon which the argument in this Court was mainly based is an aspect of equal justice. Equal justice requires that like should be treated alike but that, if there are relevant differences, due allowance should be made for them. In the case of co-offenders, different sentences may reflect different degrees of culpability or their different circumstances. If so, the notion of equal justice is not violated ...Discrepancy or disparity is not simply a question of the imposition of different sentences for the same offence. Rather, it is a question of due proportion between those sentences, that being a matter to be determined having regard to the different circumstances of the co-offenders in question and their different degrees of criminality."

The Court, therefore, concluded the principle to mean:

".....it the concept simply is that, when two or more co-offenders are to be sentenced, any significant disparity in their sentences should be capable of a rational explanation."

23. What can be inferred from the above decision is, that for applying the principle of parity both the accused must be involved in same crime and must be convicted in single trial, and consequently, a co-accused is one who is awarded punishment along with the other accused in the same proceedings."

22. The law on the point is clear. It is extremely difficult to apply the principle of parity in law in the matters relating to bail applications filed under Section

439 CrPC.

23. Therefore, it can be culled out among other relevant circumstances, the factors to be borne in mind while considering an application for bail under Section 439 CrPC are: (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the accusation; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behavior, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being influenced; and (viii) danger, of course, of justice being thwarted by grant of bail.

24. Unlike Section 437(i), there is no specific bar in Section 439 (i) of the CrPC. This is a special power of the High Court and the Court of Sessions. While exercising this special power, the High Court or the Court of Sessions has to exercise judicial discretion.

25. There is no specific definition of the phrase "judicial discretion". The famous American Judge Benjamin Cardozo in his book "The Nature of the Judicial Process" has explained the phrase "judicial discretion" as under –

“Judicial discretion is a discretion which is informed by tradition, methodized by analogy and disciplined by system and subordinated to primordial necessity of order in the social life.”

26. I have carefully considered all the materials before me. Question paper

leak damages the future of our young generation. This act cannot be compared with the scams involves millions of rupees. Question paper leak is an organized crime. This is an offence against the society at large. This court is satisfied that there are prima facie materials against the present petitioners. Therefore, this court finds no reason to agree with the prayer made by the petitioners. Accordingly, the bail applications of Saroj Sarma and Diban Deka are rejected.

27. All the bail applications are disposed of.

JUDGE

Mkk

Comparing Assistant