

IN THE HIGH COURT OF ORISSA, CUTTACK.

BLAPL NO. 18130 OF 2014

An application under section 438 of the Code of Criminal Procedure.

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|------------------------------|----------|-------------|
| Binod Bihari Dash and others | | Petitioners |
| | -Versus- | |
| State of Odisha | | Opp. Party |

For Petitioners: - M/s. Himansu Sekhar Mishra,
A.K.Mishra,DR. A.K.Tripathy
K.Badhai

For Opp. party: - Mr.Prasanna Kumar Pani
Addl. Standing Counsel,
Vigilance Department

P R E S E N T :-

THE HONOURABLE MR. JUSTICE S.K. SAHOO

.....
Date of Argument. 20.11.2014 Date of order- 29.11.2014
.....

S.K.SAHOO, J.

“Corruption is worse than prostitution. The latter might endanger the morals of an individual; the former invariably endangers the morals of entire nation.”

- Karl Kraus

It is said that there are no secrets to success in a competitive examination. It is the result of preparation, hard work and learning from failure. The candidates never know what result would come of their action. They study while others are sleeping, they prepare while others are playing because they know that if they don't go after what they want, they will never have it. Sanctity of an examination greatly depends on the integrity, alertness and sincerity of all examination officials. Any laxity on the part of the officials is likely to result in undesirable consequences and loss of faith of the candidates in the examination system.

This case is an atypical example in which many candidates who prepared hard for the competitive examination burning the midnight oil could not see the light of success because the selection process is allegedly got polluted under the shadow of corruption and sinister influence grabbed the selection committee members for which right persons were not selected for the right job.

2. This is an application under section 438 Cr.P.C. filed by the petitioners seeking pre-arrest bail in connection with Sambalpur Vigilance P.S. Case No. 78 of 2014 registered on 30.9.2014 under section 13(2) read with section 13(1)(d) of Prevention of Corruption Act, 1988 and section 409/465/467/471 read with section 120-B of

Indian Penal Code which corresponds to Vigilance G.R. Case No.8 of 2014 pending in the court of Special Judge (Vigilance), Bolangir.

The petitioner No.1 Binod Bihari Dash is the Block Development Officer, Bangamunda; petitioner No.2 Ripunath Suna is the Block Development Officer, Dungripalli; petitioner No.3 Aneeta Panda is the Deputy Collector, Collectorate, Bolangir and petitioner No.4 Raghunath Munday @ L. Munday is the Block Development Officer, Puintala Block.

3. The prosecution case is that there was an allegation that members of Selection Committee have abused their official position and misused the official power and shown undue official favour to their favoured candidates in the appointment of Revenue Inspector, Asst. Revenue Inspector and Amin in the district of Bolangir by manipulating their answer sheets. Enquiry was conducted by one Sri R.N. Patra, D.S.P., Vigilance, Deogarh Unit which was entrusted to him by S.P., Vigilance, Sambalpur. After conducting enquiry, the Enquiry Officer submitted his report on 24.6.2014 and the result of enquiry revealed that during the period of allegation Sri Debaraj Mishra, I.A.S. was serving as District Magistrate & Collector, Bolangir from 3.8.2012 to 18.7.2013 and he was the Chairman of the Recruitment Committee for the appointment of R.I./A.R.I/Amin in Bolangir District in the year 2013. The Collector as well as Sri Niranjana Tripathy, Ex-Head Clerk, Judicial Section and in-charge

Head Clerk of Establishment Section, Collectorate, Bolangir were directly or indirectly linked with the recruitment/selection of candidates for the post R.I./A.R.I/Amin.

The enquiry report further revealed that the recruitment process in respect of the appointment of R.I/A.R.I/Amin in Bolangir district was initiated in the year 2008 through advertisement inviting applications from eligible candidates for one vacancy each in the post of the A.R.I. and Amin (Special Drive for SC/ST) but due to some reason or the other, the recruitment could not be held. Again in the year 2011, another advertisement was made to fill up 54 posts in the rank of R.I/A.R.I/Amin but by subsequent advertisement the vacancy position was increased by 9 posts. Thus vacancy position for the post of R.I became 15, A.R.I became 21 and Amin became 29. In response to such advertisements, 744 numbers of applications for R.I and 1818 number of applications for A.R.I./Amins were received. 239 applications which were received in 2008 for one post in R.I./Amin each were also included in the list. After rejection of applications, 610 candidates for R.I. and 1484 candidates for A.R.I/Amin were found eligible for the physical test. After joining of Sri Debaraj Mishra, IAS, Collector, Bolangir, physical test of the candidates was held on 11.12.2012 to 15.12.2012 and physical test for the special drive (SC/ST candidates) was conducted on 10.1.2013.

The enquiry report further reveals that a Recruitment Committee was constituted under the chairmanship of Sri Debaraj Mishra, Collector, Bolangir vide order dated 4.2.2013 for the smooth management of recruitment process and the petitioners and one Babu Maharana, DWO, Bolangir became the members of such Recruitment Committee. There was some further sanction of 52 posts of R.I and 52 posts of A.R.I communicated by the Government in Revenue and Disaster Management Department, Odisha, Bhubaneswar.

The enquiry report further reveals that the petitioner No.3 was authorized by the Collector, Bolangir to proceed to Board of Secondary Education, Orissa, Cuttack to bring question papers for the written examination for the recruitment for the post of R.I/A.R.I/Amin in sealed cover and accordingly she proceeded and brought the same and deposited the sealed question papers in District Treasury on 21.5.2013 as per the order of the Collector, Bolangir and handed over the model answer sheets/scoring keys in sealed cover to Collector, Bolangir in presence of D. Prasanth Reddy, I.A.S who was the then P.D., D.R.D.A. Bolangir. Before the written examination, a preparatory meeting was held on 7.6.2013 which was chaired by Collector, Bolangir. The petitioner No.3 also attended the meeting. The Collector, Bolangir instructed the Centre Superintendents of Rajendra College, Bolangir and Womens'

College, Bolangir to deposit the sealed packets of answer sheets at the residential office of the Collector on the same day after the examination process is over. The petitioner Nos. 1, 2 and 4 were also directed on 7.6.2013 to conduct computer test examination.

On 9.6.2013 written test was conducted at both the centers under the Supervision of Centre Superintendents namely Pravat Kumar Bhoi, Sub-Collector, Titilagah and Mohan Charan Das, Sub-Collector, Patnagarh. After the written tests, the Centre Superintendents handed over the sealed packets of answer sheets subject wise at the District Emergency Operation Centre (hereinafter for short "EOC") as per the previous order dated 7.6.2013 of the Collector. All such sealed packets of answer sheets were kept inside the Almirah which was in the EOC and after locking the same, the keys of the steel almirah and of the EOC building were handed over to the Collector. Thus according to the enquiry report, Sri Debaraj Mishra, Collector, Bolangir became the sole custodian of the EOC as well as the Almirah, where the question-cum-answer sheets were kept.

As per the instruction of Collector, computer practical tests was conducted on 12.6.2013 and 13.6.2013 at Rajendra College, Bolangir and Womens' College, Bolangir and after conducting the practical tests, the evaluation sheets with the awarded marks were submitted in a closed cover by Sri Rao, who was in charge of

Rajendra College, Bolangir and Sri Khirod Mishra, who was in charge of Womens' College, Bolangir directly to the Collector, Bolangir in the evening.

The Enquiry Report further reveals that after the written examination, the petitioner no.3 Miss Anita Panda applied for leave from 14.6.2013 to 16.6.2013 on account of Raja Sankranti which was allowed by the Collector, Bolangir. The petitioner Nos. 1, 2 and 4 were directed vide order dated 10.6.2013 of the Collector, Bolangir to act as "officer for valuation" of the answer sheets of the written examination and the date of valuation was fixed from 14.6.2013 to 16.6.2013. Some ministerial staffs were deputed in the said order dated 10.6.2013 to assist in the valuation work. Similarly another set of staffs were deputed by the Collector, Bolangir vide order 13.6.2013 for assisting valuation work.

The enquiry officer found number of irregularities in the entire process of recruitment and some of the main irregularities appear to be as follows:-

- (i) No coding system was adopted to the answer sheets though provision was there itself on each paper which facilitated to track the answer sheet of a particular candidate and provided scope to manipulate the answer sheets;

- (ii) Though after completion of written examination on 9.6.2013, the Centre Superintendents deposited all the answer sheets in sealed covers but on the date of evaluation, the same were found without sealed cover and not a single evaluator stated as to how the sealed cover of the answer sheets were open in their presence;
- (iii) Though specific orders were passed to the three OAS officers i.e., petitioner Nos.1, 2 and 4 to evaluate the answer papers and the ministerial staffs were deployed to assist them but all the arithmetic/G.K. and most of the computer papers were evaluated by the Ministerial staffs, on which manipulation were seen;
- (iv) When the petitioner Nos.1, 2 and 4 objected as to why coding has not been done, the Collector expressed his displeasure on them and directed them to simply evaluate, as coding is none of their business and the Chairman is responsible for everything. Though the petitioner No.3 had informal discussion earlier with the Collector about the coding of the answer sheets and the Collector had assured her to look into the matter but that was not followed;
- (v) Sri Niranjan Tripathy, Head Clerk actively participated in the entire process of recruitment even though his name

was not been written anywhere in the entire process of recruitment. He also evaluated some answer sheets and issued verbal instructions to petitioner Nos. 1, 2 and 4 in presence of the Collector, Bolangir.

- (vi) Since the EOC was situated within the residential campus of the Collector and key of the Almirah in which sealed answer sheet packets were kept after completion of written examination on 9.6.2013 was with the Collector till the date of evaluation, the opening of the seal cover of the answer sheets packet prior to evaluation appeared to be within the knowledge of the Collector;
- (vii) The petitioner No.3 had availed leave from 13.6.2013 till 16.6.2013, within which period the evaluation work was over;
- (viii) The petitioner Nos.1, 2 and 4 not only signed the Committee meeting proceeding but they also did not take any visible steps to protest the irregularities found in the entire process and even they did not raise their voice when they found the answer sheets were in open condition;
- (ix) The petitioner No.3 was ordered to bring and deposit the question-cum-answer sheets and she only deposited the question-cum-answer sheet in the Strong Room but

handed over the model answer sheets to the Collector against which there was no order to her.

The Enquiry Officer found after discussing all the materials that unfair means have been adopted by the Selection Committee in the recruitment process to facilitate some favoured ineligible candidates to get the scope for appointment in the post of R.I/A.R.I/Amin and thereby the eligible/genuine candidates have been debarred from getting selected. It was also proved that the sealed answer papers have been handled in the EOC from 10.6.2013 to 13.6.2013 when the key of the Almirah was with the Collector, Bolangir and it was also proved that all possible steps were taken to adopt unfair means to show undue official favour to some specific candidates to provide them job by abusing the official position. It was also found that the Collector Sri Debaraj Mishra has given all possible scope to Sri Niranjan Tripathy in committing the offence. The other members of the selection committee and other officials entrusted for examination/evaluation raised their voice at different point of time against the wrong doing of the Collector, Bolangir but they succumbed to the pressure of the Collector and thereby obeyed the illegal order of the Collector.

4. While the enquiry of D.S.P., Vigilance, Deogarh Unit was under progress, in pursuance to letter No.17165/CID/INV dated 28.5.2014, one R.C. Sethi, DSP, CID, CB, Odisha, Cuttack also

enquired into the recruitment conducted by Collector, Bolangir for the post of R.I/A.R.I/Amin and from his independent enquiry, he found the following irregularities:-

- (i) No coding system was applied for valuation of examination papers;
- (ii) The papers of some applicants who secured 100 marks in arithmetic papers were verified and it was found that marks previously given in the appropriate boxes were tampered with and in their place new marks were written;
- (iii) In some arithmetic papers of the candidates who had secured 100 marks out of 100, it was found that there were over writings and cuttings and one candidate was given 93 marks though he had secured two marks in the first instance. Similar manipulations were found in many other papers. Marks previously given in the appropriate boxes were tampered with and in their place new marks were written.
- (iv) The candidates were given question-cum-answer booklets during written examinations to choose one answer out of multiple choices and to put a tick (✓) mark against their choice answer but during verification it was found from

the question-cum-answer booklets of many selected candidates that tick marks were given in correct answer boxes and tick marks already given in other boxes (wrong answer box) in respect of those questions were tampered and scratched.

The DSP,CID,CB, Odisha, Cuttack after enquiry came to hold that number of persons in the District Office, Bolangir including members of Examination Committee, persons in-charge of evaluation and custody of question-cum-answer sheets entered into a criminal conspiracy to commit manipulation and forgery in the relevant documents to facilitate selection of undeserving candidates for the post of R.I/A.R.I/Amin and by selecting such undeserving persons, qualified and suitable persons to hold such posts were deprived.

Basing on such enquiry, Mr.R.C.Sethi, DSP, CID, CB, Odisha, Cuttack lodged F.I.R. before the Superintendent of Police, CID, CB, Odisha, Cuttack and accordingly on 1.9.2014 CID, CB, Odisha, Cuttack P.S. Case No.18 of 2014 was registered under section 409/465/467/471 read with section 120-B I.P.C. The Inspector-in-charge, CID, CB Police Station, Odisha Cuttack entrusted one Sri R.K. Suar, Addl. SP, CID, CB, Odisha, Cuttack with the investigation of the case.

The said case was transferred for investigation to the Vigilance Police as per the order dated 10.9.2014 of the Director Vigilance-cum-Special Secretary to Government, GA, Vigilance and it was ordered to be investigated by the Sambalpur Division and accordingly Sambalpur Vigilance P.S. Case No.78 of 2014 was registered on 30.9.2014 under section 13(2) read with section 13(1)(d) of Prevention and Corruption Act, 1988 and section 409/465/467/471/120-B I.P.C.

5. During course of argument Mr. Himansu Sekhar Mishra, learned senior counsel appearing for the petitioners filed an additional affidavit of petitioner No.3 indicating therein that during the evaluation of the answer sheets from 14.6.2013 to 16.6.2013, she was out of Headquarters i.e., Bolangir with due permission of the Collector, Bolangir and she has no role to play in any manner in the evaluation. The petitioner No.3 in her affidavit further indicated that till 1.3.2013, no Selection Committee was constituted and the so-called constitution of the Selection Committee on 4.2.2013 is an ante-dated one and on 4.2.2013 neither she was directed by the Collector to move file regarding constitution of any Selection Committee nor any file was moved for such purpose.

Mr. Mishra, learned counsel for the petitioners further submitted that the enquiry report of the Vigilance Department clearly found that the Collector, Bolangir namely Debaraj Mishra

and Sri Niranjan Tripathy, Ex-Head Clerk Judicial Section were only directly or indirectly linked with the recruitment of selection of candidates for the posts of RI/ARI/Amin and nothing was whispered in such enquiry report regarding the alleged conspiracy made by the employees of District Office so as to benefit the Collector, Bolangir who was the head of Selection Committee. The learned counsel further submitted that the enquiry report completely exonerated the petitioners from any criminal liability either directly or indirectly in misusing their official powers or showing any undue official favour in favour of the illegally selected candidates for the aforesaid posts. The learned counsel further submitted that on the basis of the letter written by the Crime Branch to the petitioners, they submitted their written statement. The learned counsel further submitted that the FIR has been registered in an illegal and mechanical manner and one Babu Moharana who was the DWO, Bolangir and was a member of recruitment Committee was left out by the Vigilance Officials for the best reasons known to the Vigilance Authorities. The learned counsel further submitted that the petitioner No.3 was deputed by the Collector in a written order in favour of the Secretary, Board of Secondary Education to receive the question-cum-answer booklets which were five bundles and accordingly petitioner No.3 had been to Board of Secondary Education office in the official vehicle and while receiving the question-cum-answer booklets, the Secretary of Board

of Secondary Education also handed over the model answer sheets/ scoring keys in sealed cover in separate envelope indicating in the cover separately. The petitioner No.3 talked with the Collector over phone about the request of the Secretary, Board of Secondary Education and the Collector agreed to such request and accordingly the petitioner No.3 carried five bundles of question-cum-answer sheets and one bundle of model answer sheets. The Secretary, Board of Secondary Education wrote a letter on 22.5.2013 to Collector, Bolangir that he had sent the sealed packets of all the question-cum-answer booklets and scoring keys in sealed cover through petitioner No.3. The learned counsel further submitted that there was nothing in the enquiry report or any materials on record that there was any leakage of scoring keys. The learned counsel further submitted that petitioner No.3 handed over the question-cum-answer sheets and the scoring keys to the Collector, Bolangir on 20.5.2013 and she was directed by the Collector to keep the question-cum-answer booklets in the District Treasury on the very same day and no order in respect of the scoring keys was received by the petitioner No.3 and the petitioner No.3 in obedience to the order of the Collector, Bolangir, deposited the question-cum-answer booklets in the District Treasury on 21.5.2013. The learned counsel for the petitioners further submitted that on the date of evaluation in the residential office of the Collector, Bolangir even though

petitioner Nos.1, 2 and 4 raised objection before the Collector, regarding unsealed condition of the answer sheets and also brought to his notice that answer sheets were not codified but the Collector, Bolangir ignored their protest. The learned counsel further submitted in none of the papers evaluated by petitioner Nos.1, 2 and 4, there was either any manipulation or tampering. The learned counsel further submitted that common tabulation sheet and the proceeding were prepared by the Office Assistants and the petitioners only signed them as per the direction of the Collector, Bolangir on different point of time. The learned counsel for the petitioners submitted that since petitioner No.3 was absent during valuation of the answer sheets and since no irregularity or manipulation was found in the answer sheets evaluated by petitioner Nos.1, 2 and 4 and it was not also their duty to re-check the proper valuation of the answer sheets valued by other persons, merely because they have signed the tabulation sheet as per the direction of the Collector, it cannot be said that they have misutilized their official power or they have shown undue favour to anybody. The learned counsel further submitted that no prima facie case is made out against the petitioners and the petitioners were co-operating with the investigation and custodial interrogation of the petitioners is not at all necessary and since the petitioners are Government servants, in the event of their arrest and detention in

custody, they may be placed under orders of suspension and accordingly it was submitted that the anticipatory bail application may be favourably considered.

6. Mr. Pani, learned counsel for the Vigilance Department on the other hand submitted that all the petitioners were the members of Recruitment Committee and they were appointed as functionary for smooth conduct of written examination. He further submitted that the petitioner No.3 brought the question papers and model answer sheets/scoring keys in sealed cover from Board of Secondary Education and deposited the sealed question papers in District Treasury whereas she handed over the model answer sheets/scoring keys in sealed cover to the Collector against which there was no such order to her. The learned counsel further submitted that though there was coding system in each question-cum-answer sheets supplied by the BSE but no coding has been done. He further submitted that the petitioner Nos.1, 2 and 4 remained in-charge of evaluation of answer sheets and also evaluated the answer sheets and drawn up the merit list. The learned counsel further submitted that the petitioner Nos.1, 2 and 4 evaluated Oriya papers and they also signed on the tabulation sheets and proceeding and since they did not raise any objection against the Collector anywhere and anytime regarding the illegal process of examination, they can be considered as members of conspiracy with the Collector.

The learned counsel for the Vigilance Department placed reliance on the decision of Hon'ble Supreme Court in the case of **Chandra Prakash –v- State of Rajasthan, reported 2014 Criminal Law Journal 2884** wherein it is held as follows:-

“70. While dealing with the facet of criminal conspiracy, it has to be kept in mind that in a case of conspiracy, there cannot be any direct evidence. Express agreement between the parties cannot be proved. Circumstances proved before, during and after the occurrence have to be considered to decide about the complicity of the accused. Such a conspiracy is never hatched in open and, therefore, evaluation of proved circumstances plays a vital role in establishing the criminal conspiracy.”

The learned counsel for the Vigilance Department further placed reliance in case of **Major E.G. Barsay-V State of Bombay reported in AIR 1961 SC 1762** wherein it is held as follows:-

“31 The next criticism is that there can be no legal charge of a conspiracy between accused No. 1 to 3, who are public servants and accused Nos. 4 to 6, who are not public servants, in respect of offences under Prevention of Corruption Act for the reason that they can only be committed by the public servants. But this contention ignores the scope of offence of criminal conspiracy. Section 120-A of Indian Penal Code defines “criminal conspiracy” and under that definition

“When two or more persons agree to do, or cause to be done, an illegal act or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy”

The gist of offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy though the illegal act agree to be done has not been done. So, too, it is not an ingredient of the offence that all the parties should agree to do a single illegal acts. It may

comprise the commission of a number of acts. Under section 43 of I.P.C., an act would be illegal if it is an offence or if it is prohibited by law. Under the first charge, the accused are charged with having conspired to do three categories of illegal act and the mere fact that all of them could not be convicted separately in respect of each of the offences has no relevancy in considering the question whether the offence of conspiracy has been committed. They are all guilty of the offence of conspiracy to illegal acts, though for individual offence all of them may not be liable”.

7. The basic ingredients of the offence of criminal conspiracy as defined under section 120-A I.P.C. are

- (i) An agreement between two or more persons;
- (ii) The agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means.

The meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is the sine qua non of criminal conspiracy. The offence can be proved largely from the inferences drawn from the acts or illegal omission committed by the conspirators in pursuance of a common design in as much as the conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the common intention of the conspirators. The entire agreement is to be viewed as a whole and it has to be ascertained as to what in fact the conspirators intended to

do or the object they wanted to achieve. The essence of criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. Encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment (**Ref:-AIR 2008 SC 2991, Yogesh @ Sachin Jagdish Joshi -v- State of Maharashtra; (1980) 2 SCC 465, Shivnarayan Laxminarayan Joshi -v- State of Maharashtra, 2013 (3) SCALE 565, Yakub Abdul Razaq Menon -v- State of Maharashtra; AIR 2005 SC 128, K. Hasim -v- State of Tamil Nadu**).

8. The learned counsel for the Vigilance Department during course of argument placed for perusal the statements of Ramesh Chandra Sethi, Deputy S.P, CID, CB, Odisha, Cuttack Makardhwaj Kalsai, Senior Clerk, Ghanshyam Dang, Senior Clerk, Birabar Kumbhar, Senior Clerk, Pravat Kumar Mishra, Head Clerk, Sudhakar Mohapatra, Senior Clerk, Sankarshan Pradhan, Junior Stenographer, Sanjaya Kumar Mishra, Jr. Clerk, Malaya Ananda Kumar Tripathy, Senior Clerk, Miss Sikharani Bhoi, Junior Clerk, Miss Jindiarani Barik, Junior Clerk, Miss Soudamini Sahu, Junior Clerk, Sampurnananda Bez, Senior Clerk . From the statements collected during investigation by Dy. S.P., Vigilance, Bolangir and

case diary submitted by the learned counsel for the Vigilance Department, it prima facie appears that the Collector Debaraj Mishra was the sole custodian of answer sheets and within the gap period of depositing the sealed answer pockets on 9.6.2013 at the EOC and valuation work which started on 15.6.2013, there has been manipulation in the answer sheets of some candidates which was detected on the date of valuation and the Collector and Niranjana Tripathy are the persons who are aware about the manipulation. The case diary further reveals that the answer papers of the candidates relating to arithmetic papers, computer papers and General awareness papers were verified and manipulation were found to a large extent. The statements and materials collected during investigation more or less support the findings of the enquiry report of Mr. R.N.Patra, DSP, Vigilance, Deogarh Unit as well as Mr. R.N.Sethi, DSP, CID, CB, Odisha, Cuttack. The statements of all those witnesses pointed out by the learned counsel for the Vigilance Department and other documents seized during course of investigation cannot be discussed in a detailed manner at this stage as the matter is under investigation.

9. In case of **Siddharam Satilngappa Mhetre -v- State of Maharashtra reported in (2011) 48 Orissa Criminal Reports (SC) 1**, the Hon'ble Supreme Court while dealing with relevant considerations for exercise of power under section 438 Cr.P.C. held

that no inflexible guidelines or strait jacket formula can be provided for grant or refusal of anticipatory bail in as much as all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. Grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case and it was held as follows:-

“122. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;
- ii. The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- iii. The possibility of the applicant to flee from justice;
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.
- vii. The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which accused is implicated with the help of Sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

viii. While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

x. 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.

123. The arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

124. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.

125. These are some of the factors which should be taken into consideration while deciding the anticipatory bail applications. These factors are by no means exhaustive but they are only illustrative in nature because it is difficult to clearly visualize all situations and circumstances in which a person may pray for anticipatory bail. If a wise discretion is exercised by the concerned judge, after consideration of entire material on record then most of the grievances in favour of grant of or refusal of bail will be taken care of. The legislature in its wisdom has entrusted the power to exercise this jurisdiction only to the judges of the superior courts.”

10. The learned counsel for the Vigilance Department Mr. Pani submitted that in a case of this nature, the custodial interrogation is

very much necessary in as much as it would be qualitatively more elicitation-oriented. He further submitted that if the petitioners are well protected and insulated by a pre-arrest bail order during the time when they are interrogated then the interrogation would be reduced to a mere ritual. Mr. Pani submitted that from the statements collected by the Dy.S.P., Vigilance, Bolangir Unit as well as from the documents, many more things are required to be questioned to the petitioners and if the petitioners are well ensconced with a favourable order under section 438 of the Code then the success of interrogation would elude. The learned counsel further submitted that even though the counsel for the petitioners submitted that the petitioners are ready and willing to cooperate with the interrogation but he apprehends that such interrogation backed by a favourable order under section 438 Cr.P.C. insulating them from arrest would not yield any fruitful result and there would be less chance of discovery of material facts.

In case of **Bharat Chaudhary-v- State of Bihar reported in AIR 2003 SC 4662**, it is held as follows:-

“7....The gravity of the offence is an important factor to be taken into consideration while granting such anticipatory bail so also the need for *custodial interrogation*, but these are only factors that must be borne in mind by the concerned courts while entertaining a petition for grant of anticipatory bail and the fact of taking cognizance or filing of charge

sheet cannot by themselves be construed as a prohibition against the grant of anticipatory bail.”

In case of **Maruti Nivrutti Navale -v- State of Maharashtra reported in 2012 (8) SCALE 572**, wherein it is held as follows:-

“12.....It is true that the parties have also approached the Civil Court for various reliefs. At the same time, as pointed out by counsel for the State and the second respondent-Complainant, considering the seriousness relating to corrections/additions/alterations made in various documents, information furnished to the Educational Authorities which, according to them, are incorrect, we are of the view that in order to bring out all the material information and documents, *custodial interrogation* is required, more particularly, to ascertain in respect of the documents which were alleged to have been forged and fabricated. In the said documents and other materials which are in the possession of the Appellant and the allegation against him that he has made false representation before the Public Authority on the basis of those documents for obtaining necessary permission, as pointed out by the State, in order to secure possession of those documents, *custodial interrogation* is necessary”.

In case of **Muraleedharan-v-State of Kerala reported in AIR 2001 SC 1699**, wherein it is held as follows:-

“7.....*Custodial interrogation* of such accused is indispensably necessary for the investigating agency to unearth all the links involved in the criminal conspiracies committed by the persons which ultimately led to the capital tragedy. We express our reprobation at the supercilious manner in which the Sessions Judge decided to think that "no material could be collected by the investigating agency to connect the petitioner with the crime except the confessional statement of the co-

accused." Such a wayward thinking emanating from a Sessions Judge deserves judicial condemnation. No court can afford to presume that the investigating agency would fail to trace out more materials to prove the accusation against an accused. We are at a loss to understand what would have prompted the Sessions Judge to conclude, at this early stage, that the investigating agency would not be able to collect any material to connect the appellant with the crime. The order of the Sessions Judge, blessing the appellant with a pre-arrest bail order, would have remained as a bugbear of how the discretion conferred on Sessions Judge under Section 438 of the Cr.P.C. would have been misused. It is heartening that the High Court of Kerala did not allow such an order to remain in force for long."

In case of **State rep. by the CBI -v- Anil Sharma reported in (1997) 7 Supreme Court Cases 187**, wherein it is held as follow:-

"6. We find force in the submission of the CBI that *custodial interrogation* is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with favourable order under Section 438 of Code. In a case like this, effective interrogation of a suspected person is of tremendous advantage in disinterring many useful informations and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre-arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the *custodial interrogation* is fraught with the danger of the person being subjected to third degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with

the task of disinterring offences would not conduct themselves as offenders.”

What is “custodial interrogation”? “Custody” means formal arrest or the deprivation of freedom to an extent associated with formal arrest. “Interrogation” means explicit questioning or actions that are reasonably likely to elicit an incriminating response. Questioning initiated by law enforcement officers after a person is taken into custody or otherwise deprived of his or her freedom in any significant way is called “custodial interrogation”. The Court has to strike a balance between individual’s right to personal freedom and the investigational rights of the police. On one hand, the Court has to prevent harassment, humiliation and unjustified detention of an accused, on the other hand it is to see that a free, fair and full investigation is not hampered in any manner. When an application for anticipatory bail of an accused is objected to by the State on the ground of necessity of custodial interrogation, the Court can scan the materials available on record and ask the State to satisfy as to in what way the custodial interrogation could benefit the prosecution. The satisfaction of the Court would depend upon several facts viz., the nature of offence, the stage at which the investigation is pending, the materials which could not be traced out by the Investigating Agency due to absence of custodial interrogation and the benefit which the prosecution would get on

account of custodial interrogation of the accused. It cannot be stated that in a particular type of cases or for a particular type of accused, the custodial interrogation is mandatory. It would all depend upon the facts and circumstances of each case. No strait jacket formula could be laid down. When the accused makes out a case for anticipatory bail, it is not to be defeated by mere asking for custodial interrogation by the prosecution without satisfying the necessity for the same. Sometimes the custodial interrogation of suspects would give clue regarding criminal conspiracy and identity of the conspirators and it may lead to confession of guilt and recovery of the incriminating materials. Sometimes at the crucial stage of investigation, the custodial interrogation would be a boon to the Investigating Officer. The person in custody likely to be interrogated has a right to remain silent. On some questions, he may answer and on some questions, he may remain silent or refuse to answer. Nobody can be compelled to answer to a particular question. No third-degree method is to be adopted for eliciting any answer. It is illegal to employ coercive measures to compel a person to answer.

11. Now let us discuss the exact role played by the petitioner No.3 in the entire episode. The enquiry report of Sri R.N. Patra, D.S.P, Vigilance, Deogarh Unit and the materials so far collected by the Vigilance Authorities reveal that she was a member of

Recruitment Committee which was constituted on 4.2.2013 as per the order No.321/Estt. dated 4.2.2013 of the Collector, Bolangir for the selection of candidates and smooth management of the recruitment process under the Chairmanship of Sri Debaraj Mishra, Collector, Bolangir and other members. The contention of the learned counsel for the petitioners that there was no such order on 4.2.2013 and that the said order was ante-dated cannot be considered at this stage as it is to be adjudicated at the stage of trial. The materials on records further indicate that the petitioner No.3 was authorized and deputed by the Collector, Bolangir vide letter No.967/Estt. dated 9.5.2013 for the purpose of receiving question papers in sealed covers for the written examination for the recruitment for the post of R.I/A.R.I/Amin. This letter was addressed to the Secretary, Board of Secondary Education, Orissa, Cuttack and the signature of petitioner No.3 was attested by the Collector, Bolangir on the said letter itself. The petitioner No.3 received the sealed packets of all the question-cum-answer sheets with scoring keys in sealed cover for the recruitment test on 20.5.2013 from the Secretary, Board of Secondary Education, Odisha, Cuttack. It appears from records that on the same day i.e., on 20.5.2013 the petitioner No.3 produced the question-cum-answer sheets and scoring keys in sealed cover to the Collector, Bolangir. It further appears from letter No.1031/Estt. dated

20.5.2013 that the Collector, Bolangir directed the Treasury Officer, District Treasury, Bolangir to open the strong room at 8.00 a.m. on 21.5.2013 to receive the question papers from petitioner No.3 who was authorized to deposit the same. The specimen signature of petitioner No.3 was attested by the Collector, Bolangir and a copy of the said letter was given to the petitioner No.3 for information and necessary action. In pursuance to such letter, the petitioner No.3 deposited the question papers in the District Treasury strong room, Bolangir on 21.5.2013. It further appears that even though the petitioner No.3 was authorized and deputed vide letter dated 9.5.2013 of Collector, Bolangir to receive the question papers only in sealed cover and there was no authorization for receiving the scoring keys but it appears from the letter No.566 dated 22.5.2013 of the Secretary, Board of Secondary Education, Odisha that the confidential materials along with the packing note and the scoring keys for the recruitment test in sealed packets were sent to the Collector, Bolangir through the petitioner No.3 on 20.5.2013. The contention of the learned counsel for the petitioners Mr. Mishra that even though petitioner No.3 was not authorized for receiving the scoring keys but as per the request of the Secretary, Board of Secondary Education, Odisha, Cuttack, she received the same after due permission of the Collector, Bolangir over phone has substantial force. The

contention of the learned counsel for the Vigilance Department, Mr. Pani that it was not proper on the part of the petitioner No.3 to handover the scoring keys to the Collector after receiving the same from the Secretary, Board of Secondary Education, Orissa on 20.5.2013 appears to be ridiculous. The petitioner No.3 was not directed by the Secretary, B.S.E, Orissa to give the question-cum-answer sheets only to the Collector and to keep the scoring keys with her. It was also not expected on the part of the petitioner No.3 to keep the scoring keys with her and to give only question-cum-answer sheets in sealed condition to the Collector, Bolangir particularly when the Secretary has intimated the Collector about the dispatch of the packets containing confidential materials as well as scoring keys through petitioner No.3. It was the duty of the petitioner No.3 not only to hand over the confidential materials received in sealed packets which is obviously the question-cum-answer sheets but also the scoring keys which was in the sealed cover to the Collector, Bolangir which she did. If the Collector kept the scoring keys with him and asked the petitioner No.3 to deposit the question papers only in sealed packets in the District Treasury strong room, Bolangir, prima facie no fault can be found with the petitioner No.3.

The manipulation stated to have taken place during valuation of the answer sheets which was fixed from 14.6.2013 to

16.6.2013 but actually commenced from 15.6.2013, on which dates the petitioner No.3 was on leave after due permission of the Collector. Since the petitioner No.3 has not participated in the valuation work, she cannot be saddled with any illegality that was committed during course of such valuation by other persons. It appears from enquiry report that the petitioner No.3 had informal discussion with the Collector about the coding of answer sheets prior to the date of valuation and the Collector had assured her to look into the matter but that was not acted upon. It further appears from the enquiry report that on 21.06.2013 evening the petitioner No.3 was called to the Residence Office of the Collector and handed over the copy of the proceeding by the Collector wherein it was written that the evaluation committee has drawn up the merit list of successful candidates. The copy of the proceeding was already signed by two of the Block Development Officers. The tabulation sheet was also produced before her in which the Block Development Officers had already signed. The petitioner No.3 wanted to cross check the tabulation sheet with the manual tabulation sheet as she was not present during the evaluation and tabulation process but she was told by the Head Clerk Niranjan Tripathy in presence of the Collector that manual tabulation sheet has not been prepared and the tabulation sheet was prepared under the direct supervision of the Collector. Since the Block

Development Officers had already signed the tabulation sheet and the proceeding, she did not raise any doubt and signed the documents.

In view of such materials available on record, it cannot be prima facie said that the petitioner No.3 has any role in the alleged unfair means adopted by the selection committee members in the recruitment process to facilitate some favoured ineligible candidates to get scope for appointment. Thus the petitioner No.3 has made out an exceptional case in her favour for grant of anticipatory bail. The possibility of the petitioner No.3 fleeing away from the justice is remote and there is also no criminal antecedent against the petitioner No.3. As it appears, there is no allegation against the petitioner No.3 in the enquiry report of R.N. Patra, D.S.P. Vigilance, Deogarh Unit and there is also no specific allegation against the petitioner No.3 in the F.I.R. lodged by R.C. Sethi, DSP,CID,CB, Orissa Cuttack. The materials so far collected by the Vigilance Authority during course of investigation do not attribute any specific role to the petitioner No.3 in the alleged commission of the offences. Since the petitioner No.3 is a lady and she is Deputy Collector serving in the Collectorate, Bolangir and prima facie no illegality appears to have been committed by her in the entire recruitment process, keeping

in view the proviso section 437 (1) Cr.P.C. I am inclined to release petitioner No.3 on anticipatory bail.

Accordingly, it is directed in the event of arrest of the petitioner No.3 in connection with the aforesaid case, she shall be released on bail on furnishing bail bond of Rs.20,000/- (rupees twenty thousand) with two solvent sureties for the like amount to the satisfaction of the arresting officer on condition that she shall make herself available for interrogation by the I.O. as and when required and she shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing any facts to the Courts or to the Investigating Officer and with further condition that she shall fully co-operate with the investigation and shall appear before the I.O. as when required and shall not tamper with the evidence. The petitioner No.3 shall not leave India without obtaining prior permission from the learned Trial Court. She shall furnish her present address to the Investigating Officer who shall verify it and submit it to the trial court under his signature and in case of the change of address, it must be communicated to the Investigating Officer who shall verify it and intimate the same to the Court concerned under his signature. The prosecution is at liberty to file an application for

cancellation of bail if the petitioner No.3 violates any terms and conditions of this bail order.

12. So far as petitioner No.1, 2 and 4 are concerned, it appears that they were directed by the Collector, Bolangir vide order No.857/Res. dated 10.6.2013 to act as “officer for valuation” of the answer sheets and all these three petitioners participated in the valuation work which was fixed from 14.6.2013 to 16.6.2013 but actually started from 15.6.2013. It appears that when these three petitioners came to the residential office of the Collector, Bolangir on the date of valuation, the almirah which was there in the EOC was already open and the answer sheets were in unsealed condition. No coding system was adopted to evaluate the answer sheets. When the three petitioners were directed by specific order to evaluate the answer papers, they should not have allowed the ministerial staffs who were deployed to assist them to evaluate all the answer sheets of arithmetic/G.K. and most of the computer papers on which manipulation were seen. The contention of the learned counsel for the petitioners that the petitioner Nos.1, 2 and 4 raised protest at the time of valuation as to why the coding system was not done but when the Collector expressed his displeasure on them and directed them to simply evaluate as coding is none of their business, the three petitioners obliged the Collector and that they succumbed to the pressure of the Collector, is not sufficient to absolve them of

their responsibilities. They have not only kept mum at that point of time but have remained silent thereafter and not even brought the matter to the notice of the higher authorities regarding the irregularities and unfair means adopted in the recruitment process. The contention of the learned counsel for the Vigilance Department that the role of petitioner Nos.1, 2 and 4 prima facie makes out a case of conspiracy with other accused persons to facilitate favoured ineligible candidates getting scope for appointment in the post of R.I/A.R.I/Amin has substantial force. They have signed the committee meeting proceeding and tabulation sheet. Their conduct in not taking any visible steps to protest the irregularities found in the entire process of valuation speaks a lot about their unlawful and unholy combination with the conspirators and it has given encouragement and support to the co-conspirators to achieve the illegal object and such conduct raises "the pointing finger of accusations" against them. The charges in this case are very serious and it relates to the unfair means adopted in the recruitment process for which eligible/genuine candidates were debarred from getting selected and illegible candidates were favored with orders of appointment in the posts of R.I/A.R.I/Amin. The statements and materials placed by the learned counsel for the Vigilance Department prima facie establish the link of these three petitioners in the crime. Without entering into a detail examination of the

evidence at this stage but on a brief examination of the materials, I find prima facie case is available against the three petitioners.

Considering the nature and gravity of accusations with utmost care and caution and the need for custodial interrogation, I am not inclined to exercise the discretionary power under section 438 of the Code by granting pre-arrest bail to petitioner Nos. 1, 2 and 4. Accordingly, the prayer for anticipatory bail of petitioner Nos. 1, 2 and 4 stands rejected.

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S.K. Sahoo,J.

Orissa High Court, Cuttack
The 29th November, 2014/Pravakar