

Balchand Bharti Vs State of C.G.**Misc. Criminal Case No. 2302 of 2008**

Court: Chhattisgarh High Court**Date of Decision:** Feb. 3, 2009**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) â€” Section 299, 439, 82, 83#Pariksha Adhiniyam (Recognized Examination) Act â€” Section 4#Penal Code, 1860 (IPC) â€” Section 120B, 420, 467, 468, 471

Citation: (2009) 2 CGLJ 57**Hon'ble Judges:** T.P. Sharma, J**Bench:** Division Bench

Advocate: Shailendra Dubey, for the Appellant; Kishore Bhaduri, A.A.G. and Avinash K. Mishra, Panel Lawyer for State, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

T.P. Sharma, J.

The applicant has filed this application u/s 439 of the Code of Criminal Procedure for grant of regular bail, as he is in

custody in connection with Crime No. 91/2008, registered at Police Station Bamhanidih, Distt. Janjgir-Champa, for offence punishable under

Sections 420, 467, 468, 471, 120B of the I.P.C. and Section 4 of the Pariksha Adhiniyam (Recognized Examination) Act.

2. I have heard learned Counsel for the parties and perused the case diary.

3. This is the second bail application filed on behalf of the applicant u/s 439 of the Code of Criminal Procedure after dismissal of the first bail

application on merits vide order dated 24-9-2008 passed by this Court in M.Cr.C. No. 1635/2008.

4. Learned Counsel for me applicant submits that the applicant is in custody since 25-8-2008 in connection with the offence punishable under

Sections 420, 467, 468, 471, 120B of the I.P.C. and Section 4 of the Pariksha Adhiniyam (Recognized Examination) Act. The applicant was

working as Assistant Centre Incharge posted at Examination Centre Birra, Centre No 24189 and he was required to discharge the duties of

Centre Incharge in absence of the Centre Incharge or to discharge the duties as assigned to him by the Centre Incharge. This case is relating to

preparation of fake and forged answer books in the name of one Porabai who appeared in the examination from the alleged Birra Centre where

the applicant was working as Assistant Centre Incharge. Learned Counsel further submits that it was not the duty of the applicant to supply

question papers and answer books, to collect answer books, to seal and to send the same to the Police Station or Coordination Centre or to any

centre for their valuation or to receive the same after valuation. The applicant has not dealt with the question papers or answer books of the alleged

Birra Centre in any manner, simply he was posted as Assistant Centre Incharge at Birra Examination Centre where according to the case of the

prosecution, the alleged scam was committed. He has been made accused and he is in custody since 25-8-2008. Learned Counsel also submits

that one of the co-accused namely, S.L. Tiwari, Centre Incharge of another Centre Bamhanidih, Centre No. 24141, from where the alleged set of

answer books were said to be stolen and have been used for preparation of alleged fake answer books, has been granted anticipatory bail by this

Court. He further submits that this is an application u/s 439 of the Code of Criminal Procedure. Case of the present applicant is not only similar to

the case of S.L. Tiwari but rather it is stronger than the case of S.L. Tiwari who was granted anticipatory bail.

5. On the other hand, learned Counsel appearing on behalf of State opposes the bail application and submits that this case is related to the known

Porabai scandal in which Porabai appeared in the examination from Birra Centre where the applicant was working as Assistant Centre Incharge.

She appeared in Hindi, English, Physics, Chemistry and Biology subjects on different dates and according to the record of the centre, answer book

Nos. 83333, 9906201, 9906325, 21257 and 9886394, respectively, have been provided to her on different dates to answer the questions, but

instead of answering in the aforesaid answer books, different answer books bearing Nos. 60325, 60327, 60409, 60410 and 60411, respectively

were found, the same have been checked and she stood first in the merit list. A detailed inquiry has been made by the Education Department and

Mr. P.K. Pandey has conducted inquiry in which he found that the officers and employees of Birra Centre and Bamhanidih Centre have entered

into conspiracy and in furtherance of that conspiracy, 1,000 answer books bearing serial Nos. 60001 to 61000 were taken out from Bamhanidih

Centre, Centre No. 24141, out of those answer books, answer books bearing Nos. 60325, 60327, 60409, 60410 and 60411 have been used in

the name of Porabai by some person and the seal of Birra Centre has been affixed on those answer books, they were finally sent to the Police

Station in sealed condition along with other answer books and the same were evaluated by the evaluating officer.

6. This is a mega scandal of education sector. Confidence of public, especially the confidence of labourious students is being marred by such

incidents. This type of incidents creates doubt on their merit. Charge sheet has already been filed in this case. Enquiry report and the statement Mr.

P.K. Pandey who has conducted enquiry shows involvement of the present applicant in the crime in question. Statements of Gyaneshwar Pandey,

Rajendra Yadav and Bhuneshwar Sahu also show involvement of the present applicant who was working as Assistant Centre Incharge and who

had involved in mass copying. The applicant was posted as. Assistant Centre Incharge and he was required to assist the Centre Incharge in

discharge of his duty. This is not a case of casual incident of copying in any one paper or relating to one or two questions. This is a case of copying

of six papers on different dates by getting the answer books from another centre in which answers have not been written by the candidate herself,

but by some other person. Statements of Mr. P.K. Pandey, Bhuneshwar Sahu, Gyaneshwar Pandey and Rajendra Yadav show involvement of the

present applicant who had also played active role in the conspiracy. Presence of the applicant in the centre premises and his association in the

conduction of the examination cannot be ruled out.

7. Other co-accused S.L. Tiwari who was granted anticipatory bail was not working in Birra Centre, he was working in Bamhanidih Centre and

according to the case of the prosecution 1,000 answer books which were allotted to Bamhanidih Centre were not found in Bamhanidih Centre and

out of 1,000 answer books, six answer books had been used as the answer books of Porabai. The case of S.L. Tiwari is not similar to the case of

the present applicant who is directly involved in this mega scandal.

8. Taking into consideration the seriousness of offence and pious duty of conduction of examination, I do not find any change in the circumstances

after rejection of the first bail application, in other words, I do not find any case for grant of bail to the applicant. Consequently, the second bail

application filed on behalf of the applicant is dismissed.

9. The prosecution has filed charge sheet and some of the accused persons have been shown to be absconding. The Court below is directed to

expedite the trial after invoking the provisions of Sections 82, 83 and 299 of the Code of Criminal Procedure, 1973.