

HIGH COURT OF UTTARAKHAND AT NAINITAL

Second Bail Application No. 150 of 2023

Sachin Kumar ...Applicant

Versus

State of Uttarakhand ...Respondents

Present:-

Mr. Sandeep Kothari, Advocate for the applicant.

Mr. Amit Bhatt, D.A.G. for the State.

Mr. Lalit Sharma, Advocate for the informant.

Hon'ble Ravindra Maithani, J. (Oral)

Applicant Sachin Kumar is in judicial custody in Case Crime No. 389 of 2022, under Sections 420, 409, 120-B IPC read with Section 3, 4, 6, 9, 10 of the U.P. Public Examination (Prevention of Unfair Means) Act, 1988, Police Station Raipur, District Dehradun. He has sought his release on bail.

2. Heard learned counsel for the parties and perused the record.

3. According to the FIR, in an examination conducted by the Uttarakhand Subordinate Service Selection Commission, Dehradun, complaints were received with regard to use of unfair means.

4. It is the case against the applicant that he also took money so as to facilitate use of unfair means in the examination and provided answers to the candidates.

5. Learned counsel for the applicant would submit that the applicant has no role in the case. He was appointed as Assistant Proctor for conducting the examination. The applicant performed his duties. There is no evidence against him. It is argued that it is highly improbable to believe as projected by the prosecution that within two minutes 100 questions may be copied on a device by rolling the questions one by one. There is no call record between the applicant and the candidates. It is also argued that the prosecution is relying on the statement of Vishal Kumar but he is not charge-sheeted witness. Vishal Kumar has not named the witness, instead he has named one Sachin son of Late Swaram.

6. Learned State counsel would submit that the applicant was deputed on invigilation duty in the examination. The CCTV footages confirms the active role of the applicant. On 20.07.2021, the examination was to be held from 2:00 PM to 4:00 PM. The applicant took the candidate Vishal Kumar straightway in a seat which was reserved and it was not covered by CCTV. He took the photographs of all 100 questions on screen with the help of

the candidate Vishal Kumar and later on, supplied him answers. Learned counsel has referred to the CCTV log as has been filed as annexure 1 to the supplementary counter affidavit. At the time of hearing today, he also rendered for the perusal of the Court, the statement of Vishal Kumar, son of Jai Prakash recorded during investigation. It is also submitted that other witnesses Ruhul Kumar and Jeeshan also named the applicant.

7. Learned counsel for the applicant would also submit that the applicant did not change the seat of the candidate Vishal Kumar, instead he generated the request on the system for change of the seat and only thereafter, he took the candidate Vishal Kumar at the reserved seat.

8. It is a stage of bail. Much of the discussion is not expected of. Arguments are being appreciated with the caveat that any observation made in this order shall have no bearing at any subsequent stage of the trial or in any other proceedings.

9. Witnesses Gulamuddin and Jeeshan have categorically stated about the role of the applicant to help in examination. Candidate Vishal Kumar is more categorical. He tells that through Sachin son of Late Swaram, he paid money and the person, who met him in the examination hall, straightway took him at a seat which was not covered

by CCTV, took the photographs of the question paper, which he scrolled on the system and thereafter, gave him answers, which he did quickly.

10. Annexure 1 to the supplementary counter affidavit are details of CCTV footages. It reveals the chronology that took place on that date. Even if Vishal is not named as a witness in the charge sheet; it makes less difference at this stage. Admittedly, Vishal was a candidate. He has been examined under Section 161 of the Code of Criminal Procedure, 1973. He may very well be examined by the Court at trial.

11. It is a case of using unfair means in the public examination. It is a serious offence. Whatever material is available before this Court at this stage, commands this Court to reject the bail application.

12. Having considered, this Court is of the view that there is no ground to enlarge the applicant on bail. Accordingly, the bail application deserves to be rejected.

13. The bail application is rejected.

(Ravindra Maithani, J.)
10.11.2023