

(2014) 11 OHC CK 0034
In the Orissa High Court
Case No : BLAPL No. 18321 of 2014

Niranjan Tripathy

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 29-11-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 438
Penal Code, 1860 (IPC) — Section 120A, 120B, 149, 34, 409
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)

Citation : (2015) 119 CLT 426

Hon'ble Judges : S.K. Sahoo, J

Bench : Single Bench

Judgement

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 petitioner 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 is the Ex-Head Clerk, Judicial Section and in-charge Head Clerk of Establishment Section, Collectorate, Bolangir and he is now working as Head Clerk, Puintala Block, Bolangir.

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 the petitioner who was 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 Miss

Aneeta Panda, Deputy Collector, Binod Bihari Das, Block Development Officers, Raghunath Mundry, Ripunath Suna and 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 Miss Aneeta Panda, Deputy Collector 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 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 Block Development Officers namely Binod Bihari Dash, Ripunath Suna and Raghunath Mundry 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, Miss Anita Panda, Deputy Collector applied for leave from 14.6.2013 to 16.6.2013 on account of Raja Sankranti which was allowed by the Collector, Bolangir. The Block Development Officers Binod Bihari Dash, Ripunath Suna and Raghunath Mundry 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 Block Development Officers 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 Block Development Officers 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.

(v) The petitioner 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 the Block Development Officers 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) Miss Aneeta Panda, Deputy Collector had availed leave from 13.6.2013 till 16.6.2013, within which period the evaluation work was over;

(viii) The Block Development Officers 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) Miss Aneeta Panda, Deputy Collector was ordered to bring and deposit the

question-cum-answer sheets and she only deposited the question-cum-answer sheets 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 the petitioner 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. Ashis Kumar Mishra, learned counsel appearing for the petitioner submitted that the petitioner being the Head Clerk obliged the order and command of the Recruitment Committee as they were the higher authorities. The learned counsel challenged the findings of the Enquiry Report and submitted that only one sentence has been mentioned against the petitioner in the FIR that he was orally instructed by the Collector to take charge of the room, wherein the examination papers were kept on an Almirah. He further submitted that key of the Almirah in the EOC was with the Collector and the key of the EOC was also with the Collector and therefore it cannot be said that the petitioner had committed any manipulation in the answer sheets prior to the valuation. He further submitted that it cannot be said that the petitioner has misutilized his official power or he has shown undue favour to anybody. The learned counsel further submitted that no prima facie case is made out against the petitioner and custodial interrogation of the petitioner is not at all necessary and since the petitioner is a Government servant, in the event of his arrest and detention in custody, he may be placed under orders of suspension and accordingly it was submitted that the anticipatory bail application may be favorably considered.

6. Mr. Pani, learned counsel for the Vigilance Department on the other hand submitted that the materials available on record indicate that the petitioner was handling/using the almirah and the room on oral instruction of the Collector. The petitioner has evaluated the answer papers even though he was not in the evaluation committee. The petitioner told others in the presence of the Collector during valuation to give marks if tick mark is available on the right box even if it has been overwritten/corrected earlier. Mr. Pani further submitted that in

between 10.6.2013 to 15.6.2013 after deposit of the answer sheets and before evaluation, the petitioner and one Makardhwaj Kalsai, Senior Clerk use to come to the residential office of the Collector and the petitioner use to take the key of the EOC from the Collector and work in the EOC building. He further submitted that on the date of valuation, the petitioner opened the almirah and brought out answer papers for valuation and dumped it on the table occupied by the Collector and it was found that no seal was available on the answer sheets packet and the same were tied with rope. He further submits that tabulation sheet was prepared as per the direction of the petitioner and Merit List was also produced by the petitioner before Babu Moharana, DWO, Bolangir who signed it even though he has not seen while the merit list was prepared. The learned counsel for the Vigilance Department submits that the petitioner is absconding.

The learned counsel for the Vigilance Department placed reliance on the decision of Hon''ble Supreme Court in the case of Chandra Prakash Vs. State of Rajasthan, 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 Vs. The State of Bombay, 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:- Yogesh @ Sachin Jagdish Joshi Vs. State of Maharashtra, ; Shivnarayan Laxminarayan Joshi and Others Vs. State of Maharashtra, , 2013 (3) SCALE 565, Yakub Abdul Razaq Menon -v- State of Maharashtra; K. Hashim Vs. 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, the Collector had handed over the key of EOC to the petitioner and manipulation of answer sheets was detected on the date of valuation and therefore the Collector and the petitioner 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 Satlingappa Mhetre Vs. State of Maharashtra and Others, , 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 petitioner who is now absconding is well protected and insulated by a pre-arrest bail order during the time when he is 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 petitioner and if the petitioner is 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 petitioner submitted that the petitioner is 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 him from arrest would not yield any fruitful result and there would be less chance of discovery of material facts.

In case of *Bharat Chaudhary and Another Vs. State of Bihar and Another*, 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 Vs. State of Maharashtra and Another*, , 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 Vs. State of Kerala*, , 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 C.B.I. Vs. Anil Sharma*, , 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 would 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 in the entire episode. The materials so far collected by the Vigilance Authorities reveal that

the name of the petitioner was not written anywhere in the entire process of recruitment but he actively participated in the entire process and even issued verbal instructions to the OAS Officers in presence of the Collector. He has also evaluated same answer sheets. The petitioner was handling and using the almirah and EOC on the instruction of the Collector. The petitioner told others in presence of the Collector during valuation to give marks to the candidates if the tick mark is available on the right box, even if it has been overwritten or corrected earlier. In between 10.6.2013 to 15.06.2013 after the deposit of the answer sheets and before valuation, the petitioner was coming to the residential office of the Collector and use to take the key of the EOC from the Collector and work in the EOC building. On the date of valuation, the petitioner opened the almirah and brought out answer papers for valuation and dumped it on the table occupied by the Collector and it was found that no seal was available on the answer sheets packets and the same were tied with ropes. The tabulation sheet was prepared as per the directions of the petitioner and he produced the tabulation sheet and proceeding before the officers for their signature. The petitioner is absconding for which he could not be interrogated by the Vigilance Authorities. The materials on record further reveal that the petitioner is directly or indirectly linked with the recruitment/selection of the candidates and the conduct of the petitioner is very suspicious and he has been given all possible scope to adopt unfair means which facilitated the ineligible candidates who were favoured to get the scope for the appointment. The contention of the learned counsel for the Vigilance Department that the role of petitioner 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. The role of the petitioner after the answer sheets were kept in the EOC and during the entire process of valuation and thereafter speaks a volume of misconduct and raises "the pointing finger of accusations" against him. 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 ineligible candidates were favored with orders of appointment for 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 the petitioner 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 petitioner.

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. Accordingly, the prayer for anticipatory bail of the petitioner stands rejected.