

GAHC010087662021



WWW.LIVELAW.IN
THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./1123/2021

RAJINA PARBIN SULTANA AND 5 ORS.
D/O- RAHIM ALI, PERMANENT RESIDENT OF ABHAYAPURI, WARD NO- 4,
PO- ABHAYAPURI, PS- ABHAYAPURI, DIST- BONGAIGAON, PIN-783384

2: RASEDUL HOQUE @ MD. RASHIDUL HOQUE
S/O-LATE AMIR HUSAIN PARAMANIK
PERMANENT RESIDENT OF ABHAYAPURI
WARD NO- 4
PO- ABHAYAPURI
PS- ABHAYAPURI
DIST- BONGAIGAON
PIN-783384

3: RAFIKUL HUSSAIN
S/O- KRAMAT ALI
PERMANENT RESIDENT OF ABHAYAPURI
WARD NO- 4
PO- ABHAYAPURI
PS- ABHAYAPURI
DIST- BONGAIGAON
PIN-783384

4: JAHIDUL ISLAM
S/O- ANSER ALI
PERMANENT RESIDENT OF VILLAGE DUMERGURI
WARD NO- 4
PO- DUMERGURI
PS- ABHAYAPURI
DIST- BONGAIGAON
PIN-783384

5: HASAN MUSTAFIZUR RAHMAN
S/O- ABDUL MALEK
PERMANENT RESIDENT OF ABHAYAPURI

PO AND PS- ABHAYAPURI
DIST- BONGAIGAON
PIN-783384

6: MAHJABIN HASIN
D/O- HAIDER ALI WWW.LIVELAW.IN
PERMANENT RESIDENT OF ABHAYAPURI
PO AND PS- ABHAYAPURI
DIST- BONGAIGAON
PIN-78338

VERSUS

THE STATE OF ASSAM
REP. BY PP ASSAM

Advocate for the Petitioner : SYED BURHANUR RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

08.06.2021

The Court proceedings have been conducted through remote video conferencing mode due to the prevailing situation in the State due to Covid-19 pandemic.

2. Heard Mr. S.B. Rahman, learned counsel for the accused-petitioner and Ms. A. Begum, learned Additional Public Prosecutor for the respondent State of Assam.

3. By this application under Section 439, Code of Criminal Procedure, 1973 (CrPC), the accused-petitioner viz. Rajina Parbin Sultana has prayed for her release on bail, as she is in custody since 16.05.2021 in connection with

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Abhayapuri Police Station Case no. 436/2021, registered under Sections 120B/124A, Indian Penal Code (IPC) and Section 2 of the Prevention of Insult to National Honour Act, 1971.

4. The First Information Report (FIR) has been lodged by the Officer In-Charge of Abhayapuri Police Station on 15.05.2021. It has *inter alia* been mentioned in the FIR that on 14.05.2021, the accused-petitioner had invited some guests to her house for lunch on the occasion of Eid festival. A picture had, thereafter, emerged in the social media, Facebook wherefrom it was gathered that the accused-petitioner and few other persons had taken lunch on a dining table where the table cloth resembled the Indian National Flag. 6 (six) nos. of persons have been named as accused in the FIR stating that they had willfully dishonoured the Indian National Flag by using the same as a table cloth on the dining table while taking food across the dining table.

5. The learned counsel for the accused-petitioner has submitted that out of the 6 (six) accused persons named in the FIR, 5 (five) of them have already been released on bail by order dated 25.05.2021 passed in this application. He has submitted that even if the accusations made in the FIR are *prima facie* accepted to be true, the same could not be brought within the purview of the offence under Section 124A, IPC. He has further submitted that an offence under Section 2 of the Prevention of Insult to National Honour Act, 1971 is punishable with imprisonment for a term which may extend to three years, or with fine, or with both. He submits that as the accused-petitioner is in custody since 16.05.2021, the accused-petitioner may be released on bail subject to any terms and conditions.

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6. Learned Public Prosecutor has submitted that the accused-petitioner was the host for the lunch which was held in her house, on 14.05.2021 when the alleged act was committed. It is submitted by her that there is ample evidence that the accused-petitioner had used a table cloth resembling Indian National Flag while inviting guests to her house on the occasion of Eid festival. It is submitted by her that the materials, as available in the case diary, collected during the course of investigation carried out so far, are not sufficient to hold a *prima facie* view about the offence defined under Section 124A, IPC.

7. Learned counsel for the accused-petitioner has expressed apology for an unintentional typographical error appearing in paragraph-11 of the application. The sentence is to the effect that "the accused-petitioners are under 30 from middle class background and therefore have clout to influence the investigation". As the learned counsel for the accused-petitioner has submitted that it was an unintentional mistake, the Court is inclined to accept the same with the suggestion to the learned counsel for the accused-petitioner to exercise more care and caution in future.

8. I have considered the submissions of the learned counsel for the parties and taken note of the submissions as regards the materials available in the case diary, on the basis of the submissions made by the learned Additional Public Prosecutor.

9. The question whether the accused-petitioner, by her act had, committed the offence under Section 2 of the Prevention of Insult to National Honour Act, 1971 in any public place or any other place within public view is to be considered on the basis of the materials collected during the course of investigation and its admissibility during the course of trial. It does not *prima facie* suggest to be an act to have the affect of subverting the Government by

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bringing that Government into contempt or hatred or creating disaffection against it. This Court is not expressing any final opinion with regard to the fulfillment of the ingredients of the aforesaid offences.

10. Considering the period of detention of the accused-petitioner since 16.05.2021 and the progress made in the investigation, this Court is of the considered view that further custodial detention of the accused-petitioner is not necessary for the purpose of carrying out investigation of the case and her release on bail at this stage of investigation is not likely to cause any prejudicial effect in the further investigation, provided she continues to extend her assistance and co-operation in the further investigation of the case.

12. Accordingly, it is directed that the accused-petitioner shall be released on bail on furnishing a bail bond of Rs. 20,000/- with one local surety of the like amount to the satisfaction of the learned Sub-Divisional Judicial Magistrate (M), North Salmara, Abhayapuri subject to the conditions that :-

[i] the accused-petitioner shall co-operate with the investigation and make themselves available for interrogation whenever required by the Investigating Officer (I.O.) of the case;

[ii] the accused-petitioner shall not, directly or indirectly, make any inducement, threat or promise to any witness acquainted with the facts of the case so as to dissuade her from disclosing such facts to the court or to any police officer;

[iii] the accused-petitioner shall not obstruct or hamper the police investigation and not to play mischief with the evidence collected or yet to be collected by the police;

[iv] the accused-petitioner shall maintain law and order and she shall not commit an offence similar to the offence of which she is

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accused, or of the commission of which she is suspected; and
[v] the accused-petitioner shall regularly remain present during
the trial and co-operate the Court to complete the trial for the above
offences, if charge sheeted in the case.

The application stands disposed of in the aforesaid terms.

JUDGE

Comparing Assistant