

GAHC010072382021



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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./903/2021

SIKHA SARMA
W/O. NAVAJYOTI DEVA SARMA, R/O. SIXMILE, ADITI ENCLAVE, FLAT
NO.4B, NEAR RAHMAN HOSPITAL, P.S. DISPUR, DIST. KAMRUP (M),
ASSAM, PIN-

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Petitioner : MR. A M BORA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 19.04.2021

Heard Mr. A.M. Borah, learned Sr. Counsel assisted by Mr. N. Borah, learned counsel appearing for the accused petitioner. Also heard Ms. S.H. Bora, learned Addl. P.P., Assam appearing for the State respondent.

2. By this petition under Section 439 Cr.P.C., the petitioner, namely **Smti. Sikha Sarma** has prayed for grant of bail in connection with **Dispur P.S. Case No. 1281/2021** u/ss **294A/124A/500/506** of the IPC read with Section **45** of the I.T. Act.

3. The case diary, as called for, is placed before the Court.

4. Mr. A.M. Borah, learned Sr. Counsel appearing for the accused petitioner, submits that the accused is a renowned writer, who has authored 4 best selling Assamese books and radio artist and further, a singer etc. Mr. Borah submits that the accused petitioner did not commit the alleged offences as projected in the F.I.R. as she had no malafide intention while posting the messages in her facebook account. According to Mr. Borah, the accused petitioner thereby neither made any anti-national statement nor made the statement which brings or attempts to bring or create any hatred, enmity, contempt or disaffection towards the Government established by law. Mr. Borah also submits that as the word 'Swahid/martyr' is not defined in law or by any Government notifications etc., the accused petitioner committed no offence in law for exercising her freedom of expression on good faith. Mr. Borah submits that the Minister of State in the Ministry of Home Affairs, Government of India had clearly mentioned in its reply to a question vide unstarred Question No. 1474 dated 18.12.2013 in the Rajya Sabha that "Swahid/martyr" is not defined anywhere and presently the Ministry of Defence is not issuing any such order/notification to this effect in respect of the defence personnel. Similarly, Mr. Borah submits that no such order/notification to this effect is issued by the Ministry of Home Affairs in respect of Central Armed Police Forces (CAPF) personnel who are killed in action while discharging their duties. However, their families/Next of Kin are given full family pension under the Liberalised Pensionary Award Rules, i.e., the last pay drawn, and ex-gratia compensation as per rules in addition to the other ex-gratia/benefits admissible. Mr. Borah, therefore, submits that besides the aforementioned legal grounds and considering the length of detention, the accused petitioner, who is a lady, may be directed to be released on bail, if deemed necessary, subject to any condition. Mr. Borah has relied on the judgments of the Hon'ble Supreme Court- i) *Kedar Nath Singh Vs. State of Bihar*, reported in *1962 Supp (2) SCR 769* ii) *Bilal Ahmed Kaloo Vs. State of A.P.*, reported in *(1997) 7 SCC 431* and iii) *Common Cause and Anr. Vs. Union of India*, in *Writ Petition (Civil) No.*

683/2016. Mr. Borah has also relied on the judgment of the Hon'ble Delhi High Court rendered in *Avadh Kaushik Vs. Govt. of NCT of Delhi & Anr., in W.P.(C) No. 4514/2015*.

5. *Per contra*, Ms. S.H. Bora, learned Addl. P.P., Assam appearing for the State respondent, submits that the case diary reveals that the investigating officer has seized copy of all the disputed relevant seditious facebook posts of the accused petitioner and on reading of the same, as a whole, shows that thereby the accused petitioner has shown her mental tendency to demoralise the soldiers of the armed and para-military forces by way of questioning the use of 'Swahid/martyr ' in respect of the armed personnel who laid their lives in action or killed on duty against a militant outfit.

6. The F.I.R., dated 05.04.2021, lodged by Umi Deka Baruah and Kangkana Goswami before the Officer-in-Charge of Dispur P.S. reveals, *inter-alia*, that the present accused petitioner had posted a facebook post on 05.04.2021 showing disrespect to the martyrs of the Nation. It is also alleged that the accused petitioner in her post maligned and disregarded the sacrifice of the martyrs by urging 'Media' not to generate public sentiments in their favour and not to term them as 'Swahids' as they are drawing salary for the services they are providing to the nation. Posting a distasteful post, she wrote- "*A person who draws salary for his service cannot be considered to be a martyr/swahid if he dies on duty. If it is so, then, an electrical worker who dies in an electric shock should also be considered as Swahid. News media, do not make the public emotional.*" It is also alleged in the FIR that this defamatory comment has also encountered public outrage in social media as on that day, the nation was mourning the martyrdom of 22 Jawans killed during anti-naxal operation in Chattisgarh on 3rd April, 2021 which also included two jawans from the State of Assam namely Swahid Bablu Rabha and Swahid Dilip Das.

7. I have carefully considered the respective submissions of the learned counsel of both sides and perused the averments made by the accused petitioner as well as the case diary. Also perused the citations.

8. The accused has been in judicial custody since 07.04.2021.

9. As per the accused forwarding report, dated 07.04.2021, the investigating officer cited the following grounds for the arrest of the accused petitioner-

“Grounds of arrest:

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1. *The below named accused person is a FIR named accused.*
2. *During investigation, it is learnt that the accused lady regularly made such types of remarks through social media and public life to make communal disharmony among public. She used the media platform as a tool to incite common public against the state and showed disrespect to the people who give to supreme sacrifice for the nation.*
3. *The arrested lady not only showed disrespect to the martyrs of the nation but at the same time tried to invoke anti-social element that killing of our soldier is not a crime.*
4. *Through the said post the accused lady tried to create hatred against the government in the execution of lawful duty. Further, her statement ferments disaffection towards the government of India and has potential to give rise to terrorist and anti-national forces.*
5. *Her statement endangers the lives of security personnel engaged in discharging of their lawful duties. It further threatened to cause death or grievous hurt as also incites and abets others to do the same.*
6. *Before this incident she has a prior history of repeatedly making such statement or comment by using social media facebook. Thereby threatening the communal harmony in the state.”*

10. The above prima facie grounds for arrest of the accused petitioner seem to have basically arisen out of the offence of ‘sedition’, which is made punishable under Section 124A of the IPC. The offence of ‘Sedition’ contemplates three ingredients- 1. That the accused did speak, write, make signs or representations or some other acts; 2. That the accused brought or attempted to bring into hatred or contempt or excited or attempted to excite disaffection thereby; 3. That the said hatred, contempt or disaffection was towards the Government established by law. This Section of the IPC, it may be pointed out, is not inconsistent with the fundamental right of freedom of expression guaranteed under Article

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19(1)(a) of the Constitution of India and as such, the intention of the offender has to be gathered from the language used.

11. Now, on scrutiny of the case diary, it is noticed that the accused petitioner prima facie expressed her personal views on the use of the term 'Swahid/martyr' through social network in respect of 22 brave hearts/patriot soldiers including 2 such soldiers from the State of Assam, who laid their lives in action or killed on duty, which evoked widespread criticism in social networking platform. In this context, the above referred judgments of the Hon'ble Supreme Court and the High Court are perused and having considered the pros and cons of the allegations and evidence so far collected by the investigating officer in the case and also, taking note of the apprehension of threat to health of the prisoners due to the ongoing second wave of novel Covid-19 pandemic, this Court is of the considered opinion that further continuation of detention of the accused petitioner, who is a woman, may not be necessary in the interest of the ongoing investigation.

12. Accordingly, it is provided that the accused shall be released on bail of **Rs.30,000/- (Rupees Thirty Thousand)** with one surety of like amount to the satisfaction of the learned **Chief Judicial Magistrate, Kamrup (Metro) at Guwahati**, subject, of course, to the following conditions-

- i) That the accused/petitioner shall cooperate with the Investigating Officer as and when required;
- ii) That the accused/petitioner 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 from disclosing such facts to the Police Officer or the Court; and
- iii) That the accused/petitioner shall refrain from committing any similar offences in future of which she is accused or suspected of commission.

It is made clear that no attempt is hereby made to interpret the disputed term involved in the case as the investigation is yet to be completed.

Return the case diary.

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This disposes of the bail application.

JUDGE

Comparing Assistant