

(2021) 09 GAU CK 0048

In the Gauhati High Court

Case No : Anticipatory Bail No. 1754 Of 2021

Anindita Sarma And 2 Ors.

APPELLANT

Vs

State Of Assam

RESPONDENT

Date of Decision : 17-09-2021

Acts Referred:

Indian Penal Code, 1860 — Section 406, 498A

Information Technology Act, 2008 &mdash Section 43, 66C, 66E, 72, 77B

Citation : (2021) 09 GAU CK 0048

Hon'ble Judges : Soumitra Saikia, J

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. B.K. Mahajan, learned counsel for the petitioners and Mr. B.B. Gogoi, learned Addl. Public Prosecutor for the State of Assam.

2. This anticipatory bail petition has been filed by the petitioners namely, 1. Dr. Anindita Sarma, 2. Nripendra Nath Sarma and 3. Manju Lata Sarma, apprehending arrest in connection with Dispur P.S. Case No. 1676/2021 under Section 406 of the IPC read with Sections 43/66C/66E/72 of the Information & Technology Act, 2008.

3. The allegations made in the FIR are that the petitioner No. 1, who is the wife of the informant one Sri Apu Sarma, with the help of her family members and friends had hacked into the laptop, mobile phone, computer etc. belonging to the informant in order to procure information and evidence to be used for filing a divorce by the petitioner No. 1. The petitioner No. 1 had also lodged another FIR alleging harassment by her husband- Apu Sarma which is registered as Dispur P.S. Case No. 1645/2021 under Section 498A of the IPC.

4. This Court while calling for the case diary vide order dated 25.06.2021 granted interim bail to the petitioners on the conditions mentioned therein.

5. The matter is fixed today for production of the case diary and the same has

been produced before this Court by the learned Addl. Public Prosecutor.

6. The case diary produced has been duly perused.

7. Since the case diary is available and as agreed to by both learned counsels, the matter is taken up for disposal.

8. Mr. B.K. Mahajan, learned counsel for the petitioners submits that the allegations made in the FIR are completely false and the same is lodged by the informant as the counterblast to the FIR lodged by the petitioner No. 1 which was registered at an earlier point in time vide Dispur P.S. Case No. 1645/2021. The learned counsel for the petitioners submits that the petitioner No. 1 is a Radiologist by profession and petitioner Nos. 2 & 3 are her parents. Petitioner No. 2 is a retired Senior Citizen. The learned counsel for the petitioners submits that after marriage of the petitioner No. 1 with the informant, there were certain differences which had cropped up leading to frequent quarrels between them. These quarrels aggravated over a period of time and the petitioner No. 1 was harassed by the informant because of which she had lodged the FIR which is registered at Dispur P.S. Case No. 1645/2021. Although, attempts were made to reconcile their differences with the informant, however, because of his erratic behavior and suspicious nature, the same could not be ameliorated. Faced with such a situation, the petitioner No. 1 contemplated to file a divorce. The informant for reasons best known to him made unsubstantiated and false allegations against the petitioners and her family members alleging that they had unauthorizedly taken out information from his mobile phone, laptop, computer etc without his knowledge for use as evidence in the divorce proceedings contemplated to be initiated by the petitioner No. 1. The learned counsel for the petitioners submits that there are no ingredients present of the sections under which the FIR has been registered. Drawing the attention of the Court to Sections 43/66C/66E/72 of the Information & Technology Act, 2008, the learned counsel for the petitioners submits that if the same are proved, it entails punishment which can only extend upto 3 (three) years. The learned counsel for the petitioners submits that under Section 77B of the Information & Technology Act, 2008 for all offences where punishment for imprisonment is upto 3 (three) years are treated to be bailable. Therefore, he submits that the Sections of Information & Technology Act, 2008 are all bailable. He further submits that in spite of there being no ingredient available, the police had registered the FIR under Section 406.

9. The learned Addl. Public Prosecutor submits that the matter is under investigation and in terms of the directions of this Court while granting the interim bail, the petitioners had appeared before the Investigating Officer and their statements were recorded.

10. From the case diary, it is seen that in terms of the interim bail granted by this Court vide order dated 25.06.2021, the petitioners had appeared before the Investigating Officer and their statements were recorded. The investigating is

under progress. There are no materials as seen from the case diary which suggests that continuation of the petitioners on bail will hamper the progress of the investigation carried on by the police or that the petitioners may interfere with the investigation by tempering with any evidences. It is submitted at the bar that at present both the petitioner No. 1 and the informant are staying separately and in separate places for the last several months. There are no materials in the case diary to suggest that the petitioners had dominion or access to any of the properties belonging to the informant.

11. In view of all the above, the interim anticipatory bail granted in favour of the petitioners, vide order, dated 25.06.2021, is hereby made Absolute, subject to the following conditions:

(i) that the petitioners shall appear before the Investigating Officer of the case once every month and as and when required for the purpose of investigation till completion of the investigation;

(ii) that the petitioners shall not hamper or tamper with the investigation in any manner; and

(iii) that the petitioners 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 Court or to any police officer.

12. It is made clear that in the event of violation of the above conditions, the Investigating Officer will be at liberty to seek cancellation of the bail as per Law.

13. Accordingly, the pre-arrest bail application stands disposed of.

14. Return the case diary.