

GAHC010188582023



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

**Case No. : AB/2948/2023**

SIKHAMONI GOGOI  
W/O LATE JITUMONI GOGOI  
R/O DIGHALA PATHAR GAON  
P.O. AND P.S. NAHARKATIA  
DIST. DIBRUGARH, ASSAM

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

**Advocate for the Petitioner : MR S M ABDULLAH P**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**HON'BLE MR. JUSTICE ROBIN PHUKAN**

**ORDER**

**16.10.2023**

Heard Mr. S.M. Abdullah P, learned counsel for the applicant and also heard Mr. K.K. Parasar, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. Apprehending arrest in connection with Tinsukia P.S. Case No.502/2023, under

Section 294/332/353/506/447/511 IPC and added Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, this application under Section 438 Cr.P.C. is preferred by the applicant, namely, Mrs. Sikhamoni Gogoi, for grant of pre-arrest bail.

3. It is to be noted here that the aforementioned case has been registered on the basis of an FIR lodged by one Swapneel Paul, District Magistrate, Tinsukia, on 14.08.2023. The essence of allegation made in the aforesaid FIR is that on 14.08.2023, at about 5:30 p.m. one lady, namely, Smt. Sikhamoni Gogoi, BDO, Itakhuli Development Block came to the office of the District Magistrate holding a dog in her hand and started shouting and using slang words and vandalized the Government sign board in front of the office entrance and she tried to enter into the office chamber of the District Magistrate forcefully shouting unparliamentary words and she also physically assaulted the security personnel, who stopped her from entering into the chamber of the District Magistrate and also slapped one Suntrichna Gharpholia, ACS, ADC, Tinsukia and one Dusmanta Bora, CA to DC and also used unparliamentary words towards Minister Sanjay Kishan.

4. Mr. Abdullah, learned counsel for the applicant submits that this Court was pleased to grant the privilege of interim pre-arrest bail to the applicant vide order dated 25.08.2023, and pursuant to the said order, the applicant had appeared before the I.O. and she has been cooperating with the investigating agency. Further, Mr. Abdullah, referring to Annexure-3 (page-17 and 18) of this petition submits that the applicant has been suffering from psychiatric problems and undergoing treatment and therefore, Mr. Abdullah contended to make the interim order dated 25.08.2023, absolute, in the same terms and conditions.

5. On the other hand, Mr. K.K. Parasar, learned Additional Public Prosecutor has produced the case diary before this Court and submits that though the case was earlier registered under Section 294/332/353/506/447/511 IPC, later on, on the prayer being made by the I.O., the learned Chief Judicial Magistrate, Tinsukia, has added Section 3(1)(r) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and

in view of Section 18 of the said Act, anticipatory bail application is not maintainable. However, Mr. Parasar, learned Additional P.P. submits that pursuant to the order of this Court dated 25.08.2023, the applicant had appeared before the I.O. and she has been cooperating with the investigating agency and the investigation is substantially progressed.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the case diary with the assistance of Mr. Parasar, learned Additional P.P.

7. It is a fact that as per Section 18 of the 1989 Act, Section 438 of the Code of Criminal Procedure is not to apply to a person committing an offence under this Act and the Section reads as under:-

**"18. Section 438 of the code not to apply to persons committing an offence under the Act.**

Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act."

8. But in the case **Dr. Subhash Kashinath Mahajan Vs. The State of Maharashtra & Anr.** reported in **(2018) 6 SCC 454**, it has been held that there is no absolute bar against grant of anticipatory bail in the cases under the 1989 Act if no prima facie case is made out or when no judicial scrutiny of the complain is found to be prima facie malafide and thereafter, in the case of **Union of India Vs. State of Maharashtra & Ors.** reported in **(2020) 4 SCC 761**, a larger Bench of the Supreme Court, has observed that if prima facie case has not been made out attracting the provisions of the 1989 Act in the case, the bar created under Section 18 of the 1989 Act on the grant of anticipatory bail is not attracted.

9. In the instant case, though the learned Court below has allowed the prayer of the I.O. for adding Section 3(1)(r) of the 1989 Act, yet, having gone through the averments made in the FIR dated 14.08.2023, no prima facie case under any of the provisions of the

said Act is found to be made out against the present applicant. Though some of the witnesses examined by the I.O. have stated that she had rebuked one of the witness, namely, Nikas Thengal, the PSO of the District Magistrate, Tinsukia, yet, having perused the said statement, this Court is unable to derive satisfaction that a prima facie case under the 1989 Act is made out against the applicant.

10. Further, the case diary indicates that the applicant had appeared before the I.O. and she has been cooperating with the investigating agency and further it appears that she has been suffering from some psychiatric problems.

11. Having regards to above and also having regards to the cooperation being extended by the applicant to the investigating agency, her custodial interrogation seems to be not warranted here in this case. Accordingly, this Court is inclined to make the interim order dated 25.08.2023, absolute, in the same terms and conditions.

12. In terms of above, this anticipatory bail application stands disposed of.

13. Case diary be returned.

**Sd/- Robin Phukan**  
**JUDGE**

**Comparing Assistant**