

13.11.2024
Sl. No.3
akd
[ALLOWED]

C. R. M. (A) 3806 of 2024

In Re: An application for anticipatory bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 filed on 07.10.2024 in connection with Amherst Street Police Station Case No.114 of 2024 dated 07.09.2024 under Sections 196/299 of the Bharatiya Nyaya Sanhita, 2023. (G.R. (NS) Case No.558 of 2024)

And

In Re: ***Nazia Elahi Khan***

... .. Petitioner

Mr. Ranojoy Chatterjee
Mr. Tamal Singha Roy

... .. for the petitioner

Mr. Imtiaz Ahmed
Mrs. Ghazala Firdaus
Md. Aamaar Zaki
Md. Arif
Md. Zeeshanuddin
Mr. Syed Nariful Islam
Sk. Sahidullah
Mr. Debopam Roy
Md. Arsalan
Mr. Mithun Mondal
Mr. Mofakkerul Islam

... .. for the de-facto complainant

Mr. Madhusudan Sur .. Id. Addl. Public Prosecutor
Mr. Nirupam Dhali

... .. for the State

1. It is submitted on behalf of the petitioner the uploaded videos have been deleted and that she has not made similar imputations which may hurt the religious sentiments of a community. It is further submitted custodial interrogation for progress of investigation is not necessary. Accordingly, she prays for anticipatory bail.
2. Learned Additional Public Prosecutor opposes the prayer for anticipatory bail. He produces the transcripts of the videos and submits the videos contain extremely derogatory comments which hurt the sentiments of a religious community.

3. Learned Advocate for the de-facto complainant also opposes the prayer for anticipatory bail and submits petitioner transgressed the limits of decency and made derogatory and unfounded insinuations which hurt the sentiments of a religious community.

4. We have considered the rival submissions of the parties. We have gone through the transcripts of the interviews given by the petitioner on online news portals.

5. The petitioner's interviews contain grave insinuations against a religious community. We are conscious petitioner has freedom of speech. However, the freedom does not entitle her to incite hatred amongst communities. Contrarian views with regard to relations between different religious communities and concept of secularism, a cherished basic structure of the Indian constitution, is understandable. In a pluralist democracy, it is not expected everyone would speak in the same tone or share similar sentiment. The socio democratic fabric of the country is elastic enough to accommodate even unpopular views. However, the bandwidth of freedom of expression does not give a licence to indulge in '*hate speech*' and abuse or make irresponsible and hateful insinuations which can conflagrate enmity and violence in society.

6. We deprecate the tone and essence of the interview but we note petitioner has taken down the interviews from the online news portals. She has not made similar insinuations thereafter. It is also relevant to note offences, even if proved, would attract sentence less than seven years imprisonment and arrest and detention would require requisite satisfaction regarding conditions laid down in Section 35(b)(ii) of the Bharatiya Nagarik Suraksha Sanhita, 2023. Nothing is placed on record to show custodial interrogation is necessary for progress of

investigation. On the other hand, the offensive videos have been taken down.

7. In such view of the matter, we are of the opinion custodial interrogation of the accused/petitioner for progress of investigation is not necessary and she may be granted anticipatory bail.

8. At this stage, learned Advocate for the de-facto complainant submits condition be imposed upon the petitioner not to give similar interviews in future.

9. We are unwilling to impose such condition upon the petitioner for the following reasons.

10. Firstly to impose a condition restraining her right to give interviews or air her views would amount to pre-censorship which is not countenanced in law. Secondly, we are further persuaded to come to such a conclusion as condition of such nature would give an impression to pretrial inference of guilt against the petitioner.

11. However, we direct the petitioner, whenever she chooses to air her views in public regarding inter-religious matters, she shall bear in mind the constitutional ideals of fraternalism, dignity and boundaries of penal law.

12. Accordingly, we direct in the event of arrest, the accused/petitioner, namely **Nazia Elahi Khan**, be released on bail upon furnishing a bond of Rs.10,000/- (Rupees Ten thousand only), with two sureties of like amount each, to the satisfaction of the arresting officer and also subject to the conditions as laid down under Section 482(2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 and on further condition that the petitioner shall appear before the jurisdictional court and pray for regular bail within four weeks from date.

13. The application for anticipatory bail is, thus, disposed of.

(Gaurang Kanth, J.)

(Joymalya Bagchi, J.)