

GAHC010105122019



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

Case No. : WP(C)/3161/2019

SAHARA KHATUN
W/O LT. ABDUL MUHIM, R/O VILL. NO. 4 BHUJMARI, PO- TEWARIPAL, PS-
SOOTEA, DIST.-BISWANATH (ASSAM), PIN-784175

VERSUS

THE STATE OF ASSAM AND 9 ORS.
REP. BY THE CHIEF SECRETARY GOVT. OF ASSAM, DISPUR, GUWAHATI,
PIN-781006

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
HOME DEPTT. DISPUR
GUWAHATI
PIN-781006

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST DEPTT. DISPUR
GUWAHATI
PIN-781006

4:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI
PIN-781007

5:THE DIVISIONAL FOREST OFFICER
BISWANATH WILDLIFE DIVISION
BISWANATH CHARIALI
P.O AND P.S.- BISWANATH CHARIALI

DIST.-BISWANATH (ASSAM)
PIN-784176

6:THE RANGE FOREST OFFICER
CRIME INVESTIGATION RANGE
BISWANATH CHARIALI
P.O. AND P.S. BISWANATH CHARIALI
DIST.-BISWANATH (ASSAM)
PIN-784176

7:THE SUPERINTENDENT OF POLICE
SONITPUR
P.O. AND P.S. TEZPUR
DIST. SONITPUR (ASSAM)
PIN-784001

8:THE SUPERINTENDENT OF POLICE
BISWANATH
P.O AND P.S BISWANATH CHARIALI
DIST.-BISWANATH (ASSAM)
PIN-784176

9:THE OFFICER IN CHARGE
TEZPUR POLICE STATION
P.O. AND P.S. TEZPUR
DIST.-SONITPUR
(ASSAM)
PIN-784001

10:THE OFFICER IN CHARGE
BISWANATH CHARIALI POLICE STATION
P.O. AND P.S. BISWANATHH CHARIALI
DIST.- BISWANATH (ASSAM)
PIN-78417

For the petitioner : Mr. M.K. Hussain
Mr. K.U. Ahmed, Advocates.

For the respondents : Mr. D. Saikia, Advocate General, Assam
Assisted by Mr. D. Nath, Senior Govt.
Advocate, Assam

– B E F O R E –

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

02-08-2023

S. Mehta, C.J.

The instant petition under Article 226 of the Constitution of India has been preferred by the petitioner herein seeking the following relief:-

“(i) Writ in the nature of Mandamus shall not be issued directing the Respondents to pay adequate compensation to the family members of the deceased as he died in the custody of the Respondent No.6;

-AND-

(ii) Writ in the nature of Mandamus shall not be issued commanding the Respondents particularly the Respondent No-1 to take necessary action against the guilt officials after making inquiry into the matter;

-AND-

(iii) Writ in the nature of Mandamus shall not be issued commanding the Respondents to take necessary action in connection with Biswanath Chariali PS Case No.4/2019 u/s.120(B)/302/34 IPC lodged by the petitioner;”

The petitioner has alleged that her son, the victim Late Mirjat Ali was arrested by police personnel of Tezpur Police Station in connection with Tezpur PS Case No.2576/2018 on 22.12.2018 for the offences punishable under Sections 120(B)/511 IPC read with Section 51(1) of Wildlife Protection Act and Section 25 (1-A) of Arms Act. On 04.01.2019, acting on the prayer of the Range Forest Officer, Crime Investigation Range, Biswanath Chariali, learned SDJM(M), Biswanath

Chariali issued a production warrant in furtherance whereof the custody of Mirjat Ali was handed over to the Range Forest Officer. While Mirjat Ali was in custody of the said officer, he met with homicidal death on 08.01.2019. The victim was aged about 36 years at the time of the incident. Autopsy on the dead body of Mirjat Ali was carried at the Behali PHC, Sonitpur and the Senior Medical & Health Officer took note of large numbers of injuries on the body of the victim Mirjat Ali. The Forest officials projected that the victim committed suicide in the lock up. However, as per the observations made in the post mortem report, abrasions were found near the mandibular angles of the deceased and the neck vessels were found to be bruised. Subdural haematoma were found below the ligature mark. The post mortem findings also indicate swelling in the ankle joints with inflammation on the soles of feet. The medical jurist opined that the cause of death was due to asphyxia as a result of injuries sustained, i.e. hanging. The petitioner has alleged that this is clearly a case of torture and custodial death. Matter regarding the unnatural death of Mirjat Ali is being enquired into/investigated by police. But even though more than four years have passed, no conclusion has been drawn. The petitioner has thus approached this Court by way of this writ petition seeking a direction for fair investigation and necessary action against the guilty officials and to pay adequate compensation to the family members on account of custodial death of Mirjat Ali.

The State of Assam has filed an affidavit in response to the notice issued by this Court wherein it is stated that a committee was constituted to enquire into the cause of death of Mirjat Ali and after detailed enquiry, the committee has recommended that the investigation should be got conducted by a special agency.

Learned Advocate General Mr. D. Saikia fairly stated in the Court that compensation may be awarded to the victim's family either in accordance with Clause 6 of the Assam Victim Compensation Scheme, 2012 or the Notification

dated 15.11.2014 issued by the Revenue & Disaster Management Department of the Assam Government.

We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the material placed on record.

We are prima facie of the view that the opinion expressed in the post mortem report referred to (supra) that the cause of death of the deceased Mirjat Ali is hanging, is seriously questionable in view of the pertinent findings of the post mortem report. The fact that the neck vessels were found bruised give rise to a strong suspicion that the victim was strangulated. This conclusion is fortified by the existence of other antemortem injuries on the body of the deceased. Thus, we hereby direct that the entire medical and associated records shall be placed before a Medical Board to be constituted at the Gauhati Medical College, who shall give its independent opinion regarding cause of death of Mirjat Ali after thoroughly examining the records and the videography conducted during the post mortem examination. The investigation of the case shall be assigned to an officer not below the rank of Additional Superintendent of Police and shall be supervised by an officer in the rank of Inspector General of Police.

We are informed that compensation to the tune of Rs.2 lakhs has already been awarded to the family members of the victim by the Assam State Human Rights Commission. Thus, additional amount of Rs.3 lakhs shall be awarded to the family members of the deceased Mirjat Ali as compensation by virtue of clause 6 of the Assam Victim Compensation Scheme, 2012, treating the deceased Mirjat Ali to be a victim of custodial violence.

The above compensation is being awarded to the family members without prejudice to their right to seek higher compensation by availing the suitable remedy under law. The investigation by the Additional Superintendent of Police, as directed above, shall be completed within a period of two months and the result

thereof be filed in the competent court for further direction.

The writ petition is disposed of in these terms.

JUDGE

CHIEF JUSTICE

Comparing Assistant