

GAHC010119012023



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

Case No. : W.P.(Crl.)/20/2023

RAFIKUL MONDAL,
S/O- LT. SHUKUR ALI MONDAL,
VILL- KOTPARA, P.O. CHITHILA,
P.S. FAKIRAGRAM, DIST.- KOKRAJHAR,
BTR, ASSAM, PIN- 783345.

VERSUS

1.THE STATE OF ASSAM.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GHY-6.

2:THE COMMISSIONER AND SECRETARY,
GOVT. OF ASSAM, HOME DEPTT., DISPUR, GHY-06.

3:THE DIRECTOR GENERAL OF POLICE, ASSAM,
ULUBARI, GHY-05.

4:THE SUPERINTENDENT OF POLICE, DHUBRI (ASSAM),
PIN- 783301.

5:THE SUB-DIVISIONAL POLICE OFFICER, BILASIPARA,
BILASIPARA SUB-DIVISION, BILASIPARA, DIST.- DHUBRI
ASSAM, PIN- 783348.

6:THE OFFICER IN CHARGE, BILASIPARA POLICE STATION,
DIST.- DHUBRI, ASSAM, PIN- 783348.

7:DEWAN ROHIS UDDIN AHMED,
INVESTIGATING OFFICER IN CONNECTION WITH BILASIPARA P.S. CASE
NO. 206/2023, BILASIPARA POLICE STATION, DIST.- DHUBRI,
ASSAM, PIN- 78334.

For the Petitioner : Mr. M.U. Mondal, Advocate,
Mr. M. Hussain, Advocate,
Mr. R.I. Mondal, Advocate,
Mr. A. Wahab Mondal, Advocate.

For the Respondent(s) : Mr. D. Mazumdar, Additional Advocate General, Assam.
Mr. R.K. Bora, Additional Senior Government Advocate,
Assam.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE

HON'BLE MRS. JUSTICE MITALI THAKURIA

21.06.2023

Mr. D. Mazumdar, learned Additional Advocate General, Assam has placed on record two sealed envelopes, one containing the status report of investigation of Bilasipara P.S. Case No.206/2023 and the other containing the preliminary enquiry report pursuant to the enquiry conducted into the allegation of illegal detention of two wives of Shahjahan Ali.

On a perusal of the findings of the enquiry report, we note that the enquiry officer has recorded that action of the police officers, i.e. Inspector Jyotirmoy Gayan and I.O. Manash Jyoti Saikia appear to be vindictive as they could have arrested the woman after two days' of interrogation based on evidence in hand. The enquiry officer has also noted that the TSI Padmapani Borah, brought the woman named Sukhjan Bibi to the Police Station at 4:15 A.M. with her baby aged 2.5 years which was in gross violation of Section 46(4) of the Cr.P.C. In spite of these observations, the enquiry officer has finally concluded that these three police officers may have resorted to reactive policing and their action does not show any mala fide intention. They acted on public

pressure to show visible action.

We feel that the findings so recorded by the enquiry officer are contradictory, lopsided and appear to have been arrived at somehow to favour the police officers concerned.

The Director General of Police, Assam shall objectively examine the findings so recorded in the preliminary enquiry report and take suitable action as per law. While doing so, the fact that the Inspector, Jyotirmoy Gayan proceeded to indulge in a grossly illegal process of registering a second F.I.R. in the matter, shall also be kept in mind.

It is also to be noted that a complaint was filed to the Superintendent of Police, Dhubri in relation to the manifestly illegal action of the OC but no action was taken thereupon. This fact shall also be kept in mind while the preliminary enquiry report is considered by the Director General of Police, Assam. The CCTV footage of the police station shall also be closely examined by the Director General of Police in the course of this exercise.

The report of the enquiry officer and the status report of investigation shall be returned back to Mr. Mazumdar, learned Additional Advocate General, Assam.

Mr. M.U. Mondal, learned counsel for the petitioner urges that as there is significant material to establish that "Musstt. R." and "Musstt. S.", two wives of Shahjahan Ali were kept under illegal detention with the minor children, his client would be better advised to approach the Assam State Human Rights Commission for seeking appropriate action against the officials of the Bilasipara Police Station and to claim compensation for illegal detention. However, he points out that the enquiry against the erring officers is being conducted in a lopsided manner and is not proceeding in an appropriate direction. He further

prays that the CCTV footage of the Bilasipara Police Station for the corresponding period may be preserved.

The petitioner is thus given liberty to institute suitable proceeding before the Assam State Human Rights Commission.

The recordings of the CCTV footage of Bilasipara Police Station shall be preserved till the conclusion of the trial and will be provided to the appropriate forum as and when required.

It is clear that at present, no person related to the petitioner is illegally detained.

Thus, the proceedings of the instant writ petition are closed with the above observations and directions.

JUDGE

CHIEF JUSTICE

Comparing Assistant