

GAHC010124492022



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

Case No. : WP(C)/4544/2022

ALI HASSAN @ HASSAN ANSARI
SON OF LATE MUSTAKIM ANSARI,
RESIDENT OF JORHAT KABARSTAN ROAD, NEAR JAMA MASJID, WARD
NO. 5, P.O. AND P.S- JORHAT, DISTRICT- JORHAT, PIN- 785001, ASSAM.

VERSUS

XXX AND 11 ORS
AND 11 ORS

2:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
HOME DEPARTMENT
DISPUR
GUWAHATI-781006
ASSAM.

3:THE DEPUTY COMMISSIONER
JORHAT
PIN- 785001
ASSAM.

4:THE ADDITIONAL DEPUTY COMMISSIONER
JORHAT
PIN- 785001
ASSAM.

5:SUB-DIVISIONAL MAGISTRATE(S)
JORHAT
PIN- 785001
ASSAM.

6:THE DIRECTOR GENERAL OF POLICE
ASSAM POLICE HEADQUATERS
ULUBARI
GUWAHATI-07
ASSAM.

7:THE SUPERINTENDENT OF POLICE
JORHAT
PIN-785001
ASSAM.

8:AS PER ORDER DATED 27.07.2022
R-8 IS STRUCK OFF.

9:AS PER ORDER DATED 27.07.2022
R-9 IS STRUCK OFF.

10:THE JOINT DIRECTOR OF HEALTH SERVICES
JORHAT
PIN- 785001
ASSAM.

11:THE STATE FORENSIC SCIENCE LABORATORY
KAHILIPARA
GUWAHATI-19
ASSAM.

12:THE OFFICER-IN-CHARGE
JORHAT POLICE STATION
JORHAT
PIN-78500

Advocate for the Petitioner : MR R YASIN

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

Date : 13-09-2023

JUDGMENT & ORDER (ORAL)*(AM Bujor Barua, J)*

Heard Mr. SN Krishnatraya, learned counsel for the petitioner. Also heard Mr. D Nath, learned Senior Government Advocate for the respondents in the Government of Assam, Ms. L Devi, learned CGC for the respondents in the Union of India and Ms. S Sarma, learned counsel for the authorities in the Health Department, Government of Assam.

2. The petitioner Ali Hassan @ Hassan Ansari has instituted this writ petition on the allegation that his deceased brother Sabir Ansari was taken into custody in connection with Jorhat Police Station Case No.2311/2021 under Section 380 IPC on 19.10.2021. The said police station case relates to an allegation that the deceased Sabir Ansari had taken away the mobile phone of the informant Md. Ali who was also working along with the deceased in a tailoring shop. Upon being taken into custody in connection with Jorhat Police Station Case No.2311/2021, the deceased Sabir Ansari was kept in the lockup of the police station overnight. On the morning of 20.10.2021 at about 8 A.M., a police personnel of the Jorhat Police Station had informed the writ petitioner that the deceased Sabir Ansari had committed suicide by hanging himself with the help of a rope. In this connection UD Case 17/2021 was registered. The deceased Sabir Ansari was subjected to a post mortem examination in the Jorhat Medical College and Hospital resulting in the post mortem report dated 20.10.2021 which is available as Annexure-2, page 24 to the writ petition. A reading of the post mortem report shows the following injuries as extracted:

“2. Wounds- position, character	INJURIES:
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3. Bruise- position, size and nature	1. Abrasion with contusion of size 1 cm x 1 cm is present over the forehead right side. 2. Abrasion with contusion of size 5 cm x 1 cm is present over the left shoulder area lateral aspect. 3. Abrasion with contusion of size 6 cm x 2 cm is present in the left forearm posterior aspect. 4. Abrasion with contusion of size 2 cm x 1 cm is present in the posterior aspect of the left elbow area. All injuries are read in colour.
4. Mark of ligature on neck dissection, etc.	An oblique, non continuous ligature mark of length 38 cm and breadth 3 cm is present in the upper part of the neck, above the level of the thyroid cartilage, which goes obliquely upwards (forming a "V") at the front and back and on one side of the neck..." continuity is present at the upper lateral part of the neck, 1 cm below the left mastoid (Position of the knot). The floor of the ligature mark is dry, depressed and parchmented with blackish discolouration. On dissection, the area immediately below that ligature mark is found dry, hardened, whitened and pale with a glistening appearance and contusion in the surrounding tissues. Hyoid bone & thyroid cartilages found to be healthy."

3. Although in the post mortem report, the information regarding the cause of death was kept pending till receipt of the report of the Chemical Analysis of Viscera and blood samples from the Forensic Science Laboratory, but subsequently, the final opinion dated 25.11.2021 had been rendered that the deceased died due to asphyxia resulting from hanging which was ante-mortem and suicidal in nature and that the injuries were ante-mortem and caused by blunt force impression.

4. In course of the magisterial enquiry that was subsequently conducted the Doctors conducting the post mortem examination had clarified that the other injuries seen on the body were not fatal and that the ligature mark in the upper part of the neck suggests suicide. It was also stated by the Doctor that at the time of post mortem, the tongue was found to be protruding and that it was due to compression of neck by ligature material and the root of the tongue was also compressed and that the protruding of the tongue is a common phenomenon in this type of hanging cases. It is also stated by the Doctor that the size of the ligature mark in the post mortem report corresponds to the cloth which was used for the purpose of hanging as was seized by the police. In the aforesaid circumstances, this writ petition is instituted.

5. Seeking for an independent judicial enquiry as well as CBI enquiry on the event of the custodial death of the deceased Sabir Ansari and also to take appropriate action against the police personnel as per law and for a compensation amounting to Rs.30,00,000/- (Rupees Thirty Lakhs) to the petitioner and his family, the present writ petition has been instituted. On the

issue of seeking a judicial enquiry as well as CBI enquiry on the death of the deceased Sabir Ansari, we have perused the post mortem report and all other relevant materials produced by the State authorities for arriving at a conclusion as to whether the death of the deceased was suicide or it was a case of homicide. One of the factors that were found relevant was that although it is claimed by the police that the deceased died due to suicide by hanging inside the police lockup, but the photographs produced before the Court shows that the feet of the deceased were still touching the floor when he had died. In the circumstance, a consideration had arisen as to whether a death by hanging can take place when the feet of the deceased are still touching the floor. In this respect, the theoretical presentation in the book '*A Textbook on Medical Jurisprudence and Toxicology*' by Mody has been referred by Mr. D Nath, learned Senior Government Advocate for the State authorities and had referred to certain provisions therein, wherein it is provided that the death of hanging by suicide can still take place even if the feet of the deceased would be touching the floor by pointing out that when a hanging is attempted at a given particular position, it is possible for a person to commit suicide even if the feet may be touching the floor. We also take note of the circumstances preceding the deceased being taken to the police custody that he was apprehended by the public of the locality on the allegation that he had stolen a mobile phone of the informant and was subjected to a public thrashing before being handed over to the police. As the deceased was apprehended by the public on the allegation of having stolen a mobile phone and the public thereafter handed over the deceased to the police resulting in registration of Jorhat Police Station Case No.2311/2021, *prima facie*, no material is available that the police may have indulged in certain extra constitutional methods for the purpose of their

investigation for the theft case, *inasmuch as*, the circumstance leading to the deceased being taken to custody does not warrant so as the identity of the accused as well as the evidence that may be required to substantiate the allegations were already available with the police, *inasmuch as*, it was the public who had apprehended him and handed him over to the police. From such point of view, *prima facie*, there does not appear to be any material which may suggest that it is the police authorities who had indulged in any kind of extra constitutional act resulting in the ligature mark in the upper portion of the neck of the deceased for furtherance of their investigation while the deceased was in the police lockup. Secondly, we find that the death of the deceased happened in the lockup of the police station which is a small confined area within the police station itself and not in any other part of the police station, where the police personnel may have acted upon the deceased. Further the materials available on record shows that the circumstances existed in the police lockup for a horizontal bamboo broom to be used for tying the piece of cloth for the purpose of hanging. The existence of the circumstance in the police station for the deceased to be found in a hanging position from the said bamboo pole also *prima facie* does not indicate whether it was a case of suicide or homicide. No material is also being projected in any manner that any of the police personnel through their covert or over act had contributed in abetment of suicide by the deceased. Considering the materials in its entirety as indicated above, we are of the view that no *prima facie* material is available to arrive at any conclusion that the death of the deceased was not because of any reason other than that was stated by the State authorities as well as the medical opinion that it was a case of suicide. We further take note that where the death of the deceased Sabir Ansari took place on 20.10.2021, the writ petition seeking for a judicial enquiry

as well as CBI enquiry is dated 21.06.2022 i.e. almost after a period of 8(eight) months. No material is made available by the petitioner as to what transpired between 20.10.2021 when the death of Sabir Ansari had occurred and 21.06.2022 when the writ petition was filed which may have led the petitioner to believe that the death of his brother Sabir Ansari was not suicidal but homicidal in any manner.

6. From such point of view, we look into the grievance of the petitioner seeking for a compensation for the death that took place for the deceased while he was admittedly in the police station lockup. In this respect we refer to the law laid down by the Hon'ble Supreme Court in *Re-Inhuman Conditions in 1382 Prisons reported in (2017) 10 SCC 658* wherein in paragraph 55 it is provided that it is important for the Central Government and the State Governments to realize that persons who suffer an unnatural death in a prison are also victims – sometimes of a crime and sometimes of negligence and apathy or both. And therefore, there is no reason at all to exclude their next of kin from receiving compensation only because the victim of an unnatural death is a criminal.

7. As the liability of the State authorities to pay a compensation had been propounded by the Hon'ble Supreme Court in paragraph 55 of the judgment in *Re-Inhuman Conditions in 1382 Prisons* (supra) as indicated above, it can be concluded that in view of the unnatural death that had occurred to the deceased Sabir Ansari while he was in the police lockup, the writ petitioner or the next of kin of the deceased are entitled to a compensation and as there is also a conclusion of the Hon'ble Supreme Court that the person who suffers an unnatural death in a prison is also victim, we are of the view that for

determining the compensation that may be payable, the Notification dated 01.02.2019 of the Government of Assam in the Political (A) Department would be relevant. The Notification dated 01.02.2019 was issued in exercise of the powers under Clause 5(9) of the Assam Victim Compensation Scheme, 2012. By the said Notification the quantum of compensation payable to a victim in case of death is provided as Rs.5,00,000/- (Rupees Five Lakhs).

8. As the deceased Sabir Ansari can also be accepted to be a victim as per the proposition of the Hon'ble Supreme Court in paragraph 55 of the judgment in Re-Inhuman Conditions in 1382 Prisons (supra), we are of the view that for the purpose of this writ petition, the State authorities are liable to pay a compensation of Rs.5,00,000/- (Rupees Five Lakhs) to the next of kin of the deceased Sabir Ansari.

9. For the purpose the writ petitioner or any other person who claims to be a next of kin of the deceased Sabir Ansari shall approach the Secretary to the Government of Assam in the Home Department along with the certified copy of this order. The Secretary upon such approach shall verify as to whether the person who approaches is the next of kin of the deceased Sabir Ansari and upon being satisfied, to disburse and pay the amount of Rs.5,00,000/- (Rupees Five Lakhs) to the person who approaches the Secretary. If more than one person appears before the Secretary as the next of kin and it is found that all such persons who approach as the next of kin are entitled, the Secretary shall pay the amount to the eldest of the person who may approach and it is for that person to apportion the compensation amongst all the others.

10. The Secretary to pass a reasoned order and disburse and pay the amount within a period of two months from the date of the approach of the first person before the Secretary along with the certified copy of this order.

11. However, as no conclusion could be arrived because of lack of material that it was a case of homicide, liberty remains with the petitioner to assail in an appropriate forum, if any material is available to question the death of the deceased Sabir Ansari as to whether it was a case of suicide or homicide.

12. Writ petition stands allowed in the above terms.

JUDGE

JUDGE

Comparing Assistant