

GAHC010127822017



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

Case No. : WP(C)/2490/2017

KHANDAKAR SHAMSUL ARFIN
S/O LT. KHANDAKAR ABDUL GANI, VILL. DANGARKUCHI, PO-
SONKUCHI, PS- BARPETA, DIST. BARPETA, ASSAM, PIN-781314

VERSUS

THE STATE OF ASSAM and 6 ORS.

2:THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM
REVENUE and DISASTER MANAGEMENT AND RELIEF and
REHABILITATION DEPTT.
DISPUR
GHY-06

3:THE COMMISSIONER and SECY.
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-06

4:THE DEPUTY COMMISSIONER
BARPETA
ASSAM

5:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GHY-07

6:THE SUPERINTENDENT OF POLICE
BARPETA
DIST. BARPETA
ASSAM

PIN-781314

7:THE OFFICER-IN-CHARGE
BARPETA POLICE STATION SADAR
PO-BARPETA
DIST. BARPETA
ASSAM
PIN-78131

For the Petitioner(s) : Mr. M. Hussain, Advocate

For the Respondent(s) : Ms. S. Sarma, Government Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 09.10.2023

1. The instant writ petition has been filed by the Petitioner seeking a direction upon the Respondents to recover the son of the Petitioner from the hands of the culprits who have kidnapped him on 25.08.2015 and in that connection, Barpeta P.S. Case No.2226/2015 has been registered under Section 365 of the Indian Penal Code.
2. When the matter came up before this Court on 25.09.2023, this Court had directed the Superintendent of Police, Dhubri to file an affidavit on or before 04.10.2023 bringing on record the status of Barpeta P.S. Case No.2226/2015 which have been transferred to Dhubri Police Station as was intimated to this Court on the basis of instructions dated 22.09.2023.
3. It reveals that the Additional Superintendent of Police (Crime), Dhubri, has filed an affidavit pursuant to the directions passed by this Court on 25.09.2023. In the said affidavit, it has been mentioned that upon receipt of the FIR, a case was registered as Barpeta P.S. Case No.2226/2015 under Section 365 of the Indian Penal Code. During investigation, the Investigating Officer found that the

original place of occurrence of the incident falls under Dhubri Police Station. The Investigating Officer of the case submitted a petition before the Chief Judicial Magistrate, Barpeta requesting to transfer of the case from Barpeta Police Station to Dhubri Police Station. The Chief Judicial Magistrate, Barpeta passed an order to transfer the case to the Dhubri Police Station. On receipt of the case diary from the Barpeta Police Station, a case was registered and numbered as Dhubri P.S. Case No.681/2017 under Section 365 of the Indian Penal Code. During the investigation, the Investigating Officer examined the complainant and recorded his statement under Section 161 of the Cr.P.C and visited the place of occurrence and drew a rough sketch map, examined the available witnesses near the crime scene and recorded their statements under Section 161 of the Cr.P.C. The Investigating Officer also analyzed the mobile phone call records for finding out clue in the case. Various accused persons were arrested and forwarded to the judicial custody after interrogation. The Investigating Officer tried all the possible steps to recover the victim but no fruitful results were achieved. After completion of the investigation, the case has been submitted in FR as "No Clue" vide FR No.489/2023 dated 28.08.2023.

4. Taking into account the above statements made in the affidavit, it is the opinion of this Court that the remedy which now lies with the Petitioner is to approach the concerned Court wherein the said FR has been submitted and file appropriate application, if so advised.

5. This Court further finds it relevant to take note of that in the writ petition, a prayer has been made that the Petitioner be paid the appropriate compensation as per the various schemes announced by the Government. However, from a perusal of the materials on record, there appears that the Petitioner had not approached the concerned authorities seeking compensation. Under such

circumstances, no mandamus can be issued upon the Respondent Authorities for payment of any compensation as per the schemes announced by the Government of Assam.

6. Be that as it may, this Court grants liberty to the Petitioner to approach the District Commissioner, Dhubri by submitting a representation enclosing therewith the necessary documents evidencing the fact that the Petitioner is the next of kin of the victim and as such entitled to the benefits under the appropriate scheme. This Court further observes and directs that in the eventuality, such application is filed before the District Commissioner, Dhubri, the said District Commissioner shall duly consider the same and if found entitled to on the basis of the materials shall forward the same to the Revenue and Disaster Management Department of the Government of Assam. Thereupon, if the Petitioner is found entitled to, the Revenue and Disaster Management Department after carrying out the necessary verification shall release the said amount to the concerned Authority so that the same could be disbursed to the Petitioner.

7. The said exercise be completed within a period of 6 (six) months from the date of submission of a certified copy of the instant order along with representation to the District Commissioner, Dhubri.

8. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant