

GAHC010264402022



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

Case No. : WP(C)/8304/2022

ZAHIRUL ISLAM SARKAR
S/O- LATE NURUL ISLAM SARKAR, R/O- VILL.- BANGALIPARA PART-I, P.S.
BILASIPARA, DIST. BILASIPARA, DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY OF HOME AND
POLITICAL DEPTT., DISPUR, GUWAHATI-6, ASSAM

2:THE DIRECTOR GENERAL OF POLICE
GOVT. OF ASSAM
ULUBARI
GUWAHATI.

3:THE SUPERINTENDENT OF POLICE
DHUBRI.

4:OFFICER IN CHARGE
BILASIPARA POLICE STATION
BILASIPARA
DIST. DHUBRI

Advocate for the Petitioner : MR. S K DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 10-01-2023

Heard Sri. S.K. Das, learned counsel for the petitioner as well as Mr. K. Gogoi, learned Govt. Advocate for the respondent nos.1 to 4.

2. The petitioner is the informant in Bilasipara P.S. case no.359/2022 registered under sections 143/448/380/436 IPC. In the FIR lodged on 26.11.2022, it was alleged that on 26.11.2022, at about 9:30 p.m., about 15-20 accused persons, by breaking open the window rod entered the house and attempted to kill him and 2(two) other inmates and then burnt his Alto 800 car bearing registration no.AS-01-DF-775 into ashes and looted Rs.70,000/- in cash and gold chain of his wife. It was alleged that police came 2(two) hours after FIR was lodged.

3. The petitioner has alleged that the police has not investigated the case properly and that the accused persons are roaming freely. It was alleged that the same set of accused had previously made attempt to kill him for which Bilasipara P.S. case no.212/2018 and Bilasipara P.S. case no.593/2021 were lodged, but no action was taken by the police.

4. In respect of the prayer made in this writ petition, the learned Govt. Advocate has referred to the case of *Sakiri Vasu Vs. State of Uttar Pradesh and ors.*, (2008) 2 SCC 409 and *Sudhir Bhaskarrao Tambe Vs. Hemant Yashwant Dhage and ors.*, (2016) 6 SCC 277, to project that the Supreme Court of India, has deprecated the exercise of power under Article 226 of the Constitution of India to order investigation, except in rare and exceptional cases. It has been submitted that he has received written instructions dated

09.01.2023 from the IO that in course of investigation, the IO has seized CCTV footage and few witnesses have been examined. Moreover, house search of accused has been made, but the accused are absconding. Moreover, objection has been submitted in connection with AB no.3808/2022 in Bilasipara P.S. case no.359/2022.

5. Be that as it may, as there are provisions of Code of Criminal Procedure which can be exercised by the aggrieved informant/petitioner if there is no progress of investigation. The petitioner may be well advised to avail legal remedy as may be available under the appropriate law.

6. We refer to the provisions of Section 156 (3) Cr.PC, which empowers the Magistrate that, if he is prima facie satisfied, to (i) direct registration of FIR, (ii) if an FIR has already been registered, issue a direction for proper investigation and (iii) to monitor the investigation.

7. As alternative and efficacious remedy has been provided for in law, which has not been exhausted by the petitioner, this Court in exercise of power under Article 226 of the Constitution of India shall be a loath to issue direction to the police with regard to investigation.

8. Therefore, the Court does not find any merit in this writ petition and the same is dismissed. However, the petitioner is at liberty to avail appropriate remedy as she may be so advised.

JUDGE

Comparing Assistant