

GAHC010071112020



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

Case No. : W.P.(Crl.)/2/2020

SANTANU BORTHAKUR
S/O. AWANI BORTHAKUR, R/O. GANESH MANDIR PATH, NEW GUWAHATI,
P.S. NOONMATI, DIST. KAMRUP (M), ASSAM.

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY THE SECRETARY TO THE GOVT. OF INDIA IN THE MINISTRY OF
HOME AFFAIRS (FOREIGNERS DIVISION), MAJOR DHYAN CHAND
NATIONAL STADIUM, INDIA GATE, NEW DELHI-110002.

2:THE STATE OF ASSAM
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-781001
DIST. KAMRUP (M)
ASSAM.

3:THE SECRETARY TO THE GOVT. OF ASSAM

HOME AND POLITICAL DEPTT.
DISPUR
GUWAHATI-781006.

4:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
POLITICAL (B) DEPTT.
DISPUR
GUWAHATI-781006.

5:THE INSPECTOR GENERAL OF PRISONS
ASSAM PRISON HEADQUARTERS
KHANAPARA

GUWAHATI-781022
ASSAM

Advocate for the Petitioner : MS. P BORAH

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

Linked Case : W.P.(Crl.)/4/2020

DIPIKA SARKAR
D/O- SRI CHITTARANJAN SARKAR
R/O- JYOTIKUCHI
JYOTI SRINAGAR
GHY- 34

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA IN THE MINISTRY OF HOME
AFFAIRS (FOREIGNERS DIVISION)
MAJOR DHYAN CHAND NATIONAL STADIUM
INDIA GATE
NEW DELHI- 110002

2:THE STATE OF ASSAM
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM
DISPUR
GHY-01
DIST.- KAMRUP (M)
ASSAM

3:THE SECY. TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPTT.
DISPUR
GHY-06

4:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
POLITICAL (B) DEPTT.
DISPUR GHY-06

5:THE INSPECTOR GENERAL OF PRISONS
ASSAM PRISON HEADQUARTERS
KHANAPARA
GHY-22
ASSAM

Advocate for : MR N DUTTA

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS

Linked Case : W.P.(Crl.)/3/2020

NURUT ZAMAN DEWAN
S/O- NURUDDIN DEWAN
PRESENTLY R/O- H.NO. 57
COL.J.ALI ROAD
GHY-01

VERSUS

THE UNION OF INDIA AND 4 ORS
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MAJOR DHYAN CHAND NATIONAL STADIUM
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5:THE INSPECTOR GENERAL OF PRISONS
ASSAM PRISON HEADQUARTERS
KHANAPARA
GHY-22
ASSAM

Advocate for : MR N DUTTA

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS

Linked Case : W.P.(Crl.)/7/2020

ABANTEE DUTTA
CO FOUNDER AND DIRECTOR
STUDIO NILIMA- COLLABORATIVE NETWORK FOR RESEARCH AND
CAPACITY BUILDING D/O- NILAY DUTTA
R/O- 1A
DAMAYANTI MANSION
SATYA BORA LANE
DIGHALIPUKHURI EAST
DIST- KAMRUP(M)
GUWAHATI- 781001

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY THE SECRETARY TO THE GOVT OF INDIA IN THE MIN OF HOME
AFFAIRS (FOREIGNERS DIVISION) MAJOR DHYAN CHAND NATIONAL
STADIUM
INDIA GATE
NEW DELHI- 110002

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DISPUR
GUWAHATI- 781006

5:THE INSPECTOR GENERAL OF PRISONS
ASSAM PRISON HEADQUARTERS
KHANAPARA
GUWAHATI- 781022
ASSAM

Advocate for : MR N DUTTA

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS

Linked Case : W.P.(Crl.)/6/2020

ABANTEE DUTTA
D/O- NILAY DUTTA
R/O- 1A
DAMAYANTI MANSION
SATYA BORA LANE
DIGHALIPUKHURI EAST
DIST- KAMRUP(M)
GUWAHATI- 781001

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REP. BY THE SECRETARY TO THE GOVT OF INDIA IN THE MIN OF HOME
AFFAIRS (FOREIGNERS DIVISION) MAJOR DHYAN CHAND NATIONAL
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ASSAM PRISON HEADQUARTERS
KHANAPARA
GUWAHATI- 781022
ASSAM

Advocate for : MR N DUTTA

Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 18/06/2024

Suman Shyam, J

1. Heard Mr. A. Gautam, learned counsel appearing for the writ petitioners in this batch of Writ Petitions (Criminal). Also heard Ms. A. Gayan, learned CGC, appearing on behalf of the Union of India as well as Mr. D. Nath, learned senior Government Advocate, Assam, appearing for the State of Assam.

2. These 5 Writ Petitions (Criminal) had been instituted on more or less identical facts seeking similar reliefs. The writ petitions have been preferred on behalf of the detenues and by some socially active persons espousing the cause of a number of declared foreigners/detenues who were housed in District Jails at Jorhat and Goalpara on being declared as foreign nationals. Apparently, some of the detenues are foreign nationals who had been convicted by various Courts for offences committed under the NDPS Act as well as many other laws in force in India. In other words, some of the detenues are declared foreigners and others are convicted foreign nationals.

3. Contending that all these detenues were housed in regular District Jails in violation of the guidelines laid down by the Hon'ble Supreme Court in the case of ***Bhim Singh Vs. Union of India and others*** reported in ***(2012) 13 SCC 471***, the writ petitions had been instituted with a prayer to release the detenues. The petitioners have also challenged the notification No. PLB.149/2008/50 dated 01/12/2009, notification No. PLB.149/2008/54 dated 05/04/2010 and notification No. PLB.121/2015/44 dated 24/09/2015, with a prayer to declare those notifications as un-constitutional on the ground that these notifications have illegally designated parts of the District Jails as detention centers, thus violating the fundamental rights of the detenues guaranteed under Article 21 of the

Constitution of India.

4. It appears that during the pendency of these writ petitions, the State Government of Assam, has completed the construction of a Detention Centre at Matia, in the district of Goalpara, with as many as 11 (eleven) towers. The declared foreigners, as indicated herein above, have since been shifted to the Matia Detention Centre and they are presently being housed in 3 (three) such towers, which are assigned to the declared foreigners. It is not in dispute that to that extent, the relief prayed for in this batch of writ petitions do not survive for consideration of this Court, at this Stage. However, Mr. Gautam has argued that although the detenues are housed in the Matia Detention Centre, yet, a part of the Detention Centre, including as many as 8 (eight) towers, have now been designated for housing the regular Under Trial (UT) prisoners/convicts, of offences under the Prevention of Corruption Act, 1988, Child Marriage Act, POCSO Act, 2012 etc. and therefore, the State Government has evidently once again converted the Detention Centers into regular jails, thus, acting in violation of the guidelines laid down in the case of ***Bhim Singh (Supra)***.

5. Responding to the above arguments, Mr. D. Nath, learned senior Government Advocate, Assam, has argued that the Detention Centers are exclusively meant for housing the declared foreign nationals until their deportation, in accordance with law. However, since there were sufficient empty towers available in the detention centre and in view of the sudden surge of cases pertaining to Child Marriage/POCSO Act, as a temporary measure, some of the empty towers were designated for housing the UT prisoners. Mr. Nath submits that since it was purely a temporary measure, it cannot be said that the Detention Centre has been converted into a regular Jail. Mr. Nath has further argued that since the purpose of filing the Habeas Corpus petitions have already been met, these matters be closed as no further relief can be granted to the writ petitioners in these petitions.

6. We have considered the submissions made at the Bar and have carefully gone through the materials available on record.

7. It is not in dispute that the construction of the Matia Detention Centre is complete and the declared foreigners including those who were the subject matters of these Habeas Corpus petitions are presently housed in the Matia Detention Centre. It appears that some of the detenues have also been released on bail during the COVID period. It is not in dispute that all the detunes are declared foreigners. The controversy arising at this stage, is pertaining to the issue of lodging the regular UT prisoners/convicts pertaining to Child Marriage/POCSO Act offences, in as many as 8 towers designated for the purpose, in the Matia Detention Centre.

8. After hearing the submissions of the parties, we are of the view that whether the recourse adopted by the State Government in using the detention centre for lodging UTPs is permissible in law or not, would definitely be a pertinent issue to be considered by this Court as and when the occasion arises. However, this issue is beyond the remit of these proceedings as the matter, in the opinion of this Court, gives rise to a new cause of action. In the absence of proper pleadings and particulars pertaining to the manner in which the vacant space in the 8 towers is being presently utilized by the State, thus indicating prejudice, if any, that has been caused to the declared foreigners (detenues), it would not be possible for this Court to go deeper into the said aspect of the matter.

9. As such, by granting liberty to the petitioners and/or any other aggrieved party to raise the aforesaid issue by filing appropriate petition, questioning the usage of the vacant area of Matia Detention Centre for lodging UTPs and matters ancillary thereto, if so advised, we close the Habeas Corpus petitions, as infructuous.

JUDGE

JUDGE

sukhamay

Comparing Assistant