

GAHC010138492024



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

Case No. : W.P.(Crl.)/22/2024

MD. KASHEM ALI
S/O- LATE SAYED ALI, R/O- RUPAHI TOWN (JYOTI NAGAR), P.S.
RUPAHIHAT, DISTRICT- NAGAON (ASSAM)

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, DEPARTMENT OF HOME, DISPUR, GUWAHATI-6

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
REHABARI
GUWAHATI-7

3:THE SUPERINTENDENT OF POLICE
NAGAON
P.O. AND DISTRICT- NAGAON
ASSAM
PIN- 782001

4:THE CRIMINAL INVESTIGATION DEPARTMENT
GOVT. OF ASSAM REPRESENTED BY THE INSPECTOR GENERAL
83 A
BARTHAKUR MILL ROAD
SOUTH SARONIA
ULUBARI
GUWAHATI-7

5:THE O/C
RUPAHIHAT POLICE STATION
P.O.- RUPAHIHAT
DISTRICT- NAGAON
ASSAM

PIN- 78212

Advocate for the Petitioner : MR. A R SIKDAR, MS M SARMA

Advocate for the Respondent : GA, ASSAM,

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

HON'BLE MR. JUSTICE SOUMITRA SAIKIA

20/09/2024

(Soumitra Saikia, J)

Heard Mr. A R Sikdar, learned counsel for the petitioner and Mr. D Nath, learned Senior Government Advocate, Assam for all the respondent Nos. 1 to 5.

2. The petitioner has filed the writ petition aggrieved that his son, Anarul Islam, stated to be aged about 22 years, has been missing since 13.12.2023. It is stated that on the fateful day, he had taken out his family vehicle bearing registration No. AS-02-AM-5278 (Maruti Swift) at about 3:00 PM. After that he never returned home. The petitioner along with other family members and relatives upon search since the evening of the fateful day located the vehicle at about 8:00 AM on the next day at Naltali Road of Kaliabor-Tezpur Highway in an abandoned condition. A wearing apparel used by the son of the petitioner was found lying at a distance of 7/8 feet from the vehicle.

3. According to the petitioner, the FIR was filed on 14.12.2023, but the same was received by the concerned Police Station only on 19.12.2023.

4. In spite of the FIR being filed and the petitioner approaching the police authorities for investigation, proper steps for investigation and recovery of his missing son has not been undertaken. The petitioner, thereafter, by communication dated 24.01.2024 addressed a letter to the Superintendent of Police, Nagaon District ventilating his grievances that in spite lodging the FIR, the investigation has not been carried out properly and his son has not been recovered. Since no reply was received, the petitioner has approached this Court by filing the instant writ petition with the following prayers:-

“Under the above facts and circumstances it is therefore prayed that your Lordships would be pleased to admit this petition, call for the records, issue a rule calling upon the respondents to show cause as to why a writ in the nature of Mandamus, Certiorari shall

not be issued directing the respondents Police Authority more particularly the Superintendent of Police, Nagaon including that of Crime Branch to take care in the matter of Rupahihat P.S. Case No. 495/2023 to investigate into the matter, to trace out the victim and to arrest the accused persons in Rupahihat P.S. No. 495/2023 u/s 365 IPC by way of conducting appropriate enquiry into the occurrence, to submit charge sheet against the accused person on completion of the investigation as per relevant provision of Law and further direction may be issued direction may be issued directing the State authority to pay compensation amounting to Rs.10 Lakhs only to the petitioner for the loss of life of his son and after hearing parties Your Lordships would be pleased to make a rule absolute granting adequate relief to the petitioner/informant as deem fit and proper in the interest of justice.

-AND-

Further, pending disposal of this writ petition it is prayed in the interim that the Superintendent of Police, Nagaon may kindly be directed to take up the Rupahihat P.S. Case No. 495/2023 u/s 365 IPC by himself for fresh investigation or by any other Superior Police Officer under his authority so as to arrest the accused person and to recover the victim son of the petitioner in the interest of justice."

- 5.** Notice in the matter was issued on 26.07.2024 permitting the respondent authorities to obtain status report in respect of the investigation carried out and apprise the Court on the next date. Subsequently, Mr. Nath, learned Senior Government Advocate, Assam has placed the status report as communicated to him from the Office of the Superintendent of Police, Nagaon.
- 6.** Upon a careful perusal of the communication addressed to the learned Senior Government Advocate, Assam, which was placed before the Court, it is seen that proper steps have been initiated by the concerned Investigating Officer pursuant to the lodging of the FIR for recovery of the son of the petitioner stated to have gone missing.
- 7.** A supervision note issued by the Superintendent of Police, Nagaon is also placed before the Court.
- 8.** In terms of the said note, the actions taken by the Investigating Officer have been specified and further the actions suggested to the Investigating officer is also seen mentioned in the said Supervision Note. Pursuant to that the Court observed that from the communication placed before the Court as well as upon perusal of the supervision note, it is not known whether any steps have been

taken for publication of the photographs of the missing son of the writ petitioner in any newspaper and television as per the standard procedure.

9. Today, when the matter is called upon, Mr. Nath, learned Senior Government Advocate, Assam has placed before the Court the photographs and information with regard to the missing son of the writ petitioner, which was published in two local dailies, namely, "the Dainik Janambhumi" in its edition dated 23.08.2024 and "the Sentinel" in its edition dated 23.08.2024.

10. Upon hearing the learned counsel for the parties and upon perusal of the pleadings available on record, it is seen that as extracted above, the writ petition has been filed with a specific prayer, namely, to take necessary steps to investigate into the matter and to trace out the missing son of the petitioner in connection with Rupahihat P.S. Case No. 495/2023. The further prayer is for issuance of a writ of mandamus to direct the State authority to pay an amount of Rs.10,00,000/- to the petitioner for the loss of life of his son.

11. On a pointed query of the Court to the learned counsel for the petitioner as to whether he has any information whether his son is alive or dead or whether his body has been recovered, the learned counsel for the petitioner submitted that he has no such instructions. He submits that in fact he has no instructions as to whether the son of the petitioner is still alive or has died in the meantime.

12. Under such circumstances, this Court is of the view that prayer for compensation cannot be granted under any of the schemes as may be available or published by the Government of Assam, until and unless there is evidence to suggest that the missing son of the petitioner is no longer alive.

13. From the materials placed before the Court by the State, it is seen that the investigation is still underway. The Investigating Officer/the appropriate police authorities have not concluded their investigations as on date. Under such circumstances, the prayer for grant of compensation at this stage cannot be allowed.

14. The other prayer made in the writ petition is for issuance of a mandamus/certiorari directing the respondent police authorities, more particularly, the Superintendent of Police, Nagaon to take care in the matter of Rupahihat P.S. Case No. 495/2023, to investigate into the matter, to trace out the victim and to arrest the accused persons in the aforesaid case and upon due enquiry and investigation, to submit the charge-sheet.

15. As has been discussed above, in terms of the communication placed before the Court and

with due reference to the supervision note issued by the Superintendent of Police, Nagaon, it is seen that police has taken up the investigation and the steps as per the standard procedure are currently being undertaken by police. Under such circumstances, we direct the respondent police authorities to carry on the investigation in connection with Rupahihat P.S. Case No. 495/2023 in a right earnest and upon conclusion of the investigation, take necessary steps as per the procedure of law prescribed under Bharatiya Nagarik Suraksha Sanhita, 2023.

16. Since the writ petition has been filed with specific prayers as discussed above and since also under the provisions of BNSS, 2023, where detailed provisions are prescribed for redressal of the grievances in the event of failure of the police authorities to conduct proper investigation, this Court is of the view that since the police has already initiated the investigation and in the present writ petition, as there is no specific allegation that the son of the petitioner was taken into custody and thereafter, he had gone missing or that he had suffered bodily injury or had succumbed to such injuries sustained during police custody, nor there is a specific prayer for issuance of a writ of habeas corpus, this Court is of the considered opinion that the writ petition can be closed at this stage.

17. The prayer for compensation as discussed above will be available to the petitioner to approach the appropriate authority after the conclusion of the investigation and after the finding of the police authorities as to the whereabouts/status of the missing son of the petitioner.

18. Accordingly, we dispose of this writ petition at this stage directing the respondent authorities to continue the investigation and upon conclusion of its investigations to take necessary steps as prescribed under the procedure of BNSS, 2023. If the petitioner is still aggrieved, the remedies prescribed under the BNSS, 2023 are available to the petitioner to approach the appropriate forum.

19. Accordingly, this writ petition stands disposed of.

20. Interim order, if any, stands vacated.

JUDGE

JUDGE

Comparing Assistant