

GAHC010006232021



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

Case No. : WP(C)/306/2021

SABURA KHATUN
W/O- LT. RAHIJUDDIN SK., R/O- VILL- KAJAIKATA PART-VI, P.S.
BILASIPARA, DIST.- DHUBRI, (ASSAM)

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HOME DEPTT.,
DISPUR GHY-6

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GHY-7

3:INSPECTOR GENERAL OF PRISONS
ASSAM
KHANAPARA
GHY-22

4:THE DY. COMMISSIONER
DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783301

5:THE SUPERINTENDENT OF POLICE
DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783301

6:THE SUPERINTENDENT OF POLICE

DISTRICT JAIL
DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783301

7:THE OFFICER-IN-CHARGE OF BILASIPARA P.S.
DIST.- DHUBRI
ASSAM
PIN- 783348

Advocate for the Petitioner : MR. S A AHMED, MISS M GOGOI,MS F AHMED

Advocate for the Respondent : GA, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

For the Petitioner : Mr. S. A. Ahmed, Advocate

For the Respondents : Mr. D. Nath, Sr. Govt. Adv.
(For Respondent Nos. 1 to 7)

Date of Judgment : 20.09.2024

JUDGMENT & ORDER

(Mridul Kumar Kalita, J)

- 1.** Heard Mr. S. A. Ahmed, learned counsel for the petitioner. Also heard Mr. D. Nath, learned Senior Government Advocate, Assam appearing for the respondent Nos. 1 to 7.

- 2.** This writ petition has been filed under Article 226 of the Constitution of India by the petitioner, namely, *Sabura Khatun*, seeking adequate

compensation on account of death of her husband, namely, *Rohijuddin Sk.*, who died in the Gauhati Medical College and Hospital (GMCH), while in judicial custody, on 30.06.2018.

3. The facts for consideration of the instant writ petition, in brief, are that the husband of the petitioner, namely, Late Rohijuddin Sk. was arrested on 24.05.2018 in connection with Bilasipara Police Station Case No. 525/2018 under Sections 147/149/436/325 of the Indian Penal Code. The aforesaid case was registered on filing of an FIR, on 23.05.2018, by one Nur Hussain Bhuyann before the Officer-in-Charge of Bilasipara Police Station. In the said FIR allegations were made against the accused persons named in the FIR, including the deceased husband of the present petitioner, that they have set the house of the first informant on fire with an intention to forcefully dispossess the informant from his plot of land. In the FIR, allegation is also made against the accused persons that they had assaulted the informant and their family members causing serious injuries on their person.

4. After arrest of the husband of the petitioner in the aforesaid case, he was produced before the Sub-Divisional Judicial Magistrate(M), Bilasipara, Dhubri on the same date i.e., 24.05.2018 and he was remanded to the judicial custody in the District Jail, Dhubri.

5. The learned counsel for the petitioner has submitted that as the husband of the petitioner was ill, the Superintendent of District Jail, Dhubri on 29.06.2018 submitted a letter to the Superintendent of Police, Dhubri to provide the police escort on 30.06.2018 for escorting the sick prisoner (husband of the petitioner) from the District Jail, Dhubri to Gauhati Medical College and Hospital (GMCH) for better medical treatment. However, on 01.07.2018, the husband of

the petitioner passed away while he was under treatment at GMCH. On 02.07.2018, the post-mortem examination was conducted on the dead body of the husband of the petitioner.

6. The learned counsel for the petitioner has submitted that the cause of the death of the husband of the petitioner as stated in the death certificate issued by the GMCH on 11.01.2019 was mentioned as "pneumonia".

7. The learned counsel for the petitioner has submitted that though the petitioner's husband was suffering from pneumonia, however, he was not treated properly for the said ailment while he was in custody, which resulted in his death while in judicial custody due to negligence of jail authority in providing proper medical care and treatment for the ailment which he was suffering.

8. The learned counsel for the petitioner has also submitted that the petitioner's right to life which is guaranteed under Article 21 of the Constitution of India includes the right to be provided with adequate and appropriate medical treatment when he was in judicial custody, which was not provided to the husband of the petitioner that resulted in his death.

9. The learned counsel for the petitioner has also submitted that as the petitioner's husband was the sole bread earner of his family, hence, his untimely death in custody has put the petitioner and his other family members, who were dependent on his earning in extreme financial hardship.

10. The learned counsel for the petitioner has also submitted that the petitioner is suffering due to abject poverty and ignorance, which is also the reason for the petitioner approaching this Court belatedly.

11. It is submitted by the learned counsel for the petitioner that under the aforementioned circumstances where the fundamental rights of the husband of the petitioner to get adequate medical treatment, while he was in judicial custody, has been flagrantly violated by the State authorities, the petitioner being the dependent and wife of the deceased, is entitled to get adequate compensation from the State respondents. In support of his submission, the learned counsel for the petitioner has cited the following rulings as follows: -

(i) "Nilabati Behera-Vs- State of Orrisa and Ors. reported (1993) 2 SCC 746"

(ii) *Shahar Banu –Vs- The State of Assam and Ors. [Judgment dated 23-03-2023 by a Co-ordinate Bench of this Court in WP(C)/3363/2017]*

12. On the other hand, Mr. D. Nath, learned Senior Government Advocate, appearing for the State respondents, has submitted that the husband of the petitioner was provided adequate and proper medical treatment for his ailment while he was in judicial custody, which is apparent from the fact that the husband of the petitioner died in GMCH and not in jail. The learned Senior Government Advocate, Assam also submits that the record of detailed medical treatment of the deceased Rohijuddin Sk. as furnished by the Medical and Health Officer-1 Jail Hospital, District Jail, Dhubri would show that the petitioner was provided with the medical treatment for hyper tension since the date of his remand to judicial custody i.e., 25.05.2018 till he was forwarded to GMCH by the jail authority on 29.06.2018.

13. The learned Senior Government Advocate, Assam has also submitted

that, in this regard, the Assam Human Rights Commissions (AHRC) had taken up a *suo moto* case on death of husband of the petitioner, Rohijuddin Sk. The said case was registered as AHRC Case No. 2345/4/18-19 and by order dated 03.04.2019 passed in the said case, the AHRC closed the said case after coming to the conclusion that the UTP Rohijuddin Sk. died of natural cause and he is not a victim of violation of Human Rights. The learned Senior Government Advocate has, therefore, submitted that the writ petition filed by the petitioner is liable to be dismissed.

14. We have considered the submissions made by learned counsel for both the sides and have gone through the materials available on record carefully.

15. It appears from record that the husband of the petitioner was arrested on 24.05.2018 in connection with Bilasipara P.S. Case No. 525/2018 under Sections 147/149/436/325 of the IPC and he was remanded to judicial custody on the same date i.e., 24.05.2018 and since then he was kept in Dhubri District Jail till 29.06.2018. On 29.06.2018, said UTP was taken to the Civil Hospital, Dhubri and thereafter to GMCH at Guwahati on 30.06.2018, where he expired on 01.07.2018.

16. We have also gone through the order dated 03.04.2019 passed by the Assam Human Rights Commission in Suo moto case taken up by it on the death of UTP Rohijuddin Sk., which was registered as AHRC Case No. 2345/4/18-19.

17. Though, the AHRC has come to the finding that the death of the UTP Rohijuddin Sk, i.e., the husband of the present petitioner, was due to natural cause, however, we are unable to agree with the finding of the AHRC as on

cursory perusal of the order dated 03.04.2019 passed by the said Assam Human Rights Commission would show that it has observed therein that the deceased Rohijuddin Sk. was diagnosed with Acute Exacerbation of Chronic Obstructive Pulmonary Disease.

18. Moreover, in the Form for final opinion after chemical analysis of viscera, histo-pathological examination of tissue in respect of deceased Rohijuddin Sk. issued by the Department of Forensic Medicine and Toxicology, GMCH, on 23.08.2018, it appears that the death of the husband of the petitioner, namely, Rohijuddin Sk., was due to pneumonia.

19. Though, the cause of death in the order of the Assam Human Rights Commission has been stated to be natural cause as well as in the report of Forensic Department dated 23.08.2018 after mentioning that the death was due to pneumonia, the words “natural death” has been mentioned therein. However, as apparently there is a finding that the petitioner was diagnosed with “acute exacerbation of chronic obstructive pulmonary disease” and he died due to pneumonia, his death cannot be regarded as natural death but due to ailment which was diagnosed, i.e., the acute exacerbation of chronic obstructive pulmonary disease.

20. Now, let us examine as to whether the deceased was provided with any treatment for the aforesaid chronic obstructive pulmonary disease, while he was in judicial custody, or not.

21. It appears on perusal of detailed medical treatment record of the deceased dated 14.02.2021 furnished by the Medical & Health Officer-I, Jail Hospital, District Jail, Dhubri, which is available on record, that the deceased

Rohijuddin Sk. was provided with the medicines for hypertension only from 25.05.2018 to 10.06.2018. He was provided only Telmisartan 40 + Amlodipin 5, Pantoprazole 40 and Stemetil MD which are basically the medicines for hypertension and *gastritis*.

22. It also appears from record that on 11.06.2018, the deceased Rohijuddin Sk. was admitted to Jail Hospital and till 29.06.2018 he was treated there only. However, it appears from record that during this period he was treated for hypertension only and no medication was provided to him for Chronic Obstructive Pulmonary Disease till 28.06.2018, when for the first time Deriphylline 150 was prescribed to him which is normally given for asthma and Chronic Obstructive Pulmonary Disorder. Thus, it appears that for more than one month after his arrest, while he was in District Jail, Dhubri, the deceased Rohijuddin Sk. was not treated for any Chronic Obstructive Pulmonary Disorder, though, he was suffering for the said ailment as it was a chronic ailment.

23. We are of the considered opinion that being an under trial prisoner, since 24.05.2018 till his death on 01.07.2018, the deceased Rohijuddin Sk. was entitled to get adequate and appropriate medical treatment as same would be regarded as a part of Right to Life guaranteed to him under Article 21 of the Constitution of India.

24. In the case in hand, we are of the view that the said right appears to have been violated to the extent that though the husband of the petitioner was suffering from Chronic Obstructive Pulmonary Disease, however, the treatment for the same was provided first time to him only on 28.06.2018 i.e., three days prior to his death. Before that, he was only being treated for hypertension for more than a month during which he was in custody.

25. In the case of ***Nilabati Behera –Vs- State of Orrisa and Ors (Supra)***, the Hon'ble Apex Court has observed as follows:

“35. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law — through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the court in the facts and circumstances of the case, is possible. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the courts found that grant of such relief was warranted. It is a sound policy to punish

the wrongdoer and it is in that spirit that the courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental right of a citizen under Article 21 is concerned. Law is in the process of development and the process necessitates developing separate public law procedures as also public law principles. It may be necessary to identify the situations to which separate proceedings and principles apply and the courts have to act firmly but with certain amount of circumspection and self-restraint, lest proceedings under Article 32 or 226 are misused as a disguised substitute for civil action in private law. Some of those situations have been identified by this Court in the cases referred to by Brother Verma, J."

26. Thus, from the above it appears that in the event there is any violation of Fundamental Rights of an under trial prisoner, it would be for the State authorities to compensate for such violation of the fundamental rights notwithstanding the right of the citizen to a remedy by way of civil suit, criminal proceeding etc. remaining intact.

27. In the case of ***Shahar Banu - Vs- The State of Assam and Ors. (Supra)***, this Court has taken notice of a notification issued by the Revenue and Disaster Management Department, Relief and Rehabilitation Branch, Government of Assam dated 15.11.2014, which provides for an *ex-gratia*

payment to the next of kin of persons killed due to accident in public places or in public carriers other than killed by extremists, terrorists, miscreants and due to the firing of security forces, which had been quantified to be Rs. 2,00,000/- (Rupees Two Lakhs).

28. Although, in the instant case, death of the husband of the petitioner was not caused because of any accident in public carriers or because of any extremists, terrorists, miscreants' violence or by firing of security forces but due to failure of the State authorities to provide timely, appropriate and adequate medical treatment for the ailment which he was suffering from.

29. Though, the notification issued by the Revenue and Disaster Management Department, Relief and Rehabilitation Branch, Government of Assam dated 15.11.2014 provides for an *ex-gratia* payment to the next of kin to the extent of Rs.2,00,000/- (Rupees Two Lakhs) for death of persons killed in circumstances mentioned in the said notices. However, sufficient time has lapsed since the date of issuance of the said notification and due to lapse of time, we are of the considered opinion that a compensation amount of Rs.3,00,000/- (Rupees Three Lakhs) to the petitioner, who is the wife of the deceased Rohijuddin Sk. would meet the ends of justice.

30. The respondents, through the Home Department, Government of Assam is, therefore, directed to pay an amount of Rs.3,00,000/- (Rupees Three Lakhs) as compensation to the petitioner, namely, Sabura Khatun, wife of the petitioner/Under Trial Prisoner Rohijuddin Sk.

31. The payment of compensation shall be made to the Bank Account of the petitioner on the proper identification within a period of two months from

the date of this order.

32. This writ petition is, accordingly, stands allowed.

JUDGE

JUDGE

Comparing Assistant