

GAHC010022342018



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

Case No. : WP(C)/815/2018

SUMITRA DEVI
W/O- LATE GOPI NATH, VILL- NAYAPARA (ALENGMARI), P.O- LAKHIGANJ,
P.S- SAPATGRAM, DIST- DHUBRI, ASSAM, PIN- 783345

2: BICHITRA NATH
D/O- LATE GOPI NATH
VILL- NAYAPARA (ALENGMARI)P.O- LAKHIGANJ
P.S- SAPATGRAM
DIST- DHUBRI
ASSAM
PIN- 78334

VERSUS

THE STATE OF ASSAM AND 8 ORS.
TO BE REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF
ASSAM, HOME DEPTT., DISPUR, GUWAHATI-6

2:THE CHIEF SECRETARY
TO THE GOVT OF ASSAM
DISPUR
GHY- 06

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
RELIEF AND REHABILITATION DEPTT.
DISPUR
GUWAHATI-6

4:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM
FINANCE DEPTT.
DISPUR
GUWAHATI-6

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

6:THE SUPERINTENDENT OF POLICE
DHUBRI ASSAM
PIN- 783301

7:THE JAIL SUPERINTENDENT OF DISTRICT JAIL
DHUBRI ASSAM
PIN- 783301

8:THE OFFICER IN CHARGE
SAPATGRAM P.S DIST- DHUBRI
ASSAM PIN- 783337

9:THE DEPUTY COMMISSIONER
DHUBRI DIST- DHUBRI
ASSAM
PIN- 78330

Advocate for the Petitioner : MR. A MANNAF

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI
ORDER

17.05.2024

Heard Mr A Mannaf, learned counsel for the petitioners. Also heard Mr M Chetia, learned counsel for the respondents.

2. By way of the instant writ petition, the writ petitioner is seeking appropriate compensation in favour of the petitioners, who are the wife and daughter of the victim Gopinath, who died during judicial custody for the negligence act of the Jail

Superintendent, District Jail, Dhubri, Assam.

3. The brief facts of the case is that, on 20.09.2016, one FIR was lodged by Nipun Nath, alleging that on the night of 18.09.2016 unknown miscreants entered into the house of the informant and stolen away two nos. of gas cylinders from his house. On 19.09.2016, informant came to know from the local public that one Gopinath (husband of petitioner No. 1/father of petitioner No. 2) and another Shahadev Nath, had stolen away the gas cylinder from the house of the informant. Accordingly, the informant with the help of local public at Kokrajhar apprehended the two accused persons and after beating them, they were handed over to the jurisdictional police station, on the next day, wherein the said two accused persons also confessed to their involvement.

4. Mr A Manna, learned counsel for the petitioner submits that on the 20.09.2016, when the police personnel had picked up the two victims, the victims were badly injured and as such, it was incumbent on the police personnel to provide necessary medical treatment to the victims. He further submits that upon the said two accused/victim persons being produced before the Sub-Divisional Judicial Magistrate (M), Bilasipara (SDJM, for short), on 21.09.2016, the SDJM, upon seeing the said two accused persons directed the police personnel to provide necessary medical treatment to them. He further submits that despite the aforesaid direction of the SDJM, no adequate medical treatment has been provided to the husband of the petitioner No. 1, for which he died.

5. Mr M Chetia, learned Government Advocate, on the other hand, submits that

necessary medical treatment was provided by the police authorities after apprehending the deceased husband/father of the petitioners and upon providing medical treatment, he was forwarded to the learned Court of SDJM, Bilasipara on the next day, i.e., on 21.09.2016. He further submits that on 21.09.2016, at about 06:45 pm, when the deceased husband/father of the petitioners was admitted into the jail, he was admitted into the jail hospital, wherein medical facilities were also provided. He, accordingly, submits that this is not a case of negligence of the jail authorities, for which the police/jail authorities can be held accountable for the death of the deceased husband/father of the petitioners.

6. I have heard the parties and perused the materials available on record.

7. It appears that the deceased husband/father of the petitioners, was apprehended from the local public after being brutally beaten, and, thereafter, medically examined through the physician of Raniganj BPHC, namely Dr Ratul Das and after completion of the medical examination, the deceased husband/father of the petitioners, along with the other accused persons were arrested and forwarded to the learned court of SDGM (M), Bilasipara, on the next day, i.e., on 21.09.2016. It further appears that on 21.09.2016, when the deceased husband/father of the petitioners and the other co-accused were produced before the learned SDJM, a copy of the forwarding report, arrest memo, medical report etc. were also submitted. It further appears that the said medical report submitted was seen by the learned SDJM. Upon perusing the case records and also from

the physical appearance of the accused persons, the learned SDJM directed the Jail Superintendent to provide the accused persons with necessary treatment. It further appears that pursuant to the said order of the learned SDJM, at the time of admission of the deceased husband /father of the petitioners into jail on 21.09.2016 at about 6:45 pm, the deceased husband/father of the petitioners was admitted into jail hospital, wherein medical facilities were again provided to him. It further appears from the affidavit-in-opposition filed on behalf of respondent No. 7 that during the continuance of treatment at Jail Hospital, the deceased husband/father of the petitioners, was shifted to Civil Hospital, Dhubri, as per the reference made by the jail doctor on 22.09.2018. It further appears that the deceased husband/father of the petitioners was released on bail on the twilight of 22.09.2016, as per the release order of the learned court while he was undergoing treatment in the Dhubri Civil Hospital, Dhubri. Paragraphs-5, 7, 8 and 11 of the said affidavit-in-opposition, against which no rejoinder has been filed, is reproduced hereunder for ready reference:-

“5. That with regard to para 5 of the W.P.(C), the deponent begs to state that the UTP Gopi Nath was admitted into the Jail hospital at the time of admission into jail on 21/09/2016 (6.45 PM) and provided medical facilities in Jail hospital (Photocopy of health screening enclosed herewith). During continuance of treatment at Jail Hospital, the Jail Doctor referred the said UTP to Civil Hospital, Dhubri on 22/09/2018 (Refer Slip enclosed herewith) and immediately after that the UTP Gopi Nath was shifted to Civil Hospital, Dhubri. In the

meantime, the said UTP was released on bail on the twilight of 22/09/2016 as per release order of the Hon'ble Court while he was undergoing treatment in the Dhubri Civil Hospital, Dhubri, the Police escort party was relieved of their duty and the family members were there in the Civil Hospital, Dhubri to take care of Gopi Nath (Photo copy of release order enclosed). There was no negligence on the part of the Jail authority as alleged. Moreover, at the time of death (stated in the Writ Petition as 10.50 P.M. night) the said UTP Gopi Nath was not in judicial custody as he was already released on bail in the twilight of 22/09/2016 in Civil Hospital, Dhubri.

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7. That with regard to para 7 of the W.P.(C), the deponent begs to state that the UTP Gopi Nath was sent to the Civil Hospital, Dhubri as referred by Jall Doctor on 22/09/2016 for better medical treatment there and provided treatment in the Civil Hospital, Dhubri, Hence, there was no negligence on our part in providing better medical facilities to the UTP.

8. That with regard to para 8 of the W.P.(C), the deponent begs to state that the allegation brought against the Jail authority by the petitioner are, completely false and manufactured as they are not based on facts. The UTP Gopi Nath was admitted into this Jail on 21/09/2016 (6.45 P.M.) and immediately after that as per order of the Ld. Sub-Divisional

Judicial Magistrate(M) Bilasipara he was provided medical treatment by admitting him in Jail Hospital, Dhubri.

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11. That with regard to para 11 of the W.P.(C), the deponent begs to state that the death was not custodial as alleged. The UTP Gopi Nath was already released on bail at the time as stated in Para-5 above and he died in presence of family members at night i.e. at 10.50 PM of 22/09/2016.”

8. From the averments made in the said affidavit-in-opposition, it appears that necessary medical treatments at all stages, have been provided by the police authorities. It further appears that the deceased husband/father of the petitioners died after being released on bail, in the presence of the family members at night, at about 10:50 pm of 22.09.2016. That being so, petitioners have failed to make out any case of medical negligence, on the part of the police/jail authorities, while the deceased husband /father of the petitioners, was in their custody. As such, there is no merit in the writ petition. The writ petition stands dismissed.

9. No cost(s).

10. With the above observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant