



GAHC010317302019



2025:GAU-AS:4087

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

**Case No. : WP(C)/18/2020**

JITEN DAS

S/O- LT. JATINDRA MOHAN DAS, R/O- ABHAYAPURI, SHIVPUR, WARD  
NO.3, P.S. ABHAYAPURI, DIST.- BONGAIGAON, ASSAM, PH.-9864379195

VERSUS

THE STATE OF ASSAM AND 10 ORS.  
REP. BY THE P.P., ASSAM

2:THE STATE OF ASSAM  
REP. BY THE CHIEF SECY.  
ASSAM  
JANATA BHAWAN  
DISPUR  
P.O. DISPUR  
DIST.- KAMRUP (M)  
GHY

ASSAM  
PIN- 781006

3:THE DIRECTOR GENERAL OF POLICE  
ASSAM  
ASSAM POLICE HEADQUARTERS  
ULUBARI  
P.O. ULUBARI  
DIST.- KAMRUP (M)  
GHY  
ASSAM  
PIN- 781007

4:THE POLICE COMMISSIONER



M.G.ROAD  
PANBAZAR  
P.O. PANNBAZAR  
DIST.- KAMRUP (M)  
GHY  
ASSAM  
PIN- 781001

5:THE SUPERINTENDENT OF POLICE  
CHAPAGURI ROAD  
NEW COLONY  
MAHABIRSTAN  
P.O. BONGAIGAON  
DIST.- BONGAIGAON  
BONGAIGAON  
ASSAM  
PIN- 783380

6:THE OFFICER-IN-CHARGE  
JALUKBARI P.S.  
MALIGAON  
P.O. JALUKBARI  
DIST.- KAMRUP (M)  
GHY  
ASSAM  
PIN- 781011

7:THE OFFICER-IN-CHARGE  
ABHAYAPURI P.S.  
MAIN ROAD ABHAYAPURI  
P.O. ABHAYAPURI  
DIST.- BONGAIGAON  
ABHAYAPURI  
ASSAM  
PIN- 783384

8:CENTRAL BUREAU OF INVESTIGATION (C.B.I.)  
REP. BY ASSTT. S.G.I.  
GAUHATI HIGH COURT

9:DR. RABIN SAIKIA  
S/O- LT. GHANESWAR SAIKIA  
R/O- FLAT B-301  
SUBHAM ENCLAVE  
HATIGAON  
LAKHIMINAGAR  
P.S. HATIGAON  
P.O. HATIGAON



GHY  
DIST.- KAMRUP (M)  
ASSAM  
PIN- 781038  
PH- 94350-34379

10:DELETED  
AS PER ORDER DATED 02.08.2023 PASSED IN THIS INSTANT WRIT  
PETITION.

11:AMRIT BORA  
S/O- MUNINDRA NATH BORA  
BHOGPUR  
P.S. NARAYANPUR  
P.O. NARAYANPUR  
DIST.- LAKHIMPUR  
ASSAM  
PIN- 78416

**Advocate for the Petitioner** : MR Z ALAM, MR. N D SARMA,MR E U AHMED,MS. S  
NAZNEEN

**Advocate for the Respondent** : MR. B. GOGOI, GA, ASSAM, PP, ASSAM,SC, C B I

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

**Date : 04-04-2025**

**JUDGMENT & ORDER (ORAL)**

1. Heard Ms. S Nazneen, learned counsel for the petitioner. Also heard Mr. P Borthakur, learned Addl. PP, Assam appearing for the respondents.
2. The present writ petition is filed with a prayer/direction for handing over Jalukbari PS Case No.1510/2018 dated 04.11.2018 and Jalukbari PS Case No.1768/2018 dated 26.12.2018 to the Central Bureau of Investigation (CBI), Govt. of India..



3. The brief facts of the present case is that the son of the petitioner was an employee under the respondent No.9, namely, Dr. Rabin Saikia at Insight Diagnostic Centre at Rajgarh Road, Bhangagarh, Guwahati. On 04.11.2018 at about 4.45 AM, the said respondent No.9 informed the petitioner that the son of the petitioner is missing since the night of 03.11.2018, whereas, the son of the petitioner was sent with the respondent No.10 (Nipu Ali) from Hotel Landmark B. Baruah, Road, Guwahati to drop respondent No.10 at Kamakhya Gate at 12 AM by taking respondent No.9's Wagon R car bearing registration No.AS 01 AJ 8824.

4. It was also informed by the respondent No.9 that the son of the petitioner returned after dropping the respondent No.10 at Kamakhya Gate. However, it was informed by respondent No.9 to the daughter of the petitioner that the WagonR Car was found lying in a damaged condition at the Old Saraighat Bridge and that the son of the petitioner did not return back to hotel Landmark and has remained untraceable.

5. It is the further allegation that the respondent No.9 informed the petitioner that the petitioner need not worry and the respondent No.9 shall take appropriate action to search the son of the petitioner, but as no information was received from the respondent No.9's end, the petitioner who is a resident of Abhayapuri, in the district of Bongaigaon, came to Guwahati on 04.11.2018 and lodged the FIR of missing/kidnapping. However, but the respondent No.9, pressurized and restricted the petitioner not to lodge any FIR against any one, as the respondent No.9 is looking



after the same and has already lodged an FIR.

6. When no result was forthcoming, the petitioner on 09.11.2018 lodged an FIR before the Director General of Police, Assam and another FIR on 26.12.2018 in the Maligaon Police Station. Again another FIR was lodged on 07.01.2019 before the Jalukbari PS which was registered as Jalukbari PS Case No.1768/2018 under sections 328/392/365/34 IPC. When nothing was progressing, the petitioner on 23.04.2019 filed a complaint before the Hon'ble Chief Justice of India and on 05.07.2019 before the Hon'ble Minister, Finance, Health etc Assam.

7. It is the allegation that as the respondent No.9 hails from an influential family and as it seems that the respondent No.9 has been influencing, the entire investigation and therefore same was moving at a snail's pace and no sincere effort was made to find out the son of the petitioner. Accordingly, the petitioner having no other option left, has filed this writ petition with a prayer as recorded hereinabove.

8. In the aforesaid backdrop, this court issued notice to the respondents. None entered appearance for the respondent No.9 and on the prayer of the learned counsel for the petitioner, the name of the respondent No.10 was struck off from the array of parties by this court under its order dated 02.08.2023.

9. Taking note of the grievance of the petitioner, this court had called for status reports of the investigation from time to time and has been monitoring the investigation. This court has also called for the case diary of the concerned police station cases for



ascertaining self as regards the allegation of the petitioner.

10. Referring to the status report dated 29.02.2024, the learned counsel for the petitioner submits that there is no sincere effort of the investigating officer to trace out the son of the petitioner inasmuch as, though four river police stations and 6 river police out post are there from where the vehicle was found, however, the investigating officer has intimated only one river police station as regards missing information of the petitioner. Thus it shows from their approach that the authorities are not sincere in their investigation. The learned counsel for the petitioner further submits that the father of the deceased had also approached the police Accountability Commission alleging inaction against the police officer and accordingly two police officers were called by the Assam Police Accountability Commission, namely, SI B Pegu and one SI B Terong, however, they did not appear before the Assam State Police Accountability Commission and such conduct itself shows the approach of the investigating officer. It is submitted that the investigating officer had also called the SI Borsing Terong, who was the I/O of the Jalukbari PS Case No.1510/2018 at relevant point of time, but the said police officer has also not appeared before the SIT.

11. Thus there may be serious involvement of these police personals, inasmuch as the respondent No.9 is a doctor having serious influence in the society. It is also the contention of the learned counsel for the petitioner that the son of the petitioner was seen coming out from the hotel Landmark with respondent No.10.



However, CCTV footage are not seized. The respondent No.9 was the employer of the son of the petitioner, however, CDR of none of the aforesaid persons were collected by the investigating officer. In support of the argument, Ms. Nazneen, learned counsel for the petitioner has relied on the decision of the hon'ble Apex Court in ***Dharam Pal Vs. State of Haryana and Ors*** reported in ***AIR 2016 SC 618***.

12. Per contra, Mr. Borthakur, learned Addl. PP referring to the case diary contends that taking note of the seriousness of the case, the investigation was taken over by the CID and investigation was properly been done and same has also been monitored by the Deputy Superintendent of police and therefore, this is not a fit case to allege any malice on the part of the investigating authority or there is any materials to suggest that the investigating authority is trying to influence the investigation and has been trying to shield respondent No.9.

13. This court has given anxious consideration to the arguments advanced by the learned counsel for the parties and also perused the materials available in the case diary.

14. From the materials available in the case diary, what is seen is that initially case was investigated by the Guwahati City Police under Jalukbari PS, but subsequently, the DGP, Assam ordered for transferring the two cases to the CID Assam by an order dated 01.12.2022. Accordingly, two cases were endorsed to one Inspector Ajay Barman of CID, Assam vide memo dated 21.12.2022. It is also on record that the State Police Accountability Commission (SPAC)



also instructed that the Jalukbari PS Case No.1510/2018 under section 365 IPC and Jalukbari PS Case No.1768/2018 under sections 328/392/365/34 IPC should be investigated by a Dy. SP ranked officer and it should be supervised by a SP ranked officer. Accordingly the cases were endorsed to one Dy SP and one SP, CID to supervise the case by an order dated 10.10.2023.

15. From the status report as well as from the case diary, what is discernible is that actions were taken during the course of investigation which can be summarized as follows:

- I. During the course of investigation, the previous I/O inspected the place of occurrence i.e., Old Saraighat Bridge, where the vehicle which was driven by the son of the petitioner on the previous night, was found abandoned, Drew rough sketch map;
- II. The complainant/petitioner was examined under section 161 Cr.P.C.;
- III. The statements of some other witnesses available in the diagnostic center where the son of the petitioner worked were also recorded;
- IV. One police constable, who saw that a vehicle after hitting the side railing of saraighat bridge fled away by driving reverse was also recorded;
- V. The CCTV footage of hotel Landmark Ulubari, where around 11.30 PM, the victim (son of the petitioner) and Nipu Ali, respondent No.10 (whose name has been deleted from the array of respondents), were seen coming



out of the hotel in the WagonR and never returned back and the car belonged to one Dr. Rabin Saikia (respondent No.9).

VI. In the course of investigation, mobile phone of victim Rathin Das, one sky blue colour shirt of Nipu Ali, one mobile phone of Nipu Ali, some materials of Rathin Das, one Golden colour Maruti WagonR LXI Car bearing registration No.AS 01 AJ 8824 and its connected documents and some broken parts of the vehicle were seized;

VII. The mobiles were sent to FSL and said shirt of accused Nipu Ali was sent to Kahilipara for FSL analysis. FSL Kahilipara gave negative result for blood stain in the seized shirt of Nipu Ali;

VIII. The vehicle was mechanically inspected and the CDR & tower location of the victim and CDR's of other mobile numbers has also been analyzed;

IX. The earlier IO also sought from the Superintendent of River Police for providing details of dead bodies recovered in the month of November & December, 2018;

X. Said Nipu Ali was arrested, his statement was recorded. Doctor Rabin Saikia and Amrit Borah had obtained pre arrest bail from the court which was subsequently made absolute and said Dr. Rabin Saikia and Amrit Borah had been interrogated and their statements were recorded under section 161 Cr.P.C.;

XI. W.T message was sent on 09.01.2009 itself to all



O.C's and I.C's of Assam requesting to cause enquiry about the missing person i.e., the son of the petitioner;

XII. By a memo dated 07.02.2019, Chief Public Relation Officer, Assam Police HQ Guwahati widely published through electronic and print media about the victim Rathin Das, photograph along with full particulars has been uploaded in All India Missing portal etc.

XIII. This was done prior to endorsement of the Superintendent of Police and the Dy. Superintendent of Police. Subsequent to endorsement of the investigation by the CID, they have also investigated in detail. The bank transactions etc were also investigated.

16. In the aforesaid backdrop, let this court first consider the ambit of exercise of power for direction of an independent investigation, which is being carried out by the state police.

17. There is no iota of doubt in the mind of this court as regards the power of this court under Article 226 of the Constitution of India directing an investigation by a special authority. The primary consideration in issuing such writ can be many fold, however, to briefly record the reason and circumstances for such consideration can be ineffective investigation, malafide or improper investigation, when high ranking police officer or influential persons are involved in commission of a crime and failure of the investigating authorities to proceed properly with the investigation.

18. In this regard this court can very well place reliance on the decision of the Hon'ble Apex Court *in Himangshu Kumar & Ors Vs.*



***State of Chattisgarh & Ors*** reported in ***2022 SCC OnLine SC 884***, ***State of West Bengal Vs. Committee for Protection of democratic rights, West Bengal*** reported in ***2010 3 SCC 571***, ***Secretary, Minor Irrigation and Rural Irrigation Services, UP Vs. Sahngoo Ram Arya 2002 5 SCC 521***, ***KV Rajendran Vs. Superintendent of Police, CBCID 2013 12 SCC 480***. The principles of law laid down in the aforesaid judgments, can be culled out in the following manner.

I. Issuing a direction to conduct an investigation by a specialized investigating authority, such direction should not be passed as a matter of routine or merely for the reason that a party has leveled some allegations against the local police; this extra ordinary power is to be used where it is necessary to provide credibility and instill confidence in the investigation.

II. The writ court can issue such a writ only when the High Court, after considering the materials on record, comes to a conclusion that such materials prima facie discloses a reason for calling an investigation by an independent investigating agency.

III. When the High Court is of the opinion, based on the materials that the investigation made by police is not proceeding in a proper direction and high police officials are involved in the alleged crime, the court may hand over investigation to an independent agency.

IV. Such extra ordinary power under Article 226 of the Constitution of India, to issue a direction to conduct



investigation by independent investigating agency must be exercised with great caution.

19. Taking note of the aforesaid settled propositions of law and the materials available on record i.e., the case diary as well as the status report, this court is of the opinion that the investigation has been duly carried out and this court has not found anything to suggest that there is any malice or malafide intention on the part of the investigating authorities or that they are not proceeding in a right direction.

20. It is true that a father, whose only son is missing will definitely have serious anxiety, however, this court except having sympathy for the petitioner, cannot direct investigation by an independent authority in exercise of power of judicial review on mere asking. The principles of law as recorded hereinabove, are the basic foundation for issuance of such an order.

21. Taking note of the facts recorded hereinabove, this court is of the opinion that this is not a fit case to exercise this court's extraordinary power of judicial review to direct investigation by CBI inasmuch as, in the opinion of this court the investigation is neither partisan nor there are any prima facie material disclosing any reason to direct the CBI to take over the investigation, rather, on the other hand, in the given facts of the present case, such direction may discourage the investigating authority in the state police. Accordingly the writ petition stands dismissed.

22. While parting with the record, it is expected that the remaining investigation shall be properly done and logical conclusion



should be arrived at the earliest.

23. The case diary be returned back.

**JUDGE**

**Comparing Assistant**