

GAHC010124532026



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

Case No. : W.P.(Crl.)/26/2026

MUJAMMEL HOQUE
S/O MONNAS ALI, VILLAGE- DHING GAON, P.O.- DAGAON, P.S.-JURIA,
DISTRICT- NAGAON, ASSAM, PIN-782124. (THE PETITIONER IS THE
HUSBAND OF THE DETENUE/ PROCEEDEE, MUSSTT. MUMTAZ BEGUM
ALIAS MUMTAZ).

VERSUS

THE STATE OF ASSAM AND 10 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
HOME DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE UNION OF INDIA

REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF HOME AFFAIRS
NEW DELHI-110001.

3:THE SECRETARY TO THE GOVT. OF ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR
GUWAHATI-6.

4:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI-7.

5:THE DISTRICT COMMISSIONER
NAGAON
DIST. NAGAON
ASSAM

PIN- 782002.

6:THE SUPERINTENDENT OF POLICE (B)
NAGAON
DIST. NAGAON
ASSAM

7:THE OFFICER-IN-CHARGE
JURIA POLICE STATION
DIST. NAGAON
ASSAM
PIN- 782124.

8:THE STATE CO-ORDINATOR
NATIONAL REGISTER OF CITIZENS
ASSAM
GUWAHATI-781005.

9:THE SUPERINTENDENT
GOALPARA DETENTION CAMP
DIST. GOALPARA
ASSAM
PIN- 783125.

10:BIPUL KUMAR NATH
MEMBER
FOREIGNERS TRIBUNAL
4TH NAGAON AT JURIA
DIST.- NAGAON
ASSAM
PIN- 782124.

11:DIRECTOR GENERAL
BORDER SECURITY FORCE
BLOCK 10
CGO COMPLEX
LODHI ROAD
NEW DELHI-110003

Advocate for the Petitioner : MR H R A CHOUDHURY, SR. ADV., MR F U BARBHUIYA, MRS H AHMED, MS S DAS

Advocate for the Respondent : DY.S.G.I., MS. P P DAS(R10), MR T GOGOI(R10), MS P SARMA(R10), MR. P P DUTTA(R10), MR G SARMA, SC, FT AND BORDER MATTERS, MR. A K DUTTA(C.G.C.)R-2, MR. P SARMAH, ADDL. SR. GOVT. ADV., SC, NRC, MR J PAYENG, SC, FT AND BORDER MATTERS

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 03.09.2026
(K.R. Surana, J)

Heard Mrs. H. Ahmed, learned counsel for the petitioner. Also heard Mr. A.K. Dutta, learned CGC for respondent no.2; Mr. P. Sarmah, learned Addl. Senior Govt. Advocate for the respondent no.4 and 5; Mr. J. Payeng, learned standing counsel for the FT and Border matters, for respondent nos. 1, 3 and 6 to 9; and Ms. P. Das, learned counsel for respondent no.10.

2) The case of the petitioner is that his wife, namely, Mumtaz Begum @ Mumtaz, was a proceedee in F.T. Case No. 354/2015, arising out of Police Reference 'D' Case No. 2854/98, which was tried and decided by the learned Member, Foreigner's Tribunal, 4th, Nagaon, at Jura, and by its opinion dated 06.06.2019, declared her to be a foreigner. The wife of the petitioner is hereinafter referred to as 'detenue'.

3) It would be appropriate to mention that in the proceeding of F.T. Case No. 345/2015, the detenue had filed her written statement and also filed her evidence-on-affidavit, wherein she had denied that she was a foreigner and claimed to be Indian citizen, being the daughter of Md. Toyab Ali, son of Sofir Uddin, of village- Kachakhaiti, P.O. Magurmari, Mouza- Laukhua, P.S. Rupahihat, Dist. Nagaon. The name of her grandfather, Sofir Uddin, son of Karim appeared as voter in the voter list of 1965 (Ext.4) and 1970 (Ext.5) and the name of her father, Toyab Ali, son of Solimuddin appeared in the voter list of

1977 (Ext.6). The Govt. *Gaonburah* of her parental village had issued a certificate (Ext.1) that the detinue was the daughter of Md. Toyab Ali. The Secretary of Magurmari Gaon Panchayat had also issued a certificate (Ext.2) that she is a daughter of Toyab Ali and since her marriage with the petitioner, she is residing in the said village. The detinue had also produced a School Transfer certificate (Ext.3), issued by the Headmistress of Kasokhaity M.V. School, Nagaon, that the detinue was studying in Class-VII and had not passed the annual examination for promotion to Class-VIII and she had left the school on 31.12.1997 and her date of birth was recorded as 31.12.1982. The other documents exhibited by the detinue were affidavit sworn by the petitioner (Ext.7); *jamabandi* (Ext.8); and compared with original copy of Elector Photo Identity Card of Toyab Ali (Ext.9).

4) The detinue had assailed the said opinion dated 06.06.2019, and this Court, by order dated 20.04.2026, passed in W.P.(C) No. 8171/2019, having held that the learned Tribunal had not discussed the entire evidence on record, set aside the said opinion dated 06.06.2019, and remanded back to the said learned Tribunal for a fresh decision by directing the wife of the petitioner to appear before the said learned Tribunal on or before 30.05.2026.

5) It is projected that on 30.05.2026, at about 12:30 pm, the detinue had appeared before the learned Tribunal along with her learned counsel and produced the certified copy of the order passed dated 20.04.2026, passed by this Court. The further case of the petitioner is that her learned counsel, after submitting this Court's order dated 20.04.2026, left the Tribunal and the detinue remained in the Tribunal. At about 1:00 pm, the police personnel from Juria Police Station arrived at the precincts of the learned Tribunal and arrested the detinue and took her to the Juria Police Station.

When the petitioner came to know about it, he went to meet the learned Member (respondent no.10), but he was ousted from the Chamber of the learned Member and he was informed that his previous opinion would prevail and he would pass his opinion later.

6) It is projected that even his learned counsel was not aware of fresh opinion, if any, passed by the learned Tribunal. The detenue was then shifted from Juria Police Station to Sadar Police Station, Nagaon, where she was kept for the whole night. On 31.05.2026, the detenue was produced before the office of the Superintendent of Police (Border), Nagaon and later that day, the detenue was sent to Transit/ Detention Camp, Matia, Goalpara. It is alleged that the petitioner was not allowed to accompany the detenue to Matia, Goalpara. On 01.06.2026, the petitioner went to the Transit/ Detention Camp, Matia, Goalpara, and after repeated request, the petitioner was permitted to meet the detenue.

7) The petitioner then applied for certified copy on 02.06.2026, which was delivered to him only on 05.06.2026. Thereafter, the petitioner went to the Transit/ Detention Camp, Matia, Goalpara, to obtain the signature of the detenue in the vakalatnama Transit/ Detention Camp, Matia, Goalpara, to approach this Court, but the petitioner was informed that the detenue was taken back by the Police to Nagaon. The petitioner returned back and on 09.06.2026, he went to Juria Police Station, Sadar Police Station, Nagaon, and Office of the Superintendent of Police, Nagaon, but he got no information of the whereabouts of the detenue till the filing of the writ petition.

8) It was submitted by the learned counsel for the petitioner that only after the instant writ petition was moved and after order dated 19.06.2026, this Court was informed by the learned standing counsel for the FT and Border

matters that the detenue was handed over to the Border Security Force. Thereafter, when the matter was listed on 24.06.2026, the learned CGC had produced instructions which revealed that the detenue, namely, Musstt. Mumtaz Begum @ Mumtaz, FIP No. AS089082026 has been sent back to Bangladesh on 14.06.2026 at about 00:10 hours from Gate No.2, BP No. 1339/MP, which is within the Area of Responsibility of Kalaincherra- Adhoc M&C-1.

9) The Court, by order dated 24.06.2026, had impleaded the Director General, Border Security Force as respondent no. 11. The Deputy Inspector General of BSF, Sector HQ, BSF, Silchar, on behalf of respondent no.11 had filed an affidavit-in- opposition, wherein it was stated to the effect that pursuant to the order dated 03.06.2026, passed by the Senior Superintendent of Police (B), Nagaon- Cum- Foreigners Registration Officer, Nagaon, Assam, addressed to the Deputy Inspector General of Police, BSF 9BSF0, M&C, Sector Headquarters, Masimpur, Silchar, Assam, with regard to expulsion of declared foreign national under Section 2 of the Immigrants (Expulsion from Assam) Act, 1950, the Border Police had handed over to the BSF, the wife of the petitioner, Musstt. Mumtaz Begum, @ Mumtaz, Gender- Female, Category- DFN, FIP Application I.D.- AS089082026, F.T. Case No. 354/15, order dated 30.05.2026, Apprehension dated 31.05.2026, along with 3 (three) others on 13.06.2026. Accordingly, in the intervening night of 13/14 June, 2026, between 0030 hours to 0230 hours, the said Musstt. Mumtaz Begum @ Mumtaz was sent back to Bangladesh from the area of Kalaincherra, Cachar. It was stated that the BSF had no role in the process of determination of foreigner or in passing the order of deportation/ expulsion to other Country and that the BSF has to execute the order issued by the State authorities after receiving the person concerned from the Border Police without further delay. It was also stated that the declared

foreign national, namely, Musstt. Mumtaz Begum @ Mumtaz was lawfully sent back in the presence of Assam Police, District Sribhumi, Anti Human Trafficking Unit and Field G Team, SHQ BSF, Silchar.

10) Per contra, the learned standing counsel for the FT and Border matters as well as the Addl. Senior Govt. Advocate have opposed the prayer made in this *habeas corpus* application on the ground that the detainee is a Declared Foreign National (DFN for short) and therefore, she does not enjoy all the Constitutional rights as conferred on the citizens of the Country. It has been submitted that there are many cases where the DFNs, after being so declared by the learned Foreigners Tribunals, vanish from their last known address and become untraceable and therefore, their expulsion from India (Assam) cannot be done. Accordingly, it was submitted that the respondents have followed due process of law in expulsion of the DFN to her Country of origin.

11) It has been submitted that the Senior Superintendent of Police, Nagaon (respondent no.6), had filed his affidavit-in-opposition, wherein it was stated that the detainee, being a declared foreign national is not entitled to avail all the rights and privileges under the Constitution of India and therefore, the writ petition in the nature of *habeas corpus* was not maintainable. It was stated that on 30.05.2026, HC(B) Saiful Islam Choudhury, who is deployed in the Foreigners Tribunal No.4th, Juria, informed the Border Police, Juria Police Station that the learned Member, Foreigners Tribunal had declared someone as declared foreign national. On such information, the Border Police under Juria P.S. collected the copy of the opinion in F.T. Case No. 354/15 from the office of the said learned Tribunal. After that the Border Police searched and apprehended the detainee from near the campus of the Foreigners Tribunal at around 2:00 pm and she was brought to the Juria Police Station and at about 5:00 pm, vide Juria

P.S. G.D. Entry no. 013 dated 30.05.2026, she was sent to the Border Branch, S.S.P.(B) Office, Nagaon, where her biometric details of FIP ID No. AS089082026 was captured and uploaded in the Foreigners Identification Portal. After that the detinue was kept in safe custody at Nagaon Sadar P.S. for further action vide G.D. Entry No. 024 dated 30.05.2026. Thereafter, on 31.05.2026, vide SSP(B) Office Order under Memo No. NGN/B/2026/695-99 dated 31.05.2026, from the safe custody of Nagaon Sadar P.S., S.I.(B) Khagen Borah, accompanied by WLNK/45 Krishna Moni Bhuyan and WLNL/130 Mrinali Borah took DFN Mumtaz and proceeded to Holding Centre, Matia, Goalpara District, Assam and she was handed over to the Superintendent of Holding Centre, Matia, Goalpara. On 03.06.2026, vide S.S.P.(B), Office Order under Memo No. NGN/B/2026/717-21 dated 03.06.2026, Inspector Bhupen Ch. Borah, accompanied with WLNK (AB)/595 Lolita Goyari, WPC (AB)/371 Minisha Deka and party proceeded from Nagaon to Holding Centre, Matia, Goalpara District, and took the Declared Foreign National (DFN for short) from Holding Centre as per Expulsion Order passed by the District Commissioner, Nagaon District under Section 2 of the Immigration (Expulsion From Assam) Act, 1950 under Memo No. MMM.51/2025/50-A dated 02.06.2026, and proceeded to Sribhumi District. After that, the DFN Mumtaz was handed over to the S.S.P.(B), Office, Sribhumi and subsequently, the DFN was shifted on the same day to Holding Centre at 15th A.P.Bn., Eraligool, Sribhumi, set up by the Home and Political Department, Govt. of Assam, vide notification no. PLB.230556/737 dated 28.05.2025, and kept there with effect from 04.06.2026 to 13.06.2026. Subsequently, the DFN, Mumtaz was handed over to the Border Security Force on 13.06.2026, for taking necessary steps for her expulsion.

12) It was further stated that the Foreigners Act, 1946 and the

Foreigners (Tribunals) Order, 1946 do not provide for any provision for appeal against the declaration of a person as a foreigner by the Foreigners Tribunal. Moreover, the Immigration (Expulsion from Assam) Act, 1950 has empowered the competent authority to expel such person, within such time, as specified in the order,

13) It has further been submitted that in the affidavit filed by the respondent no. 6, it has been stated that this Court, from time to time, has passed orders entrusting the responsibility of the Superintendent of Police (Border) to ensure that the proceedee is present before the learned Tribunal so that later on there is no excuse that the DFN is not available for detention and deportation and therefore, the Superintendent of Police (Border), Nagaon, has deputed a person in each Foreigners Tribunal under its jurisdiction to monitor each and every case of Foreigners Tribunals and the movement of suspected foreign nationals whose cases are pending before the Foreigners Tribunals. Accordingly, once the Foreigners Tribunals pass opinion declaring the person to be a foreigner, with the help of the local police, they apprehend those DFNs for further necessary action. This is done due to the vanishing act of DFNs.

14) The learned counsel for the petitioner had referred to the copy of the Executive Order No. PLB.230556/1203 dated 29.10.2025, issued by the Addl. Chief Secretary to the Govt. of Assam, Home and Political Department, by which the District Commissioners have been empowered under Section 2 of the Immigrants (Expulsion from Assam) Act, 1950, to pass order for expulsion of illegal migrants from Assam. It has been submitted that the said Executive Order envisages expulsion only after the legal remedies available to the DFN is exhausted, which includes approaching the High Court and Supreme Court of India in some case.

15) The respondent no.10 is the learned Member, Foreigners Tribunal, 4th Nagaon at Juria. The said learned Tribunal had passed the impugned opinion dated 30.05.2026, pursuant to which the DFN has been expelled from the Country. The respondent no.10, in his affidavit-in-opposition, has taken a stand that the said authority is neither a proper nor a necessary party in this writ petition. In the said context, the learned counsel for respondent no.10 had submitted that the opinion passed by the said learned Tribunal can be assailed before this Court in a writ petition. Hence, the Tribunal is not required to defend its opinion. It was submitted that the learned respondent no.10 had denied that the detenue had appeared before the learned Tribunal at 12:30 pm on 30.05.2026 and that the respondent no.10 became furious on perusal of the order passed by this Court and asked the detenue to wait in the premises. It was submitted that the respondent no.10 had denied that the learned Tribunal had called the Border Police to take the petitioner into custody. It was submitted that the fresh opinion was passed by the learned Tribunal on the same day, i.e. 30.05.2026. It was submitted that the Foreigners Tribunal is functioning from the same campus of the Circle Office, Juria Revenue Circle and moreover, the Juria Police Station is situated just in front of the Tribunal and at a radius of just 50 meters. Accordingly, it was denied that the learned Tribunal had handed over the detenue to the police. It was submitted that the respondent no.10 had denied that he had met or spoke to the petitioner after the police personnel had taken the wife of the petitioner was taken into custody.

16) In support of his submissions, the learned standing counsel for the FT and Border matters has cited the following cases, viz., (i) *Aktara Khatun v. State of Assam & Ors.*, 2017 (2) GLT 974 (DB) (para-23), (ii) *Ajijur Rahman v.*

The Union of India & Ors., W.P.(C) No. 2358/2011, decided on 01.07.2011 (para 34), and (iii) Md. Rustom Ali v. The State of Assam & Ors., W.P.(C) No. 3236/2009, decided on 26.05.2011 (para 45).

17) Considered the submissions made at the Bar and also perused the writ petition affidavit-in-opposition filed by the respondent no.11 and respondent no.6.

18) At the outset, it would be appropriate to examine the cases cited by the learned standing counsel for the FT and Border matters. In the case of *Ajijur Rahman (supra)*, this Court had made a general reference to the declared foreigners vanishing after being declared to be an illegal migrant/ foreigner by the Foreigners Tribunals and therefore, the Court had directed the State administration to take steps for keeping the suspected foreigners whose cases are sent to the Foreigners Tribunals in detention camps so that with the closure of their proceedings and depending on the outcome thereof, they can be deported to Bangladesh.

19) The reliance of the learned standing counsel for the FT and Border matters on paragraph 23 of the case of *Aktara Khatun (supra)*, appears to be of no help in this case. The said paragraph 23 is quoted below for ready reference:

23. Under the scheme of Foreigners' Act, 1946, read with the Foreigners' (Tribunal) Order, 1964, a reference may be made by the concerned Superintendent of Police to the duly constituted Foreigners' Tribunal if there is suspicion that the concerned person is a foreigner. Once the reference is made, the competent Foreigners' Tribunal is required to render its opinion on the reference by answering it either in favour of the State or in favour of the proceedee. If the reference is answered in favour of the State, it would lead to the declaration that the proceedee is a foreigner. On the other hand, if the reference is answered in favour of the proceedee, it would mean that the proceedee is not a foreigner. The

Tribunal gets the jurisdiction to opine as above only when a reference is made by the Superintendent of Police. Therefore, to our mind, directing the Superintendent of Police (Border) to cause enquiry regarding the citizenship status of certain persons by the Foreigners' Tribunal may not be justified. Instead of issuing direction, the concerned Foreigners' Tribunal may bring this aspect of the matter to the notice of the referral authority, i.e., the Superintendent of Police (Border) for doing the needful either by making observation in the order itself or taking up the issue in the periodic meetings held between Members of Foreigners' Tribunal, Superintendent of Police and Deputy Commissioner.

20) Paragraph 45 of the case of *Md. Rustom Ali (supra)*, is quoted below:-

45. Having regard to the larger issue involved which is early detection and deportation of foreign nationals from Assam and deletion of their names from the electoral rolls during the pendency of the proceeding before the Tribunal and the related issue of speedy disposal of such cases and preventing the act of vanishing by such foreign nationals, the following directions are issued:

(1) Once a reference is made by the jurisdictional SP(B) to the Foreigners Tribunal, his/her name should be deleted from the electoral rolls forthwith.

(2) It will be the entire responsibility of the SP(B) of the districts to ensure presence of the foreign nationals under reference to the Tribunal so that later on after finalization of the proceeding declaring him/ her to be a foreign national, there is no excuse that he/she is not available for detention and deportation. In other words, it will be the responsibility of the SP(B) either to detain him/her in detention camp or to allow him/her to remain on bail subject to the condition that he/she would be available for detention and deportation, in the event of the reference being answered against him/her and no excuse will be entertained that he/she is untraceable and his/her whereabouts are not known.

(3) Since the stand of the Respondents is that the provisions of the Immigrants (Expulsion from Assam) Act 1950 are applicable and can be applied towards detection and deportation of foreign nationals, the jurisdictional SP(B) may invoke the provisions of the said Act towards that end, which will be in addition to detection and deportation of foreign nationals under the Foreigners Act, 1946.

(4) The jurisdictional SP(B) shall also take into account the fact that the provisions of Passport (Entry into India) Act, 1920 being applicable to the

State of Assam, the provisions therein towards arresting the foreign nationals who are illegally staying in Assam, are also applicable and can be invoked, wherever found necessary.

(5) In case of any reference being made to the Foreigners Tribunal against a particular person, it may also be found out as to whether his spouse and other relations including the parents are also suspected foreigners requiring reference of their cases to the Foreigners Tribunals.

(6) In terms of the affidavit filed on 25.11.2010 by the Central Govt., both the Union and the State Government shall evolve formula/procedure for early disposal of cases relating to foreign nationals. In this connection, they may refer to the stand of the Central Govt. in Paragraph 14 of their affidavit filed on 5.1.2011, by which 16 (sixteen) weeks time was prayed for towards evolving methodology for early disposal of cases by the Foreigners Tribunals. In this connection, they will bear in mind that the procedure to be followed is summary in nature and the burden of proof is always with the suspected foreigner. Any amount of delay in deciding the cases always leads to serious consequences with felling effects on integrity, sovereignty and security of the State.

21) Thus, none of the three cases cited by the learned standing counsel for the FT and Border matters lay down the law that the proceedee who are declared as illegal migrants/ foreigners by the Foreigners Tribunals should be taken into custody without serving copy of the opinion passed by the learned Foreigners Tribunal. It was not laid down that the proceedee should not be supplied free copy and/or certified copy of the opinion before being removed from the ordinary place of residence of the proceedee and then outside the District concerned or before being expelled from the Country.

22) In this case the petitioner has placed reliance on the Executive Order dated 29.10.2025 (Annexure-15 of the writ petition), by which Standard Operating Procedure (SOP) under the Immigrants (Expulsion from Assam) Act, 1950 was issued by the Govt. of Assam, Home and Political Department,

wherein it is provided that the same shall apply, amongst others, to those who have been declared as illegal migrant by the Foreigners Tribunal. The said SOP prescribes the removal/ expulsion procedure and therefore, it is deemed appropriate to extract the contents of the said Executive Order hereinbelow:-

“EXECUTIVE ORDER

Sub: Standard Operating Procedure (SOP) under the Immigrants (Expulsion from Assam) Act, 1950

In pursuance of the Notification No. F.17-1/50-Pak.III dated 20.03.1950 issued by the Government of India in exercise of the powers conferred by Section 3 of "The Immigrants (Expulsion from Assam) Act, 1950", and in pursuance of the Judgment dated 17.10.2024 passed by the Hon'ble Supreme Court in WP(C) No. 274 of 2009 (in re: Section 6A of the Citizenship Act 1955), all District Commissioners (DC), who have been empowered under Section 2 of the aforesaid Act, are authorized to order expulsion of illegal immigrants from Assam in the manner hereinafter provided.

1. To whom it shall apply:

- i) It shall apply to all those Bangladeshi (erstwhile East Pakistan) nationals/ nationals from other countries who entered illegally into the State of Assam, who has/ have been caught by the State Police, while trying to settle in the territory of Assam, without possession of any valid documents to establish citizenship status and in whose case, there is no requirement to go through a process of determination of their status as illegal immigrant.*
- ii) It shall also apply to those who have been declared as illegal immigrant by the Foreigners Tribunal.*

2. Removal / Expulsion Procedure: *On receiving the report from Police or Intelligence agencies or information from any other reliable source, the DC shall adopt the following procedure as detailed below:*

(a) Self-Removal:

- i) Once the District Commissioner has satisfied himself and recorded his opinion that the individual or the group of individuals are ordinarily resident of any place outside India, and entered the territory of Assam illegally, he shall pass an order under Section 2(a) of the Act of 1950, directing such individual/ individuals to remove himself/ themselves from India within a period of 24 hours, by a route to be specified in the order.*

ii) On issue of the removal order under Section 2(a) of the Act, the Senior Superintendent of Police (SSP) of the district will mandatorily capture his/ her biometrics (fingerprints and facial photographs) and demographic details on the Foreigners Identification Portal (FIP).

iii) After receiving the order under Section 2(a) of the Act, and after his biometrics have been taken, the illegal migrant/ declared foreign national (DFN) shall remove himself from Assam, India through the specified route.

iv) The SSP shall forthwith inform the Inspector General of Police (Border) to maintain the records. He shall also report compliance to the District Commissioner of his self-removal through the specified route.

(b) Removal by use of force:

i) In case such individual/ individuals fails to comply to such order passed under Section 2(a) of the Act, as above, the DC shall pass further order for removal of such individual/ individuals under Section 2(b) of the Act and under such circumstances, the DC shall be empowered as provided in Section 4 of the Act to take such steps and use or cause to be used such force, as may in his opinion be reasonably necessary for the effective exercise of such power.

ii) On issue of the removal order under Section 2(b) of the Act, the Senior Superintendent of Police (SSP) of the district make sure that his/her biometrics (fingerprints and facial photographs) and demographic details had been captured on the Foreigners Identification Portal (FIP) as per sub-para 2 (a) (ii) above.

iii) On the issuance of Expulsion Order, the Senior Superintendent of Police (SSP) concerned shall either keep such illegal immigrant in any of the notified Holding Centres set up for the purpose and / or hand him over to the Border Guarding Force (BSF in case of Bangladesh border/ Assam Rifles in case of Myanmar border) or any other appropriate authority nearest to him for expulsion / removal from Assam, India.

iv) The SSP shall forthwith inform the Inspector General of Police (Border) to maintain the records. He shall also report compliance to the District Commissioner of his transfer to the designated Holding Centre or his handing over to the Border Guarding Force or any other appropriate authority.

(c) Removal of Declared Foreign National (DFN):

i) In case of Declared Foreign Nationals (DFNs) identified by the Foreigners Tribunals, the DC will pass the removal order as per Section 2(b) of the Act of 1950 straight-away, as in such cases no detection process is necessary once

they have already exhausted remedies available by approaching the High Courts and in some cases, the Supreme Court as well. In some other cases, such DFNs might not have preferred any appeals.

ii) On issue of the removal order under Section 2(b) of the Act, the Senior Superintendent of Police (SSP) of the district will mandatorily capture his/ her biometrics (fingerprints and facial photographs) and demographic details on the Foreigners Identification Portal (FIP).

iii) Thereafter, the Senior Superintendent of Police (SSP) concerned shall either keep such illegal immigrant in any of the notified Holding Centres set up for the purpose and / or hand him over to the Border Guarding Force (BSF in case of Bangladesh border/ Assam Rifles in case of Myanmar border) or any other appropriate authority nearest to him for expulsion / removal from Assam, India.

iv) The SSP shall forthwith inform the Inspector General of Police (Border) to maintain the records. He shall also report the compliance to the District Commissioner of his transfer to the designated Holding Centre or his handing over to the Border Guarding Force or any other appropriate authority.

3. Referral to Foreigners' Tribunal in complex cases: *On receiving the report from Police or Intelligence agencies or information from any other source as in Para 2 above, if the District Commissioner finds it difficult to decide a case due to complexity of the matter, in exceptional situations, he shall refer it to the concerned jurisdictional Foreigners' Tribunal.*

4. Consequential Actions: *As a consequence, to the expulsion of an illegal immigrant/ DFN under para 2 above, certain actions shall be taken by the relevant authorities. The DC shall mark a copy of the Expulsion Order to the relevant authorities with certain directions, as follows:*

a) The Electoral Registration Officer to delete the name of such illegal immigrant from the Electoral Roll;

b) The Deputy Director/ Superintendent of Supply of the district, as the case may be, to cancel the Ration Card of the illegal immigrant;

c) The UIDAI authorities to cancel / freeze the Aadhaar Card of the illegal immigrant.

d) Any other relevant authority to remove the name of the illegal immigrant from all the State or Central Government Social security schemes/ grants to which illegal immigrant may have been subscribed.

e) If the person / persons against whom an order under Section 2 has been

passed, has/ have purchased or acquired any movable or immovable property in India or in Assam, before passing such order, the DC shall also pass an order confiscating such movable/ immovable property by depositing the same in the name of the Government.

5. Exceptions:

a) This SOP shall not apply to illegal immigrants who are Intercepted by the State Police or Border Guarding Force at the border, while crossing into India unauthorizedly, who are to be expelled instantly by the police through the designated Border Guarding Force, after recording their biometrics (fingerprints and facial photographs) and demographic details, on the FIP.

b) Such illegal immigrants shall be pushed back forthwith within 12 (Twelve) hours of being intercepted."

23) The said Executive Order dated 29.10.2025, referred above, envisages three steps. The first process is self-removal; the second step is removal by use of force; and third step is removal of DFN. In this regard, it may be stated that the respondent no.6 has annexed to his affidavit-in-reply, a copy of the Order under Section 2 of the Immigrants (Expulsion from Assam) Act, 1950, bearing no. NMM.51/2025/50 dated 02.06.2026, issued by the District Commissioner, Nagaon, by which along with three others, the detainee was directed to remove herself from the territory of India (Assam) within 24 (twenty four) hours. In the considered opinion of the Court, it is obvious that the said order is farcical and was never intended to be complied with. It cannot be believed that the Police authorities had withheld information from the District Commissioner, Nagaon (respondent no.5) that the detainee was arrested and/or taken into custody on 30.05.2026 and on the same day, the detainee was shifted to Holding Area, Matia, Goalpara, by virtue of order no. NGN/B/2026/678 dated 30.05.2026, passed by the Senior Superintendent of Police (Border), Nagaon. Therefore, it is a totally absurd proposition that while the detainee is in custody in the Holding Area, Matia, Goalpara, she could have removed herself from India

(Assam) within 24 hours, as directed. The said order discloses that a copy of the said order was to be served on the detainee, but the respondent nos. 5 and 6 have failed to annex any document with their respective affidavit-in-opposition to show that a copy of the said order dated 02.06.2026, was actually served on the detainee.

24) It must also be mentioned in this case, the Senior Superintendent of Police, Nagaon (respondent nos. 5), the learned Member, Foreigners Tribunal, 4th, Nagaon, Juria (respondent no.10) and the Deputy Inspector General, Sector HQ BSF, Silchar (on behalf of respondent no.11) had filed their respective affidavit-in-opposition. However, none of them have made any statement that while arresting the detainee, she was served with a copy of the opinion dated 30.05.2026, passed by the respondent no.10. The Senior Superintendent of Police (B), Nagaon has not disclosed any record maintained in the Juria Police Station, Office of the Senior Superintendent of Police (Border), Nagaon, or from the Office of the Superintendent, Holding Area, Matia, Goalpara, that when the detainee was arrested and brought, she had in her possession the copy of the opinion dated 30.05.2026, by which she was declared to be a foreigner. The photocopy of the certified copy of the said opinion dated 30.05.2026, clearly discloses that the application for certified copy was made on 02.06.2026, but the same was made ready on 04.06.2026 and delivered on 05.06.2026. Therefore, even the Foreigners Tribunal, 4th, Nagaon, Juria, did not show any urgency to supply certified copy of the said opinion dated 30.05.2026, to the person applying for certified copy.

25) The learned standing counsel for the FT and Border matters had submitted that the family members of the detainee had not shown any urgency

to apply for certified copy of the opinion, which they could have applied on 30.05.2026. The said submission is not acceptable because, the respondents have not produced any material on record to show that the detainee and/or her family members were served either with a copy of the opinion dated 30.05.2026 or any information/ notice informing that the detainee was arrested and taken to Juria Police Station, or to the Office of the Senior Superintendent of Police (Border), Nagaon, or that the detainee was shifted to Holding Area, Matia, Goalpara. Therefore, obviously, the first priority of the family members would be to search for the detainee and by the time, they could gather information that the detainee was arrested and taken to Juria Police Station, she was being shifted to Holding Area, Matia, Goalpara. The case of the petitioner is that he was not allowed to travel with his wife and he went to the Holding Area on 31.05.2026, and then applied for the certified copy on 02.06.2026.

26) It would be relevant to mention that by order dated 17.07.2026, this Court had called for production of all the entries of the General Diary Book of the concerned Police Station whose police personnel had taken the detainee into custody. The Court had also called for production of the scanned copy of all the entries of the General diary Book of 30.05.2026. However, the learned standing counsel for the FT and Border matters had produced only a copy of selective GDE no. 013 dated 30.05.2026, entered at 17:42 hours, wherein it is recorded as follows:-

“Now, one Mumtaz Begum Age- 47 years W/o Mujamil Haque of Vill- Dhing Gaon, P.S. Juria kept at PS after Declaration of DFN by member FT Court Rupahihat. Accordingly, SI Khogen Borah, HC Ajit Borah, LNK Khalilur Rahman, WLNK/549 Seemi Moni Saikia take her to SSP Border Office Nagaon.”

27) As per the affidavit-in-opposition by the respondent no.6, the detainee was arrested at 2:00 pm and brought to Juria Police Station at about

05:00 pm. There is no material to show that when the detainee was brought into Juria Police Station, the detainee was provided with a copy of the said opinion and/or the police personnel had been provided with a copy of the opinion dated 30.05.2026. There is also no material to show that on 30.05.2026, when the Senior Superintendent of Police (Border), Nagaon, had passed the order to police personnel to proceed to Holding Area, Matia, Goalpara, to hand over the detainee, he had perused the copy of the opinion. The order no. NMM.51/2025/50 dated 02.06.2026, passed by the District Commissioner, Nagaon, by which expulsion order was passed under Section 2 of the Immigration (Expulsion from Assam) Act, 1950, also does not disclose about the opinion dated 30.05.2026.

28) By order dated 19.06.2026, this Court had put the respondents to notice to show cause as follows:-

“13. We also put all the respondents to notice to show cause as to why appropriate orders should not be passed by this Court to the effect that whenever a declared foreigner is taken into custody from the premises or vicinity of a Foreigners’ Tribunal, such proceedee should be handed over a free copy of the opinion of the Tribunal before being taken into custody, if such arrest or detention is effected on the date when the opinion is passed.

14. In the event a declared foreigner is taken into custody on the date on which the opinion is passed, the respondents shall also show cause as to why a free copy of such opinion should not be provided to the detained person and/or his/her family members before the detained foreigner is removed from the jurisdiction of the concerned police station, so as to ensure that the procedure is in consonance with Article 22 of the Constitution of India.”

29) Though it was specifically directed that the learned standing counsel for the FT and Border matters shall send a downloaded copy of the said order dated 19.06.2026 to the respondent nos. 2, 3, 4, 6, 7 and 8, to the learned CGC to send a downloaded copy of the said order to respondent nos. 1

and 5 and to the learned Addl. Senior Govt. Advocate to respondent no.7, none of the respondents have filed their show cause reply.

30) In this case, by not providing a copy of the opinion to the detinue, or to any adult member of her family, a valuable time of the petitioner was spent to trace out the detinue, and by the time the petitioner could obtain certified copy of the opinion and return back to the Holding Area, Matia, Goalpara, the detinue had been shifted to Sribhumi, which is more than 400 km away, and would perhaps take 12 hours travel time. By the time order dated 19.06.2026, was passed by this Court, the detinue was already expelled from the Country.

31) The petitioner had appeared before the respondent no.10 Foreigner's Tribunal on 30.05.2026, as per direction contained in the order dated 20.04.2026, passed by this Court in W.P.(C) 8171/2019. However, the detinue was not given any opportunity by the State to assail the said opinion dated 30.05.2026 before this Court. Thus, a clear case of non-compliance of Clause 2(c)(i) of the SOP vide Executive Order No. PLB.230556/1203 dated 29.10.2025 (Annexure-15 of writ petition) has been made out by the petitioner.

32) Law relating to arrest and detention has seen a lot of development since the three cases cited by the learned counsel for the FT and Border matters were pronounced. In that regard, it may be stated that in the case of *Roy V.D. v. State of Kerala, (2000) 8 SCC 590*, the Supreme Court of India had held that Article 21 of the Constitution guarantees protection of life and personal liberty not only to the citizens of India but also to aliens. The said decision has been relied upon by the Supreme Court of India in the case of *Prabir Purkayastha v. State (NCT of Delhi), (2024) 8 SCC 254*. Moreover, the aforesaid principle has been reiterated by the Supreme Court of India in the

case of *Mihir Rajesh Shah v. State of Maharashtra*, (2026) 1 SCC 500. The relevant paragraphs thereof are quoted below:

“28. It was said that any breach of the constitutional safeguards provided under Article 22 would vitiate the lawfulness of arrest and subsequent remand and entitle the arrested person to be set at liberty. The relevant portion in Prabir Purkayastha (supra) is reproduced herein:

“19. Resultantly, there is no doubt in the mind of the court that any person arrested for allegation of commission of offences under the provisions of UAPA or for that matter any other offences has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest have to be furnished to the arrested person as a matter of course and without exception at the earliest. The purpose of informing to the arrested person the grounds of arrest is salutary and sacrosanct inasmuch as this information would be the only effective means for the arrested person to consult his advocate; oppose the police custody remand and to seek bail. Any other interpretation would tantamount to diluting the sanctity of the fundamental right guaranteed under Article 22(1) of the Constitution of India.

20. The right to life and personal liberty is the most sacrosanct fundamental right guaranteed under Articles 20, 21 and 22 of the Constitution of India. Any attempt to encroach upon this fundamental right has been frowned upon by this Court in a catena of decisions. In this regard, we may refer to the following observations made by this Court in Roy V.D. vs. State of Kerala, (2000) 8 SCC 590 : 2001 SCC (Cri) 42 : (SCC p. 593, Para 7)

“7. The life and liberty of an individual is so sacrosanct that it cannot be allowed to be interfered with except under the authority of law. It is a principle which has been recognised and applied in all civilised countries. In our Constitution Article 21 guarantees protection of life and personal liberty not only to citizens of India but also to aliens.”

Thus, any attempt to violate such fundamental right, guaranteed by Articles 20, 21 and 22 of the Constitution of India, would have to be dealt with strictly.

21. The right to be informed about the grounds of arrest flows from Article

22(1) of the Constitution of India and any infringement of this fundamental right would vitiate the process of arrest and remand. Mere fact that a charge-sheet has been filed in the matter, would not validate the illegality and the unconstitutionality committed at the time of arresting the accused and the grant of initial police custody remand to the accused.

* * *

28. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the "grounds" of "arrest" or "detention", as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.

29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be."

* * *

31. The relevant portion of Vihaan Kumar (supra) is reproduced herein:

"15. The view taken in Pankaj Bansal vs. Union of India, (2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450 was reiterated by this Court in Prabir Purkayastha vs. State (NCT of Delhi), (2024) 8 SCC 254 : (2024) 3 SCC (Cri) 573. In paras 28 and 29, this Court held thus: (Prabir Purkayastha Case, SCC p. 278)

"28. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions

require that the 'grounds' of 'arrest' or 'detention', as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.

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* * *

21. An attempt was made by the learned Senior Counsel appearing for the first respondent to argue that after his arrest, the appellant was repeatedly remanded to custody, and now a charge-sheet has been filed. His submission is that now, the custody of the appellant is pursuant to the order taking cognizance passed on the charge-sheet. Accepting such arguments, with great respect to the learned Senior Counsel, will amount to completely nullifying Articles 21 and 22(1) of the Constitution. Once it is held that arrest is unconstitutional due to violation of Article 22(1), the arrest itself is vitiated. Therefore, continued custody of such a person based on orders of remand is also vitiated. Filing a charge-sheet and order of cognizance will not validate an arrest which is per se unconstitutional, being violative of Articles 21 and 22(1) of the Constitution of India. We cannot tinker with the most important safeguards provided under Article 22.

* * *

42. The purpose of inserting Section 50-A Cr.P.C. making it obligatory on the person making arrest to inform about the arrest to the friends, relatives or persons nominated by the arrested person, is to ensure that they would be able to take immediate and prompt actions to secure the release of the

arrested person as permissible under the law. The arrested person, because of his detention, may not have immediate and easy access to the legal process for securing his release, which would otherwise be available to the friends, relatives and such nominated persons by way of engaging lawyers, briefing them to secure release of the detained person on bail at the earliest. Therefore, the purpose of communicating the grounds of arrest to the detainee, and in addition to his relatives as mentioned above is not merely a formality but to enable the detained person to know the reasons for his arrest but also to provide the necessary opportunity to him through his relatives, friends or nominated persons to secure his release at the earliest possible opportunity for actualising the fundamental right to liberty and life as guaranteed under Article 21 of the Constitution. Hence, the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives or such other person as may be disclosed or nominated by the arrested person, so as to make the mandate of Article 22(1) of the Constitution meaningful and effective failing which, such arrest may be rendered illegal.”

32. Before we delve into analysing the provisions of law and jurisprudential developments by this Court, we find it quintessential to discuss the impact of arrest on an individual. The arrest of an individual invariably impacts not only the person arrested himself, but also the persons associated with him, i.e. family, friends, relatives, etc., affecting their psychological balance and overall social well-being. This Court has on several occasions underscored that there is a stigma attached to arrest which impairs the reputation and the standing of an individual in society. The stigma attached to arrest undermines a person’s social dignity and results into consequences that reverberate beyond the individual but also extend to their social circle.

* * *

37. The mandate contained in Article 22(1) of the Constitution of India is unambiguous and clear in nature, it provides that the arrested person must be informed of the grounds of arrest as soon as they can be. It further provides that the arrested person has the right to defend himself by consulting a legal practitioner of his choice. This constitutional mandate has been effectuated by the legislature in Section 50 of Cr.P.C. 1973 (now Section 47 of BNSS 2023) which provides that an arrested person shall be forthwith communicated with the grounds of his arrest.

38. *The objective enshrined in Article 22(1) of the Constitution of India for furnishing grounds of arrest stems from the fundamental principle of providing opportunity to a person to allow him to defend himself from the accusations that are levelled against him leading to his arrest. The salutary purpose of informing the grounds of arrest is to enable the person to understand the basis of his arrest and engage legal counsel to challenge his arrest, remand or seek bail and/or avail of any other remedy as may be available to him/her under law.*

39. *It is pertinent to note that the arrested person must be given early access to legal assistance to enable him to defend himself and oppose the remand. The early access to legal counsel becomes a quintessential object to ensure that the personal liberty of the arrested person is protected. This Court in Suhas Chakma vs. Union of India and Others, 2024 SCC Online SC 3031 while emphasizing on the need of pre-litigation assistance has directed that the "Guidelines on Early Access to Justice at Pre-arrest, Arrest and Remand Stage Framework" as framed by the National Legal Services Authority, are to be diligently pursued. The guidelines provide for legal assistance to the arrested person at the stage before remand. The remand advocate shall interact with the arrestee with the objective to inform him about the allegations against him and the grounds being put by the prosecution for seeking remand. The guidelines also provide for making available the translated copy of documents to the arrested person in the language he/she understands. The purpose of securing legal assistance before remand is not merely symbolic, but it is to ensure that the accused is afforded an effective opportunity to oppose the prayer for police custody and to place before the magistrate any circumstances that may warrant refusal or limitation of such custody. If the accused is not represented through a Counsel, he/she should be made aware that he/she is entitled for legal aid. As far as possible, it shall be ensured that every accused person is represented by an advocate, if he is not able to avail such assistance, he should be given free legal aid. A three-judge Bench of this Court in Ashok vs. State of Uttar Pradesh, (2025) 2 SCC 381 : 2024 SCC Online SC 3580 held that an accused who is not represented by an advocate is entitled for free legal aid at all material stages starting from remand.*

* * *

45. *A plain reading of Article 22(1) of the Constitution of India shows that the intent of the constitution makers while incorporating the provisions was not to create any exceptional circumstances, instead it reads as "No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest....." it casts a mandatory unexceptional duty on the*

State to provide the arrested person with the grounds of such arrest with the objective to enable that person to be able to defend himself by consulting a legal practitioner of his choice. This mandate of Article 22(1) is notwithstanding any exception. This Court has made it explicit that the constitutional obligation under Article 22 is not statute-specific and it is grounded in fundamental right of life and personal liberty under Article 21 of the Constitution of India, therefore making it applicable to all offences including those under the IPC 1860 (now BNS 2023).

46. The requirement of informing the arrested person the grounds of arrest, in the light of and under Article 22(1) of the Constitution of India, is not a mere formality but a mandatory binding constitutional safeguard which has been included in part III of the Constitution under the head of Fundamental Rights. Thus, if a person is not informed of the grounds of his arrest as soon as maybe, it would amount to the violation of his fundamental rights thereby curtailing his right to life and personal liberty under Article 21 of the Constitution of India, rendering the arrest illegal.

* * *

52. From the catena of decisions discussed above, the legal position which emerges is that the constitutional mandate provided in Article 22(1) of the Constitution of India is not a mere procedural formality but a constitutional safeguard in the form of fundamental rights. The intent and purpose of the constitutional mandate is to prepare the arrested person to defend himself. If the provisions of Article 22(1) are read in a restrictive manner, its intended purpose of securing personal liberty would not be achieved rather curtailed and put to disuse.

53. The mode of communicating the grounds of arrest must be such that it effectively serves the intended purpose as envisioned under the Constitution of India which is to enable the arrested person to get legal counsel, oppose the remand and effectively defend himself by exercising his rights and safeguards as provided in law. The grounds of arrest must be provided to the arrestee in such a manner that sufficient knowledge of facts constituting grounds is imparted and communicated to the arrested person effectively in a language which he/she understands. The mode of communication ought to be such that it must achieve the intended purpose of the constitutional safeguard. The objective of the constitutional mandate would not be fulfilled by mere reading out the grounds to the arrested person, such an approach would be antithesis to the purpose of Article 22(1).

54. *There is no harm in providing the grounds of arrest in writing in the language the arrestee understands, this approach would not only fulfil the true intent of the constitutional mandate but will also be beneficial for the investigating agency to prove that the grounds of arrest were informed to the arrestee when a challenge is made to the arrest on the plea of non-furnishing of the grounds of arrest.*

55. *This Court is of the opinion that to achieve the intended objective of the constitutional mandate of Article 22(1) of the Constitution of India, the grounds of arrest must be informed to the arrested person in each and every case without exception and the mode of the communication of such grounds must be in writing in the language he understands.*

* * *

62. *We thus hold, that, in cases where the police are already in possession of documentary material furnishing a cogent basis for the arrest, the written grounds of arrest must be furnished to the arrestee on his arrest. However, in exceptional circumstances such as offences against body or property committed in flagrante delicto, where informing the grounds of arrest in writing on arrest is rendered impractical, it shall be sufficient for the police officer or other person making the arrest to orally convey the same to the person at the time of arrest. Later, a written copy of grounds of arrest must be supplied to the arrested person within a reasonable time and in no event later than two hours prior to production of the arrestee before the magistrate for remand proceedings. The remand papers shall contain the grounds of arrest and in case there is delay in supply thereof, a note indicating a cause for it be included for the information of the magistrate."*

33) Therefore, paragraph-7 of the decision of the Supreme Court of India in the case of *Roy V.D. (supra)*, it has been specifically held that Article 21 guarantees protection of life and personal liberty not only to citizen of Indi but also to aliens. Therefore, the detenue and/or her adult family members ought to have been provided either a copy of the opinion dated 30.05.2026 or an information in writing of the arrest and detention and removal from the jurisdiction from the District Commissioner, Nagaon and Senior Superintendent of Police (B), Nagaon.

34) In this case, the respondents have not brought anything on

record to show that the detenue had vanished during the pendency of the proceeding or that after the opinion dated 06.06.2019 was passed by the learned Tribunal in F.T. Case No. 354/2015, she had vanished. Rather, the detenue had challenged the said opinion, which was set aside by this Court on the ground that the evidence was not discussed by the learned Tribunal. In this case, the detenue was directed by this Court to appear before the learned Tribunal on 30.05.2026, which was duly complied with by the detenue and she appeared before the learned Tribunal on 30.05.2026.

35) The Court is of the considered opinion that the three cases of *Aktara Khatun (supra)*, *Ajjur Rahman (supra)* and *Md. Rustom Ali (supra)*, does not permit the State to take the detenue into custody without informing the detenue of her right to challenge the opinion before this Court by filing a writ petition. The respondents have not produced any record that the detenue or any adult family members were informed about the reason for taking the detenue into custody or the decision by the District Commissioner, Nagaon, to expel the detenue from the Country. In any view of the matter, the said three cases do not allow the Foreigners Tribunal to delay issuance of certified copy of the opinion so that in the meantime she can be shifted from Juria to Nagaon and then to Holding Area at Matia, Goalpara and then to Sribhumi to be expelled from the Country. Thus, the State machinery, acting in tandem, had prevented the detenue to exhaust her right to move this Court by way of a writ petition to challenge the impugned opinion dated 30.05.2026.

36) Thus, only when this writ petition was filed, the petitioner, who is the husband of the detenue, could come to know that the detenue was expelled from the Country.

37) The learned counsel for the respondent no.10 had prayed that

the name of respondent no.10 be struck-off. Under the facts and circumstances of the case, the Court is satisfied from the nature of action taken by the learned Tribunal that the element of malice in law on part of the learned Tribunal is apparent on the face of record. Had the learned Tribunal informed the detenue even verbally that she was declared to be a foreigner, there would have been no reason for her to be in the campus of the learned Tribunal and/or in its vicinity between 01:30- 2:00 pm, so as to be available for the police personnel to take her into custody. There was also no reason for the Office of the said learned Tribunal not to withhold issuance of certified copy immediately on its application being made. Therefore, the submission made by the learned counsel for the petitioner that the respondent no.10 had taken a personal grudge on the matter being remanded back to the said learned Tribunal for a fresh opinion, has force. The Court is inclined to hold that the office of the learned Member, Foreigners Tribunal 4th, Nagaon, at Juria, deliberately and wilfully delayed the issuance of certified copy of the impugned opinion dated 30.05.2026, so as to ensure that by that time, the detenue would be removed from Nagaon District. Thus, a case of malice in law has been made out against the respondent no.10. Therefore, the Court is disinclined to strike out the name of respondent no.10 from the array of respondents in this writ petition.

38) Under the facts and circumstances of the case, the petitioner has been able to make out a case that the detenue was deprived of her right to assail the opinion dated 30.05.2026, passed by the learned Member, Foreigners Tribunal, 4th, Nagaon, Juria, in F.T. Case No. 354/15, arising out of Police Reference "D" Case No. 2854/98, which is *ex facie* available to the detenue under Clause 2(c)(i) of the hereinbefore referred Executive Order dated 29.10.2025.

39) Under the unique facts and circumstances of this case, the Court is inclined to direct that the hereinbelow authority be impleaded as respondent no. 12:-

12. Ministry of External Affairs,
Government of India,
Represented by its Secretary,
South Block,
New Delhi-110011.

40) The impleading of respondent no.12 is deemed necessary and appropriate so that necessary orders/directions can be issued on the next date to the said authority to make an endeavour to have the detinue located in Bangladesh and to expatriate her to India so as to give to her an opportunity to exhaust her remedy as per Clause 2(c)(i) of the Executive Order dated 29.10.2025, referred hereinbefore, to approach this Court to assail the impugned opinion by filing a writ petition, if so advised.

41) In light of the discussions above, as the detinue has been expelled out of India without providing any information to the petitioner or any adult family member of the detention of the detinue, as an interim palliative measure, the Court is inclined to direct the Government of Assam to pay an interim compensation of Rs.2,00,000/- (Rupees Two lakh only) to the petitioner. This palliative payment of compensation shall be in addition to and not in derogation of the right of the petitioner to seek compensation before the Civil Court.

42) The petitioner shall serve a certified copy of this order at the office of the respondent no.3 and in the forwarding letter, also provide to the said authority the relevant details of his own bank account so as to enable the

State authorities to make electronic payment directly to his bank account. The said authority, on receipt of the certified copy of this order, shall process the matter regarding payment of the interim monetary compensation to the petitioner as directed by this order, which shall be paid within the outer time limit of 60 (sixty) days from the date of receipt of the certified copy of this order.

43) As none of the respondents have shown any cause why protection of right under Article 22 of the Constitution of India should not be extended to those proceedee who are being arrested and detained on the same day when the opinion is passed by the Foreigners Tribunals, till further order or orders, and as an interim measure, it is directed as follows:-

- a. The jurisdictional Senior Superintendent of Police (Border) and/or the Superintendent of Police (Border) of every district of the State of Assam, as the case may be, should ensure that before taking DFN into custody, he/she shall be informed about the opinion passed against him/her by the Foreigners Tribunals and also provide them with a free copy of such opinion.
- b. Moreover, before such DFN are shifted to outside the jurisdiction of the jurisdictional Senior Superintendent of Police (Border) and/or the Superintendent of Police (Border) of every district of the State of Assam, as the case may be, the adult family member of the DFN should be informed that the detainee is being removed from their jurisdiction.
- c. The compliance of the aforesaid two interim directions should be reported to the District Magistrate of the concerned District by the

jurisdictional Senior Superintendent of Police (Border) and/or the Superintendent of Police (Border) of every district of the State of Assam, as the case may be.

44) The Home and Political Department, Govt. of Assam, is directed to cause an enquiry as to the date and time when the opinion dated 30.05.2026 was made ready in the Foreigners Tribunal, 4th, Nagaon, Jura. In this regard, if required, the said authority shall seize and send the Tribunal's computer which was used to prepare the said opinion to forensic experts to find out the time when the said opinion was finally made ready and a report to that effect shall be produced before the Court, if possible, on the next date of listing.

45) The learned standing counsel for the FT and Border matters shall transmit a downloaded copy of this order to the respondent nos. 1, 3, 4, 6 and 9. The learned CGC shall transmit a downloaded copy of this order to the respondent no.12.

46) The Home and Political Department shall send a downloaded copy of this order to all the Foreigners Tribunals in the State for their information only.

47) The interim compensation shall be subject to further or other order or orders that be passed after further hearing of the matter.

48) List the matter on 24.09.2026.

JUDGE

JUDGE

Comparing Assistant