

GAHC010018012015



2026:GAU-AS:13808-DB

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

Case No. : WP(C)/4329/2015

SARIFUDDIN
SO LT. AZIZUR RAHMAN, RO BOROITARI PART I, PO KALAIN, DIST
CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 17 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM, HOME
and POLITICAL DEPTT., DISPUR, GHY 6, DIST KAMRUP

2:DIRECTOR GENERAL OF POLICE
ASSAM POLICE HEAD QUARTERS
ULUBARI
GHY 7
DIST KAMRUP
ASSAM

3:DY. COMMISSIONER
CACHAR
ASSAM

4:SUPERINTENDENT OF POLICE
CACHAR
ASSAM

5:OFFICER IN CHARGE
KATIGORAH POLICE
DIST CACHAR

6:Y. T. GYASTU
DIGP (MPC)
O/O -DIRECTOR GENERAL OF POLICE

ASSAM POLICE HEADQUARTERS
ULUBARI
GUWAHATI-781007
DIST.- KAMRUP (M)
ASSAM.

7:AS PER HON'BLE COURT'S ORDER DTD. 13.0.2024 IN IA(C) 2736/2023
THE RESPONDENT NO. 7 TO 16 ARE DELETED

Advocate for the Petitioner : MR. P J SAIKIA, MR. S SARMA,MR. J H LASKAR,MD. S
ALOM,MR. I H LASKAR,MR. P K DEKA

Advocate for the Respondent : MR. N J GOGOI R, R SAHIINII (R6),MR. D NATH (R6),GA,
ASSAM,MR. F U BORBHUIYA(R-9),MR. H R A CHOUDHURY(R-9),MR. J ISLAM(R-
7,11to14&16),MR. J M SULAIMAN(R-9),MR. K MUNIR(R-8),MR. M BORGOHAIN(R-10),MR. M
RAHMAN(R-10),MR. P K MUNIR(R-8),MR. R HUSSAIN(R-7,11to14&16),MR. S
BORGOHAIN(R-10),MR. T MOHAMMAD(R-7,11to14&16),MS. B DEVI(R-10),MR. A H M R
CHOUDHURY,MR. S P CHOUDHURY

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

For the petitioner	: Mr. P.K. Deka.
For respondents	: Mr. D. Nath, Senior Govt. Advocate.
	: Mr. N. Kalita, Govt. Advocate.

Date on which judgment is reserved : **19.05.2026**

Date of pronouncement of judgment : **17.09.2026**

**Whether the pronouncement is of
the operative part of the judgment?** : **No**

**Whether the full judgment has been
Pronounced?** : **Yes**

JUDGMENT AND ORDER

(CAV)

(K.R. Surana, J)

Heard Mr. P.K. Deka, learned counsel for the petitioner. Also heard Mr. D. Nath, learned Senior Govt. Advocate, assisted by Mr. N. Kalita, learned Govt. Advocate for the respondents.

2) The case of the petitioner in this writ petition is that Azizur Rahman, his father, was picked up by the police personnel, during the intervening night between 06.07.2012 and 07.07.2012 and he was brought to Kalain Patrol Post, where he questioned in connection with Katigorah P.S. Case No. 279/2012, under Sections 147/148/149/353/336/323 of the IPC. It is alleged that due to brutal custodial torture by police personnel of Kalain Patrol Post under Katigorah Police Station, led by Sri Y.T. Gyatso (respondent no.6), which led to the death of the father of the petitioner. Accordingly, this writ petition has been filed under Article 226 of the Constitution of India, seeking direction for (a) an enquiry to be conducted by the Central Bureau of Investigation or the National Investigation Agency and dispose of the representation dated 12.12.2012; (b) to conduct departmental enquiry against the police personnel who were involved in the incident for which the father of the petitioner had died; (c) to submit death certificate and post mortem report of the deceased father of the petitioner to the petitioner; and (d) to give adequate compensation due to death of the father of the petitioner in police custody.

Case of the petitioner:

3) In brief, the case of the petitioner is as follows:-

- a. The petitioner's father, namely, Azizur Rahman, a senior citizen aged about 60 years was a locally respectable small scale businessman,

having no enmity with anyone. He was not a member of any organization and also did not support any organization. He was a family man living with petitioner, his wife, sons and his mother in his own residential residence at Boroitoli Part-I, P.O. Kalain, Dist. Cachar.

- b. On 04.07.2012, an organization had given a *bundh* call in protest of second marriage of a Member of Assam Legislative Assembly of Barak Valley. On the day of *bundh*, a group of political party supported the people opposing the *bundh*. It was alleged that respondent nos. 7 and 9, were the two persons from the locality behind the scene. Accordingly, group fighting erupted and the police started *lathi* charge. When the situation worsened, the police arrested a number of persons and started search operation to arrest the leaders in connection with the incident.
- c. It has been stated by the petitioner that because of political rivalry, respondent no. 7, namely, Azizur Rahman Khan, had opposed the *bundh*, but the police, in order to save the respondent no.7, surrounded the house of the petitioner and at about 12:30 am on 07.07.2012, the police team headed by respondent no.6, knocked the door of the house of the father of the petitioner and when his father opened the door, the police started to mercilessly assault his father and though the elderly father of the petitioner had pleaded before respondent no.6 that he was innocent, the respondent no. 6 had kicked his father on his ears and back of the head and then dragged the father of the petitioner to police station at night. It has been stated that the petitioner's father was again tortured mercilessly in the police station, where he died on the same night. The petitioner had stated

that on coming to know about the barbaric action of the police, on 08.07.2012, the mother of the petitioner had lodged an FIR before the Officer-in-Charge of Katigorah P.S., requesting to take action against the persons involved in the death of her husband. The said FIR was registered as Katigorah P.S. Case No. 291 dated 08.07.2012, under Sections 448/325/506/354/302 of the IPC.

- d. The petitioner has stated that even after filing of the FIR, no enquiry or investigation was carried out and except certificate in Form-A, the petitioner was not provided with copy of the post mortem report. Thereafter, Magisterial Enquiry was conducted by the Addl. District Magistrate, Cachar, Silchar. After the conclusion of enquiry, a report under Memo No. 118/Enquiry/2012/4 dated 20.07.2012, was submitted before the District Magistrate, Cachar, which according to the petitioner, did not contain any definite conclusion and was made subject to final report to be submitted by the Forensic Science Laboratory, Guwahati. The petitioner has stated that no member of the family of the deceased was heard during Magisterial Enquiry and that the respondent no. 6 was also not questioned. It has been stated that though it is recorded in the Magisterial Enquiry Report that the father of the petitioner was forcefully taken away by the police as a part of political conspiracy and he died in police custody, but no enquiry was made as to who were behind the incident and why the father of the petitioner was brought to the police station. It is also stated that even the petitioner's family was not aware of the Magisterial Enquiry.
- e. It has been stated that due to undue influence by respondent nos. 6 to 9, neither proper enquiry was conducted nor any departmental

action was initiated against the police officials involved in the incident.

- f. Accordingly, the petitioner had submitted representation dated 12.12.2012 before the Commissioner and Secretary, Home and Political Department, Govt. of Assam, alleging the involvement of respondent nos. 7 to 16 and requested to conduct an enquiry either by the Central Bureau of Investigation (CBI for short) or the National Investigation Agency (NIA for short) and to give justice.
- g. It has been stated that the petitioner has not received any compensation till date from the Govt. of Assam due to death of Azizur Rahman in police custody nor they were provided with his death certificate.
- h. Accordingly, it has been prayed that this Court would issue a direction to conduct an enquiry of the death of the father of the petitioner by CBI or NIA and dispose of the representation dated 12.12.2012; to direct departmental enquiry against the police personnel who were involved in the incident for which the father of the petitioner had died; to submit death certificate and post mortem report of petitioner's deceased father to the petitioner; and to give adequate compensation to the petitioner due to death of his father in police custody.

4) It would be relevant to briefly refer to the stand taken by the parties in their respective affidavits:-

a. Affidavit-in-opposition by respondent no. 9 on 16.11.2015:

Briefly, it may be stated that in his affidavit-in-opposition Ataur Rahman Mazarbhuiya, who was the then M.L.A. of Katigorah LAC, who was arrayed as respondent no.9, had denied that he was connected or

involved either in calling for or opposing the bundh. Being a representative of the people, he was informed by the local people over telephone regarding group-fight between the supporters and opposers bundh and on getting information, he had informed the Civil and Police administration to contain the situation and appealed to the people to maintain peace and tranquility in the locality. He came to know about the death of the father of the petitioner in police custody and went to the house of the petitioner to express his sympathy and condolence to the family members and assured them to take up the matter with the higher authorities to enquire into the matter and to take action against those found involved in alleged custodial death of the victim. The respondent no. 9 denied his involvement in conspiracy.

b. Affidavit-in-opposition filed by respondent no. 4 on 20.11.2015:

Briefly, it may be stated that Sri Rofreez, the then Superintendent of Police, Cachar, in his affidavit-in-opposition, had stated that on 04.07.2012, a group clash erupted between two communities at Kalain Bazar under Katigorah P.S., Dist. Cachar, over 12 (twelve) hours bundh call given by the *Hindu Jagaran Manch* throughout the district on the reported bigamy by Dr. Rumi Nath, MLA of Borkhola LAC and her reported conversion to Islam. It was stated that due to group clash, several persons from both sides including police personnel on duty sustained injuries and a number of cases were registered at Katigorah P.S. in connection with the said incident and curfew had to be clamped in the area to bring the situation under control. In connection with the investigation of the investigation of the said case, two accused were apprehended by the police and during the course of interrogation, the

name of Azizur Rahman was disclosed as an active member of the mob that had went berserk at the time of the incident. It was stated that independent witnesses also pointed towards Azizur Rahman as a part of the mob. In the interest of investigation, the police team turned up to the house of Azizur Rahman and he was found there, but his son was not available. At around 01:30 hours, Azizur Rahman was brought to Kalyan Patrol Post, which is about 500 meters away from his house and he was made to sit on a chair, but immediately after sitting on the chair, Azizur Rahman complained of uneasiness and suddenly dropped down and became unconscious. He was immediately shifted to Kalain F.R.U. with proper requisition and escort in a government vehicle. The Medical Officer, Kalain F.R.U., after examining the patient, referred him to Silchar Medical College and Hospital, Silchar. Accordingly, the patient was shifted to Silchar Medical College and Hospital, Silchar but the doctor declared him brought dead. Thus, unnatural death case vide Katigorah P.S. U.D. Case No. 15/2012 was registered and investigation was taken up. The inquest over the dead body was conducted by an Executive Magistrate. The postmortem examination was conducted at Silchar Medical College and Hospital, Silchar, which was video-graphed and thereafter the dead body was handed over to the family members of the deceased. The said respondent had admitted lodging of the FIR by Musstt. Saleha Khatun, wife of Late Azizur Rahman at Katigorah P.S., which was registered as Katigorah P.S. Case No. 291/2012, under Sections 448/325/506/354/302/34 IPC, wherein it was stated that the respondent no.6 along with his staff conducted raid in her house at about 12:30 AM and forcibly picked-up her husband and brought to

Kalain Patrol Post. She was informed by her neighbors that her husband suddenly became ill at Kalain Patrol Post and shifted to Silchar Medical College and Hospital, Silchar, where he died. As per the FIR, the informant had suspected that the death of her husband occurred due to custodial torture. It was stated that in the postmortem report, there was a finding that no external injury was detected on the dead body. Thereafter, on receipt of FSL Report, the Associate Medical Professor, Department of Forensic Science, Silchar Medical College and Hospital, Silchar, furnished final opinion that the cause of death was syncope following acute or chronic coronary insufficiency. It was also stated that the present I.O. re-visited the place of occurrence and examined some more witnesses and recorded their statement under Section 161 CrPC, but no new facts were unfolded, and the re-investigation is pending for examination of more witnesses.

It may be mentioned that in this case, the petitioner has referred to the complaint of Katigorah P.S. Case No. 291/2012, as the wife of Md. Azizur Rahman instead of referring to her as his mother.

c. Affidavit-in-opposition filed by respondent no. 10 on 23.11.2015:

Briefly, it may be stated that Dr. Mainul Islam Barbhuiya, the respondent no.10, in his affidavit-in- opposition, had stated that he is working as a Senior Medical and Health Officer under the Health and Family Welfare (A) Department, Assam. At the relevant time, he was on deputation at Kalain F.R.U. and on the date of alleged incident, he was not on duty at Kalain F.R.U. and hence, he was not at all privy or witness to the alleged incident. In that regard, he had referred to the enquiry report, where it was stated as follows:-

The attending doctor Suman Bhowmik, M&HO-I, FRU Kalain stated in her statement [vide Annexure-Y] on 19/7/12 that in the intervening night of 6/7/12 and 07/7/12 he had been on duty. Further the Doctor stated at around 1.50 a.m. on 07/7/12 DSP HQ and others had brought one patient Azizur Rahman to the FRU. On clinical test, he found the patient in the gasping state and pulse rate feeble B.P. was not found recordable. Thus, dexona was injected by a nurse as per Doctor's advice and referred the patient to SMCH. The doctor further stated that no [external] abnormally was found.

Accordingly, the respondent no.10 had denied his involvement in any conspiracy for death of father of the petitioner with other respondents as false and devoid of any merit.

d. Affidavit-in-opposition filed by respondent nos.7, 11 to 14 and 16 on 01.12.2015:

Briefly it may be stated that Azizur Rahman Khan, the respondent no.7, in the joint affidavit-in-opposition filed by the respondent nos. 7, 11 to 14 and 16, had stated that he is a senior citizen aged 70 years and is involved in various social activities in the locality. It was stated that he and other private respondents had neither supported nor opposed the *bundh* call as the answering respondents belong to Katigorah constituency and the concerned MLA is of another constituency, i.e. Borkhola Constituency. It was stated that they were shocked to know that an innocent person was arrested by the police, who had died due to police torture. It was stated that the deceased was not a member of any political party and therefore, the question of any political rivalry with the deceased does not arise at all. It was denied that the deponent was one of the persons who opposed the *bundh* because of political rivalry and the police, to save the deponent had arrested the

deceased. It was denied that the answering respondents were involved in the incident. It was stated that in the representation dated 12.12.12, filed 5 (five) months' later, the deponent and other respondents were implicated falsely at the instance of their village rivals. It was stated that they had no rivalry with the deceased, who was not known to them, and he was a resident of village far away from the residence of the deponent and other private respondents. They had denied any conspiracy in the death of the father of the writ petitioner.

e. Affidavit-in-reply by the petitioner on 21.08.2017 against the affidavit-in-opposition filed by the respondent nos. 7, 11 to 14 and 16:

Briefly, it may be stated that the petitioner, in his affidavit-in- reply, had denied that respondent no.7 was not involved in the said incident. It was stated that the Kalain Patrol Post is located in the land of the respondent no.7. Hence, it was stated that there was strong prima facie evidence against the respondent no.7 and that the police, in order to save the respondent no.7, had taken the father of the petitioner into custody.

f. Affidavit-in-reply by the petitioner on 14.09.2017 against the affidavit-in-opposition filed by the respondent no.4:

Briefly, it may be stated that the petitioner, in his affidavit-in- reply, had stated that the police went to the residence of deceased Azizur Rahman to avoid arresting Azizur Rahman Khan (respondent no.7) and thereafter, tortured him as a result of which he died in police custody. It was stated that the police as well as the Medical Officer of Kalain FRU failed to provide minimum required facility to the father of the petitioner. It was stated that while shifting his father from Kalain FRU

to Silchar Medical College and Hospital, no ambulance with oxygen was provided to him, but he was brought on a police vehicle. It was stated that as a part of conspiracy, his father was deprived of minimum necessary treatment at Kalain FRU to save his life. It was stated that nothing was done for investigation after registering Katigorah P.S. Case No. 291/12 by his mother. It was reiterated that his father had died due to police torture.

g. Affidavit-in-reply by the petitioner on 14.09.2017 against the affidavit-in-opposition of the respondent no.10:

Briefly, it may be stated that the petitioner, in his affidavit-in-reply, had stated that no proper medicine was provided to his father on the night he was brought to Kalain FRU and no steps were taken to provide him with oxygen and ambulance to refer him to Silchar Medical College and Hospital, Silchar and the police personnel had forcefully taken his father in their police vehicle as dead person.

h. Affidavit-in-opposition filed by respondent no. 8 on 18.09.2017:

Briefly it may be stated that Anwar Hussain Choudhury, respondent no. 8, in his affidavit-in-opposition, had stated that there was a *bundh* call on 04.07.2012 by an organization whereas another political group opposed the same, but it is not within his knowledge if the respondent nos. 7 and 9 were behind the scene or not. He had stated that the police personnel were also attacked by the mob and to that extent Katigorah Police Station Case No. 279/2012 under Sections 147/148/149/353/336/323 IPC was registered. He was not aware whether respondent no. 7 had opposed the *bundh* call or not. He had admitted that respondent no. 6 had brought the father of the petitioner

to the police station on 07.07.2012 and later, he came to know that the father of the petitioner expired at Silchar Medical College being referred from Kalain Hospital. He had stated that in the post mortem report, no injury was found on the dead body and after examination of the viscera by Forensic Science, Kahilipara, Guwahati, it was opined that death of Azizur Rahman was due to *syncope following acute or chronic coronary insufficiency*. He had denied that he had given protection to respondent no. 7 or ever favoured respondent no.6 or that he was ever a tenant of respondent no.6 and stated that he was a tenant of Dr. Moinul Islam as quarters were not available. He had denied that he went to the residence of the petitioner as he was not present at Kalain Police Patrol and at the relevant time he had gone to Kalain Tea Estate in connection with Katigorah P.S. Case No. 279/2012 along with ASI R.U. Laskar, Havildar Amiya Paul and one section of 15 I.R. Battalion. It was stated that the enquiry was conducted by an Executive Magistrate (Addl. District Magistrate, Cachar, Silchar) as per Section 176(5) of CrPC and it was stated that Section 176(4) CrPC would not be applicable.

i. Affidavit-in-opposition filed by respondent no. 17 on 02.03.2021:

Briefly, it may be stated that Sri Partha Sarathi Paul, respondent no.17, had stated in his affidavit-in-opposition that while he was posted as Kalain FRU Hospital, Cachar, as Deputy Superintendent, he received a telephonic call from local MLA on 07.07.2012 at about 01:30 AM and informed about the incident and accordingly, he rushed to Kalain FRU Hospital immediately and on reaching there he found that the father of the petitioner had already been shifted to Silchar Medical College &

Hospital. He had enquired about the matter and also verified the M.L. Register (Official Emergency Patient Register) wherein it was noticed that there was deletion/ erasing in page no. 194, in between serial number 895-896. Having noticed the same, he had taken the initial signature of the attending doctor Sri S. Bhowmik by the side of the deletion/ erasing part and he took the said M.L. Register in his custody by providing a fresh register to the Emergency Department. On 06.12.2012, at the request of Dr. S. Bhowmik, he handed over the said M.L. Register to him for producing before the Court after keeping a photocopy of the concerned page, i.e. page no. 194 of M.L. Register, and he took acknowledgement receipt from Sri Bhowmik. He had stated that since then the M.L. Register was not returned by Dr. S. Bhowmik, he had informed the same to the Joint Director of Health Services, Cachar, Silchar, vide letter dated 07.10.2013, who in turn requested Dr. Suman Bhowmik to return the M.L. Register to him. He then retired on 31.05.2014.

j. Affidavit by respondent no. 1 on 29.03.2022 in compliance of the orders dated 25.01.2021 and 24.03.2021:

Briefly, it may be stated that pursuant to the orders dated 25.01.2021 and 24.03.2021, Sri Animesh Talukdar, serving as joint Secretary to the Government of Assam, Home and Political Department had filed his affidavit. In the said affidavit he had stated that respondent no. 6 was then serving as Addl. Superintendent of Police, Dima Hasao District. He had referred to the sequence of events leading to the contents of the FIR lodged by Saleha Khatun, registered as Katigorah P.S. Case No. 291/12, apprehending of Azizur Rahman, his death on way to Silchar

Medical College & Hospital and about subsequent registration of Katigorah P.S. Case vide U.D. Case No. 15/2012. By referring to the contents of the provisional postmortem report dated 07.07.2012; Forensic Science Laboratory Report dated 12.09.2012 and Final Postmortem Report dated 12.10.2012, it was mentioned that there was no external injury on the dead body and that death occurred due to *syncope following acute or chronic coronary insufficiency*. It was stated that the I.O. had examined Dr. Suman Bhowmik, M&HO, Kalain FRU and recorded his statement under Section 161 CrPC and in his statement, the said doctor had stated that on 07.07.2012, at about 1.30 AM, Azizur Rahman was brought to Kalain FRU in serious condition. His blood pressure and pulse was low and on examining him, gave him an injection. Suddenly, he had heart attack and hence, he was referred to Silchar Medical College Hospital. He did not find any torture mark in Azizur Rahman's body and that the doctor had clearly mentioned that due to sudden heart failure, his health condition had deteriorated. It was stated that vide notification dated 17.03.2020 and notification dated 20.05.2021, the service of Sri Y.T. Gyatso, IPS, then serving as Superintendent of Police (Law), Directorate of Vigilance and Anti-Corruption, Assam, Guwahati, was placed for inter-cadre deputation from Assam Meghalaya Joint Cadre to Sikkim Centre and he was released by the State Government.

k. Addl. affidavit filed by the petitioner on 10.05.2023:

Briefly, it may be stated that the petitioner, by filing his additional affidavit, had stated as under:-

(a) His father, aged 60 years, was picked up, forcibly taken to Kalain

Patrol Post only to get the custody of his son, Nizamuddin, and mercilessly beaten up because of which he had died instantaneously and thus, it was a clear case of custodial death.

- (b) It was stated that during Magisterial Inquiry, an eye-witness had stated that *"one police, having Mongolian look came around the table and twisted the head of Azizur Rahman. In the act other two police keep Azizur Rahman immobile by catching hold of his two hands. This forceful twisting of head resulted complete collapse of Azizur Rahman as he was seen leaned by a side, stated by aforesaid three persons. They further stated, having seen Azizur Rahman leaned by his side- the police carried him to a vehicle nearby and sped away."*It was stated that two other witnesses also deposed the same corroborating the facts leading to the death of the victim.
- (c) Accordingly, it was stated that Sri Y.T. Gyatsu had killed the victim in police station and thus, it was a clear case of culpable homicide amounting to murder during police custody. It was also stated that after the death of the victim in police station, the victim was rushed to Kalain FRU (Hospital), where respondent no.18 was on duty, who after preliminary investigation came to a conclusion that the victim was brought dead, but due to political and other pressure, he had to strike out the original entry in M.L. Register and referred the patient to Silchar Medical College and Hospital, pretending as if the victim was still alive in order to make it a case of natural death. The victim was not sent to Silchar Medical College and Hospital in police vehicle and not by hospital

ambulance and without giving him oxygen facilities though at that point ambulance service was available in the said hospital.

- (d) It was stated that the respondent no.6 had killed the victim by cracking the neck of the victim, but no X-Ray of the deceased was done though the wife of the victim had filed a petition for an enquiry under Section 176(1-A) of the CrPC, besides praying for conducting X-Ray of the neck of the deceased. It was stated that in paragraph 11 of the Inquiry Report, it was recorded that the arresting police had picked up the victim without following due procedure of the provisions of Section 50 and 50-A of the CrPC.
- (e) It was also stated that during inquiry, three eyewitnesses, namely, Mahibur Rehman, Tazuddin Borbhuiya and Sahid Uddin had deposed and as per their version, they saw that the police made Azizur sit on a red plastic chair and started arguing with him and suddenly two police officers held the leg of Azizur and one tribal police officer held the head and face of Azizur and gave a jerk and then Azizur fell towards right and after 4-5 minutes, police took Azizur by a vehicle.
- (f) It was stated to the effect that in paragraph 8(vii) of the Inquiry Report, it is recorded that respondent no.18, who had examined the victim was totally silent about the deletion of entry in page no. 194 in between serial number 895 and 896, whereas both the entries were made by him after examining two patients at that point of time. In his statement, he had stated that during his duty period on 06.07.2012, at 11.50 AM, he had examined one Kartik Ree as a patient whose entry no. was 895 and entry no. 896 was

also made by him on 07.07.2012 at 00.50 am, and he has not taken any steps to find out who deleted a portion of the entry made above entry no. 896.

- (g) Accordingly, by referring to political pressure by respondent no. 9 and alleged violation of human rights by respondent no. 6 and alleged destroying of evidence by respondent no. 18, was stated that it was a case of murder of Azizur Rahman by respondent no. 6 and thus, the State was vicariously liable to pay compensation on account of custodial death. It was also stated that the investigation of FIR lodged by wife of the victim, Katigorah P.S. Case No. 291/2012, was hurriedly investigated and closed by submission of Final Report no. 144 dated 29.12.2012, which was rejected by the learned Chief Judicial Magistrate, Silchar by order dated 12.07.2013 and directed the Officer-In-Charge, Katigorah P.S. to re-investigate the case, but no headway has been made in the matter and therefore, independent inquiry by CBI or NIA be ordered to investigate the case.
- (h) It was stated that the projected cause of death of the victim is *syncope*, and this may happen to any aged person, who was in deep sleep when he was suddenly woken-up and taken to police station alone and interrogated and tortured and surrounded by police and in such cases, medical jurisprudence states that under any abnormal situation, a person may collapse due to excessive pulse beat/ heart beat/ high blood pressure and all these might have occurred to the victim, who was picked up in a cruel manner.
- (i) It was stated that the family has suffered due to sudden death

of petitioner's father, the entire family has suffered mental shock and have suffered irreparable loss and injury and accordingly, considering the same compensation of Rs.50,00,000/- (Rupees Fifty lakh only) be awarded to the family members of Late Azizur Rahman, and strict action be taken against the accused persons, more particularly, respondent no. 6 and 18.

l. Affidavit filed by the respondent no.5 on 08.09.2023 in compliance of the order dated 11.08.2023:

Briefly, it may be stated that respondent no. 5, by filing his affidavit, has brought on record the F.R. submitted in Katigorah P.S. Case No. 291/2012 under Sections 448/325/506/354/302 IPC, vide FR No. 144/12 dated 29.12.2012, which was not accepted. On re-investigation of the case, no material was found to implicate anyone and the Investigating Officer had submitted a FR No. 32/2023 on 30.04.2023.

m. Affidavit filed by the respondent no.2 on 11.01.2024 pursuant to order dated 14.09.2023, passed in I.A.(C) No. 2736/2023:

Briefly, it may be stated that Sri Nitul Gogoi, the Inspector General of Police (Admn.), by way of his affidavit filed pursuant to order of the Court dated 14.09.2023, passed in I.A.(C) No. 2736/2023, had stated that the respondent no.6 was on Inter-State deputation to Sikkim and his address was disclosed therein.

n. Addl. affidavit filed by the petitioner on 29.05.2025:

Briefly, it may be stated that the petitioner, by filing his additional affidavit, had re-stated the statements already referred previously, relating to his version of how his father had died; about lodging of the FIR; submission of Final Report dated 29.12.2012; order dated

12.07.2013, directing re-investigation; re-investigation; and Final Report submitted on 30.04.2023. In the said context, it has been submitted that Saleha Khatun, the informant had filed her objection petition no. 663/25 dated 23.04.2025, against the Final Report and the learned Chief Judicial Magistrate, Cachar, vide order dated 23.04.2025, declined to accept the Final Report and directed registration of Complaint Case and the matter was fixed on 03.05.2025 and thereafter, fixed on 10.07.2025. Accordingly, by alleging custodial torture and resultant death of the father of the petitioner, a claim for monetary compensation of Rs.50,00,000/- (Rupees Fifty lakh only) was claimed and prayer was also made for strict action against respondent no.6.

o. Addl. Affidavit filed by the petitioner on 04.06.2025:

Briefly, it may be stated that by filing yet another affidavit, the petitioner had stated that due to unnatural death, his father could not perform Haj despite applying for the same a few weeks before his death. It was also stated that notification dated 27.12.2024, envisaged compensation for death of convicted or under trial prisoners. It was stated that the notification was not attracted in this case and in the said context, the petitioner had reiterated his version of the death of his father and as such, deterrent compensation was required to be paid to the petitioner.

p. Affidavit-in-opposition filed by the respondent no.6 on 09.01.2026:

Briefly, it may be stated that the respondent no.6, in his affidavit- in-opposition, had stated as follows:-

- (a) That as detailed by the then Superintendent of Police, Cachar, he reached Kalain Police Patrol Post a little before midnight (06.07.12- 07.07.2012). He had stated that in connection with the ongoing incidents of group clashes a number of cases were registered at Katigorah P.S. During investigation of Katigorah P.S. Case No. 279/2012 under sections 147/148/149/353/336/326 IPC; Katigorah P.S. Case No. 284/2012 under sections 147/148/149/326/379 IPC; and Katigorah P.S. Case No. 288/2012 under sections 147/148/149/336/427 IPC, the name of Azizur Rahman (father of the petitioner) was disclosed as an active member of the unruly mob as well as one of the instigators and moreover, the petitioner was also one of the FIR named accused in Katigorah P.S. Case No. 288/2012.
- (b) As per instructions from the Superintendent of Police, Cachar, a team of police team including women police under his leadership raided the house of Azizur Rahman and he was available, but Md. Nazimuddin (accused in Katigorah P.S. Case No. 288/2012 was not found available. A little after 1.00 AM, he had brought Md. Azizur Rahman to Kalain Patrol Post which was situated at a distance of around 500 meters from his house for examining him in connection with the hereinbefore mentioned cases and he was made to sit on a chair. Thereafter, the deponent went out of the police station for further patrolling.
- (c) After a while when he returned to Patrol Post, he found Md. Azizur Rahman in an unconscious state, as such the matter was immediately brought to the notice of the then Deputy

Superintendent of Police, (HQS), Silchar, who was in an adjoining room following his duty shift and the accused was immediately shifted to Kalain F.R.U.

- (d) It was learnt that while sitting on the chair, the accused person mentioned uneasiness and then dropped down and became unconscious. At the Kalain F.R.U., the Medical Officer on duty, after examining the patient, referred him to Silchar Medical College & Hospital, Silchar and accordingly, the accused person was shifted to Silchar Medical College & Hospital, Silchar. Subsequently, it was learnt that the attending doctor at Silchar Medical College & Hospital, Silchar, after examining the accused person had declared him brought dead. In that regard an UD Case was registered at Katigorah P.S. vide UD Case No. 15/2012, and investigation was taken-up. He later on came to learn that a case was registered against him and the concerned Police Party on 08.07.2012, being Katigorah P.S. Case No. 291/2012, under Sections 448/325/354/302/34 IPC.
- (e) He had deposed in connection with a Magisterial Inquiry by the then Additional District Magistrate, Cachar, Silchar, into the incident of custodial death of Md. Azizur Rahman, in connection with Katigorah P.S. Case No. 291/12. It was stated that as a probationer, he had his lodging at Police Guest House, Silchar, Cachar and thus, it was denied as false and baseless that he had taken house property on rent.

q. Affidavit-in-reply by petitioner on 03.02.2026, against the affidavit-in-opposition filed by the respondent no. 6:

Briefly, it may be stated that the petitioner, in his affidavit-in- reply against the affidavit-in- opposition filed by respondent no.6, had denied that Late Azizur Rahman was not the FIR-named accused and he had no criminal antecedents. It would suffice to mention that while denying the statements made by the respondent no.6, the stand already taken earlier were reiterated. The petitioner has cited the case of *D.K Basu v. State of West Bengal, AIR 1997 SC 610*, and it was reiterated that the respondent no. 6 is liable to be punished for offence committed under Section 302/299 IPC and he was also liable to face disciplinary proceeding.

Submissions by both sides: -

5) In course of hearing, while the learned counsel for the petitioner had made his submissions projecting custodial death of Md. Azizur Rahman and prayed to award the petitioner with compensation as prayed for. He has also submitted a written argument on 20.07.2026, which is made a part of the record. The said written argument, is accompanied by the print-out of the following cases, viz., (i) *D.K. Basu v. State of West Bengal, AIR 1997 SC 610*, (ii) *Rohtash Kumar v. State of Haryana & Ors., AIR 2014 SC (Supp) 182*, (iii) *In Re: Suo Motu Custodial Violence and other matters relating to Prison Condition, 2023 (5) GLT 19*, (iv) *Konto Warisa & Anr. v. Union of India & Ors., 2022 (3) GLT 187*.

6) Per contra, the learned Senior Govt. Advocate had made his submissions to project that the case of the petitioner was something else when the case was registered and subsequently, by passage of time, the projection of the case of the petitioner has shown conspicuous change. Accordingly, it was submitted that the case was liable to be dismissed by exonerating the State

respondents, jointly and severally.

Reasons, decision and order:-

7) Considered the submissions made at the Bar. Also considered the cases accompanying the written argument filed by the learned counsel for the petitioner. Also perused the scanned copy of the Case Diary of Katigorah P.S. Case No. 291/2012, which was ordered to be converted to G.R. Case No. 2363/2012.

8) At the outset, the undeniable fact is that Md. Azizur Rahman (also called Azizur Rahman) was picked up by the police personnel led by respondent no. 6 after midnight of the intervening dates of 06.07.2012 and 07.07.2012 and brought to the Kalain Patrol Post. That sometime after being arrested, brought and detained in the Kalain Patrol Post, Md. Azizur Rahman collapsed and was brought to Kalain F.R.U., from where he was referred to Silchar Medical College and Hospital, Silchar. On being brought to Silchar Medical College and Hospital, Silchar, he was declared, *brought dead*.

9) In the FIR filed by Musstt. Saleha Khatun, wife of Late Azizur Rahman at Katigorah P.S., which was registered as Katigorah P.S. Case No. 291/2012, under Sections 448/325/506/354/ 302/34 IPC, it was stated that the respondent no.6 along with his staff conducted raid in her house at about 12:30 AM and forcibly picked-up her husband and brought to Kalain Patrol Post and she was informed by her neighbours that her husband suddenly became ill at Kalain Patrol Post and shifted to Silchar Medical College and Hospital, Silchar, where he died. As per the FIR, the informant had suspected that the death of her husband occurred due to custodial torture. In this writ petition, the petitioner has also taken a stand that his father, Md. Azizur Rahman, died due to

custodial torture at Kalain Patrol Post. Later, by filing additional affidavit, the petitioner took a stand that three eyewitnesses had informed him that on the fateful day, his father was made to sit on a chair in the Kalain Patrol Post and while two police personnel held his legs and the respondent no.6 held his face and twisted the neck of Md. Azizur Rahman, after which he had collapsed. However, as per the postmortem report, no external injury was detected on the dead body. Thereafter, on receipt of FSL Report, the Associate Medical Professor, Department of Forensic Science, Silchar Medical College and Hospital, Silchar, furnished final opinion that the cause of death was *syncope following acute or chronic coronary insufficiency*.

10) Considering the aforesaid facts, the respondents, in their respective affidavit-in- opposition, have not specifically denied the following: -

- a. The arrest was not made on the strength of any warrant of arrest.
- b. Before arrest, Md. Azizur Rahman was not given notice under Section 41A of the CrPC.
- c. After arrest, there was no compliance with the provisions of Section 41B(b) and 41B(c) of the CrPC.
- d. After arrest there was no compliance with the provisions of Section 50 of the CrPC.
- e. After arrest there was no compliance with the provisions of Section 50A of the CrPC.
- f. That while shifting Md. Azizur Rahman, who was in collapsed condition, from Kalain F.R.U.to Silchar Medical College and Hospital, Silchar, which is at a distance of 28-30 kms., he was not taken in ambulance available at the Kalain F.R.U., but the police brought him to

Silchar Medical College and Hospital in police vehicle.

- g. While shifting Md. Azizur Rahman from Kalain F.R.U. to Silchar Medical College and Hospital, Silchar, the police personnel did not inform the family members of the same and did not carry the family member of Md. Azizur Rahman in the same vehicle.

11) Thus, the arrest of Md. Azizur Rahman, since deceased, was illegal, being not in compliance with the statutory and legal requirement of complying with the provisions of Sections 41B, Section 41C, 50 and 50A of the CrPC.

12) Though the respondent authorities had asserted in their affidavit-in-opposition that the house of the petitioner and the deceased, namely, Md. Azizur Rahman was 500 meters away from Kalain Patrol Post, yet there is no record of any attempt being made by the police personnel to inform any family member of Md. Azizur Rahman about his deteriorating health condition or took any family member or people from the neighbourhood to accompany the police team to Kalain F.R.U. and thereafter to Silchar Medical College and Hospital, Silchar.

13) Thus, *prima facie*, the death of Md. Azizur Rahman had occurred during illegal police custody and therefore, the petitioner along with the other family members of Md. Azizur Rahman are found entitled to monetary compensation, which would be referred to later.

14) In the meantime, a Magisterial Inquiry was ordered and after inquiry, the Additional District Magistrate, Cachar, Silchar, had submitted an Inquiry Report dated 30.03.2013, and in this writ petition, the petitioner has expressed his dissatisfaction with the said Magisterial Inquiry Report dated

30.03.2013.

15) The petitioner has alleged that his father, Md. Azizur Rahman was brought dead by the police at Kalain F.R.U., but the attending doctor first recorded in the Medico-Legal Register (M.L. Register for short) that his father was brought dead and thereafter, illegally deleted the original entry and made a false entry in the said to the effect that his pulse was low and that he was shown to be referred to Silchar Medical College and Hospital, Silchar, to make it appear that Md. Azizur Rahman was alive when he left Kalain F.R.U., which was to give benefit to the police personnel.

16) The fact remains that the respondent no.17, had stated in his affidavit-in-opposition that while he was posted at Kalain F.R.U. Hospital, Cachar, as Deputy Superintendent, he received a telephonic call from local MLA on 07.07.2012 at about 01:30 AM and informed about the incident and accordingly, he rushed to Kalain FRU Hospital immediately and on reaching there he found that the father of the petitioner had already been shifted to Silchar Medical College & Hospital. He had enquired about the matter and verified the M.L. Register (Official Emergency Patient Register), and he noticed that there was deletion/ erasing in page no. 194, in between serial number 895-896 and took the short signature of the attending doctor by the side of the deletion/ erasing part and he took the said M.L. Register in his custody by providing a fresh register to the Emergency Department. On 06.12.2012, on request of the said doctor, he handed over the said M.L. Register to him for producing before the Court after keeping a photocopy of the relevant page no. 194 of the M.L. Register, where he took acknowledgement receipt from the said doctor. He had stated that since then the M.L. Register has not been returned by the doctor concerned. Accordingly, he had informed the same to the Joint Director of

Health Services, Cachar, Silchar, vide letter dated 07.10.2013, who in turn requested the doctor concerned to return the M.L. Register to respondent no.17, which was not done till respondent no.17 retired on 31.05.2014.

17) The investigation of FIR lodged by Musstt. Saleha Khatun, the wife of the victim, which was registered as Katigorah P.S. Case No. 291/2012, resulted in closure of investigation by submission of Final Form/Report No. 144 dated 29.12.2012. The said Final Form/Report dated 29.12.2012, was rejected by the learned Chief Judicial Magistrate, Silchar, by order dated 12.07.2013 and direction was issued to the Officer-In-Charge, Katigorah P.S. to re-investigate the case.

18) After re-investigation, a Final Form/Report was submitted by the Investigating Officer on 30.04.2023. In the said context, it has been submitted that the informant, namely, Saleha Khatun, had filed her objection petition no. 663/25 dated 23.04.2025, against the Final Form/Report. Thereupon, the learned Chief Judicial Magistrate, Cachar, vide order dated 23.04.2025, declined to accept the Final Form/Report and directed registration of a complaint case and the matter was fixed on 03.05.2025. The case was thereafter fixed on 10.07.2025.

19) The learned counsel for the petitioner and the learned Senior Government Advocate are both *ad-idem* at the Bar that the complaint case is presently pending for adjudication before the competent Court having jurisdiction. Accordingly, the Court is of the considered opinion that this is a fit and proper case wherein this Court ought not to express any view on the contentious issues raised by the petitioner, which would be the subject matter of the criminal complaint case, which is admittedly pending for adjudication before the competent Court having jurisdiction to saddle the accused person with

appropriate criminal liability in accordance with law. If any observation made by this Court on merit, will have the tendency to prejudice either the complainant or the accused. Hence, at this stage, the cases cited by the learned counsel for the petitioner cannot be applied. Hence, the Court is of the considered opinion that it should best be left to the learned Trial Court to adjudicate the complaint case pending before it for disposal, without being influenced by anything contained in this order.

20) Be that as it may, as discussed earlier, this Court is of the considered opinion that the arrest of Md. Azizur Rahman, the father of the petitioner, was not in accordance with law. Moreover, when the case of the respondents is that the house of the petitioner was only 500 meters away from Kalain Patrol Post, the police ought to have made an endeavour to inform the family members of Md. Azizur Rahman of his health condition, which had started deteriorating after he was brought to the Kalain Patrol Post so that the family members of Md. Azizur Rahman could accompany him to Kalain F.R.U. and then to Silchar Medical College and Hospital, Silchar.

21) Thus, the Court is inclined to hold that late Md. Azizur Rahman, who was the husband of complainant in Katigorah P.S. Case No. 291/2012 and the father of the petitioner had died on 07.07.2012, while in police custody. Moreover, the manner of arrest was without compliance with the provisions of Sections 41B, 41C, 50 and 50A of the CrPC, the Court is inclined to hold the petitioner, as well as the other legal representatives/ heirs, including the complainant in Katigorah P.S. Case No. 291/2012, to be entitled to compensation of Rs.5,00,000/- (Rupees Five lakh only), which shall be paid by the Govt. of Assam, Home and Political Department, represented by its Secretary to the Government of Assam.

22) The aforesaid compensation of Rs.5,00,000/- is palliative in nature and is without prejudice to the petitioner or other family members of Azizur Rahman to claim higher compensation by approaching Civil Court having jurisdiction. However, in the event a higher compensation is awarded by the Court having jurisdiction, the compensation as awarded by this judgment and order would be adjusted.

23) It is directed that the compensation of Rs.5,00,000/-, as allowed by this judgment and order shall be paid to the petitioner within a period of 3 (three) months from the date when the certified copy of this order is served at the Office of the Home and Political Department, Government of Assam, failing which the said amount would carry interest @ 6% (six percent) per annum on and from the expiry of the period of three months from the date of service of a certified copy of this order. The petitioner shall be receiving such compensation for and on behalf of Musstt. Saleha Begum and other legal heirs of the deceased, which is required to be distributed in accordance with their respective share as they would be entitled to in accordance with the Mohammedan Law.

24) Needless to mention that the State would have the liberty to recover the compensation and interest, if any, paid from the concerned police or other officials who are found guilty in departmental proceedings, if any, ordered against them.

25) It is reiterated that the learned Trial Court would adjudicate the complaint case, arising out of Katigorah P.S. Case No. 291/2012.

26) It is desired that the learned counsel for the petitioner would instruct the petitioner that the certified copy of this judgment and order may be produced by the complainant before the learned Trial Court, if so advised.

- 27) The writ petition is partly allowed by directing the State to pay monetary compensation on terms as referred above.
- 28) There shall be no order as to cost.

JUDGE

JUDGE.

Comparing Assistant