

GAHC010007602022



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

Case No. : WP(C)/259/2022

JAISODI THAOSEN

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI-06.

2:THE DIRECTOR GENERAL OF POLICE

ASSAM
ULUBARI
GUWAHATI-06.

3:THE SUPDT. OF POLICE

HAFLONG
DIMA HASAO-788819.

4:THE CENTRAL BUREAU OF INVESTIGATION (CBI)
REPRESENTED BY ITS DIRECTOR
PLOT NO. 5-B
6th FLOOR
CGO COMPLEX LODI ROAD
NEW DELHI-110003

For the Petitioner :

Mr. B.D. Das, Sr. Adv.

Mr. D. Thaosen, Adv.

For the Respondents:

Mr. R.K.D. Choudhury, DSGI.

Mr. S. Baruah, GA, Assam.

**BEFORE
THE HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 12/10/2023.

Date of judgement : 12/10/2023

JUDGEMENT AND ORDER (ORAL)

1. Heard Mr. B. D. Das, learned senior counsel assisted by Mr. D. Thaosen, learned counsel for the writ petitioner. Also heard Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India, appearing for the respondent no. 4 and Mr. S. Baruah, learned Government Advocate, Assam, appearing for the respondent nos. 1, 2 & 3.

2. The writ petitioner herein is the wife of Jibon Kemprai, who was allegedly kidnapped by unidentified miscreants on 27/01/2016 from Diyungmukh in Dima Hasao District of Assam. An FIR was lodged, based on which, Diyungmukh PS case No. 03/2016 was registered under sections 365/506/34 of the Indian Penal Code. It has been alleged that the kidnapers had earlier threatened Sri Mohendra Kemprai i.e. the brother of the victim, asking him to abstain from participating in the emergent meeting of the NC Hills Autonomous Council, held on 29/01/2016, as otherwise, he would face dire consequences. It has also been alleged that the kidnapping took place so as to prevent Sri Mohendra Kemprai from participating in the emergent meeting scheduled on 29/01/2016 wherein, "no confidence motion" brought against the executives in power in the autonomous Council was to be discussed. Since then, the whereabouts of Jibon Kemprai remains unknown.

3. Initially, the Assam Police had conducted investigation in connection with Diyungmukh PS case No. 03/2016 but could not make any headway in the process. As such, the wife of the missing individual i.e. the writ petitioner had approached this Court by filing the instant writ petition seeking a direction from this Court to handover the investigation to the Central Bureau of Investigation (CBI) i.e. the respondent no. 4. It appears that during the pendency of this writ petition, a 3 (three) member Special Investigation Team (SIT) headed by the Superintendent of Dima Hasao District took over the investigation in connection with

Diyungmukh PS case No. 03/2016. As such, a report was called for by this Court from the SIT as regards the progress made in the investigation. Accordingly, on 03/08/2023, the Superintendent of Police, Dima Hasao District, Haflong, Assam, had submitted a report in a sealed cover. On perusal of the report, it transpired that save and except making a few arrests and recording statements of few witnesses, the SIT also could not make much headway nor it conclude the investigation, as a result of which, no charge sheet could be filed in connection with Diyungmukh PS No. 03/2016 till today. The victim also remains untraced till today i.e. even after lapse of more than 7 (seven) years since his disappearance and there is no clue as to whether he is still alive. It is under these circumstances, the petitioner has renewed the prayer for handing over the investigation to the respondent no. 4.

4. Mr. Das, learned senior counsel for the writ petitioner has vehemently argued that this is a clear case of "political assassination" and the same would be apparent from the fact that after the release of the 6 (six) arrested persons, their wives had been appointed in different departments of the Council and the main suspect is roaming freely in the Haflong town without any effort from the Police to nab him. Mr. Das further submits that even the wife of the 3 (three) main suspects have been given jobs and the person who had made the phone call to Sri Mohendra Kemprai just before kidnapping the petitioner's husband, has neither been arrested nor interrogated till today.

5. Contending that neither the Assam Police nor the SIT has been able to make any significant progress in the investigation. Mr. Das submits that the present is a fit case where the investigation should be handed over to the CBI. Mr. Das has further argued that this is a clear case of violation of Fundamental Rights of the petitioner and her husband and since the incident took place in a politically sur-charged situation where there is direct evidence to suggest that the kidnapping was carried out for a political purpose, unless the matter is handed over to a specialized agency like the CBI, the petitioner would not get justice. Mr. Das has, therefore, submitted that in order to do complete justice and in order to instill confidence in the minds of the public, it is necessary to handover the investigation of this case to the CBI.

6. In support of his above arguments, Mr. Das has relied upon the decisions of the Hon'ble Supreme Court rendered in the case of ***Dr. naresh Kumar Mangla Vs. Anita***

Agarwal and others reported in **(2021) 15 SCC 777, Sakiri Vasu Vs. State of U.P and others** reported in **(2007) 8 SCC 226** and **Secretary, Minor Irrigation & Rural Engineering Services, UP and others Vs. Sahngoo Ram Arya and another** reported in **(2002) 5 SCC 521.**

7. Responding to the above, Mr. R.K. D. Choudhury, learned DSGI, appearing for the respondent no. 4, submits that the CBI is reluctant to take over investigation in this case due to resource crunch. The learned DSGI has, however, submitted in his usual fairness that when it comes to the question of violation of fundamental right to life of a citizen and in view of the fact that there are allegations of political motive behind the incident, the relief sought for in the writ petition cannot be denied merely on the ground of resource crunch faced by the CBI.

8. Mr. S. Baruah, learned Government Advocate, Assam, appearing for the respondent nos. 1, 2 & 3 submits that the State Police has done whatever was possible and despite their best efforts, no breakthrough in the case could be achieved during the investigation.

9. I have considered the submissions made at the Bar and have also carefully gone through the materials available on record.

10. It is apparent from the materials on record that the husband of the petitioner had gone missing on 27/01/2016 and prior to that a telephone call was received by his elder brother Sri Mohendra Kemprai, who was a member of the NC Hills Autonomous Council at the relevant point of time, threatening him to abstain from taking part in the meeting scheduled to be held on 29/01/2016 wherein, a crucial agenda of removal of the party in power from office was to be discussed. Since then, the whereabouts of the husband of the petitioner is unknown. From the above, it *prima facie* appears that there are ingredients of cognizable offence having been committed in this case.

11. I also find from the materials on record that even the constitution of SIT constituted for carrying out investigation in connection with Diyungmukh PS case No. 03/2016 has failed to yield any result and from the affidavit submitted by the respondent no. 3 i.e. the Superintendent of Police, Dima Hasao District as well as from the submission of the learned Government Advocate, Assam, the likelihood of any further progress in the investigation conducted by the SIT appears to be minimal. Situated thus, the only way forward in this case

appears to be to handover the investigation to a specialized agency such as the CBI.

12. In the case of **Dr. Naresh Kumar Mangla (Supra)**, the Supreme Court has observed that “in order to do complete justice where the facts of the case demand that the investigation be handed over to a specialized agency, a superior Court is not bereft of the authority to do so”. Again in the case of **Sakiri Vasu (Supra)**, the Supreme court has observed that after looking into the materials of the case, the High Court has the power to order a CBI enquiry. However, such power should be exercised if the High Court after considering the materials on record, comes to a conclusion that such material discloses *prima facie*, a case calling for investigation by the CBI or by any other similar agency. A CBI enquiry cannot be ordered as a matter of routine or merely because the party makes some allegation.

13. In the present case, as noted above, this Court finds that the probability of political motive behind the incident cannot be ruled out. Therefore, considering the ground realities prevailing in the Dima Hasao District of Assam and having regard to the nature of investigation so far conducted in this case, this Court is left with no manner of doubt that the petitioner would not get justice unless the investigation in the connected case is handed over to a specialized agency such as the CBI.

14. Coming to the other important question as to whether, this Court can handover the investigation to the CBI without obtaining the consent of the State of Assam, the aforesaid issue has been elaborately dealt with by the Supreme Court in the case of **State of West Bengal and others Vs. Committee for Protection of Democratic Rights, West Bengal and others** reported in **(2010) 3 SCC 571** and held that the jurisdiction of the High Court under Article 226 of the Constitution of India to issue a direction to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of the State will neither impinge upon the federal structure of the constitution nor violate the “Doctrine of Separation of Power” and shall be valid in law. It was held that being the protectors of civil liberties of the citizens, the superior Courts including the High Courts would not only have the power and jurisdiction but also an obligation to protect the fundamental rights guaranteed by Part-III of the Constitution in general and under Article 21 of the Constitution in particular, vigilantly.

15. In view of the above, this Court is of the considered opinion that this matter deserves to be handed over to the CBI. Since it is a question of life and liberty of a citizen and in view of the factual backdrop of this case, this Court is unable to agree with the stand of the CBI that due to resource crunch, the matter should not be sent to the CBI for investigation.

16. For the reasons stated herein above, this writ petition succeeds and is hereby allowed.

17. The respondent nos. 1, 2 & 3 are directed to initiate all steps to handover the investigation in connection with Diyungmukh PS case NO. 03/2016 to the respondent no. 4 i.e. the CBI by following the due process of law. Once the records are handed over to the respondent no. 4, investigation be carried out by the CBI as expeditiously as possible, so as to bring the process to its logical end.

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

There shall be no order as to costs.

JUDGE

Sukhamay

Comparing Assistant