

**(2000) 01 GAU CK 0029**

**In the Gauhati High Court**

**Case No :** Civil Rule (HC) No's. 237 and 240 of 1991

Kiron Devi (Smti)

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision :** 24-01-2000

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2000) 1 GLT 446

**Hon'ble Judges :** Brijesh Kumar, C.J.;P.C. Phukan, J

**Bench :** Division Bench

**Advocate :** G. Uzir, for the Appellant; Govt. Advocate, A.R. Barthakur and P. Barthakur, for the Respondent

## Judgement

Brijesh Kumar, C.J.—This petition in Civil Rule No. (HC) 240 of 1991, has been preferred under Article 226 of the Constitution of India with a prayer for issue of a writ of Habeas Corpus, directing the Respondents to produce Shri Pabitra Sharma, son of the Petitioner, Smt. Kiron Devi, and for payment of compensation for illegal detention.

2. We have heard Shri G. Uzir, learned Counsel appearing for the Petitioner and Shri A.R. Barthakur, learned Counsel appearing for the Respondents.

3. According to the averments made in the petition, the Petitioner is the mother of Shri Pabitra Sharma @ Bablu, a resident of village Kunderabari. P.S. Tezpur, in the district of Sonitpur.

4. According to the averments, Shri Pabitra Sharma, aged 19 years, was a student of Assam Christian College, Tezpur and was preparing for his Higher Secondary Final Examination, scheduled to be held in March, 1992. It was alleged that some Army personal forcibly entered the house of the Petitioner on 16.11.91 at about 11.30 P.M. and arrested Pabitra Sharma and took him away for interrogation. He is said to have been illegally detained at an unknown place on 17.11.91; but when he did not return home, the father of Pabitra Sharma,

namely, Shri Budhin Sharma, lodged a report at Bebejia Outpost of Tezpur P.S. Despite all efforts made, the Petitioner could not procure the return of her son, Pabitra Sharma. It is alleged in the petition that according to the information collected, Pabitra Sharma was given severe beating and was injured. Ultimately, the petition was filed in this Court for a writ of Habeas Corpus, as mentioned above.

5. It also transpires that in connection with the same incident yet another petition was filed earlier, namely, Civil Rule (HC) No. 237 of 1991, and the present petition was ordered to be posted on 3.12.91 along with Civil Rule (HC) No. 237 of 1991.

6. The case has a bit checked history. Both the Civil Rules, namely, Civil Rule (HC) No. 237 of 1991 and Civil Rule (HC) No. 240 of 1991, were allowed by judgment and order dated 11.5.1992 by a Bench with direction to the Respondents to produce Pabitra Sharma before this Court on May 28, 1992 and file the return. But, evidently the detainee was not produced in the court. The matter seems to have been put up in court on various dates and different orders had been passed from time to time. On 13.8.92, the Deputy Superintendent of Police, CBI, Chenikuthi Hillside, Kushal Konwar Path, Guwahati-781003, was directed to make an enquiry about the whereabouts of Shri Pabitra Sarma @ Bablu. The report of the CBI was received and 28.1.94 was fixed in the case and the Bench Passed the following order:

Heard Shri G. Uzir, learned Counsel for the Petitioner, as well as Mr. K.N. Choudhury, learned Sr. Central Govt. Standing Counsel for the Union Government. Perused the report submitted by the CBI. The report indicates that the person under the mask is a Police informer and not the detainee. In that view of the matter, a fresh writ of Habeas Corpus be issued under the signature of the Registrar (J) and seal of the court in terms of the judgment made on 11.5.92. The writ shall indicate that the body of the detainee be produced by 27.3.94.

7. On 4.5.94, the court passed a detailed order requiring the CBI to make further enquiries and submit a report to the court as to what happened to Pabitra Sarma after the Armed forces had taken him into custody. The CBI, accordingly, submitted an additional report, which was considered and by order dated August 20, 1996, the court required the District Judge, Sonitpur, Tezpur to record findings on certain points contained in the direction given to the District Judge, which are quoted below:

(i) Whether the version put forward by the Army authorities that Sri Pabitra Sarma has been released by them through Major Nathani (since died), which fact is evidenced by Sri Indra Das, constable, is correct or not;

(ii) In case the version put forward by the Army is correct, from the evidence which may be adduced before the District Judge, whether any responsibility can be fixed on the Assam Police regarding taking of Shri Pabitra Sarma in its custody;

(iii) In case the version put forward by the Army that Shri Pabitra Sarma has been released is not correct, whether circumstances exist to indicate that the Army Authority concocted the certificate with a view to disown their responsibility to explain what happened to Pabitra Sarma after he was taken to the Army camp.

(iv) The District Judge may also record the findings about the financial status of the family of Sri Pabitra Sarma and also about the fact as to what was his occupation, educational qualification at the time of apprehension by the Army. The findings may also be recorded as to whether there are any dependents of Sri Pabitra Sarma, who may be solely dependent on Sri Pabitra Sarma and what is their present financial status.

(v) It is also made clear that in the enquiry Sri Uzir and other learned Counsel will render necessary assistance.

Sri P. Barthakur has made a statement that after receiving notice by the District Judge, Tezpur, which may be addressed to Commander, Four Corps of Indian Army, Tezpur, on the date fixed all relevant documents will be produced by the Army and will also give the list of witnesses which will be produced by the Army. Any further document required by the District Judge will be produced including the production of any Army Officer who may throw light on the incident;

(vi) As far as the Assam Police is concerned, the District Judge, Tezpur will give notice to the Superintendent of Police, Sonitpur, who will give the list of witnesses and documents which they will produce and will also produce all the witnesses and documents summoned by the District Judge.

(vii) As far as the Petitioner is concerned, it is being made clear that an opportunity will be given by the District Judge to cross examine the witnesses which may be produced by the Army and the Assam Police.

(viii) The District Judge will issue notice to the SP, CBI, Guwahati for production of the records for enquiry, which are in their possession, and on receiving such notice the SP, CBI, through a competent Officer shall produced the records before the District Judge, Tezpur and will render all the assistance in the enquiry which may be required by the District Judge.

(ix) The District Judge, Tezpur may complete the enquiry preferably within a period of 6 (six) months from today, and will send his report along with the entire documents immediately thereafter.

8. It may be indicated that in pursuance of the above order, the District Judge made an enquiry and submitted its report, dated 24.2.97. He recorded a finding that Pabitra Sarma was picked up by the Army on 16.11.91, and not on 17.11.91, as claimed by the Army, and further held that the version of the Army authorities regarding release of Pabitra Sarma is shrouded with doubt and the same could not be accepted as correct.

9. On behalf of the Army authorities it has been vehemently urged that according

to the own case of the Petitioner, the mother of Pabitra Sarma, his photograph was published with masked face under custody, in "Rongpur" paper on 9.6.92. That shows that he had been released after he was picked up in November, 1991. Learned Counsel submits that the case of the Petitioner that Pabitra Sarma was not released after his arrest, is not correct. It is further urged that the mother could not mistake photograph of her son even though face was masked.

10. It may be observed, in connection with the above fact, that an enquiry was held By the CBI in the matter. The fact which came to light was that the said photograph was originally published in "India Today" on 8.7.91. It was also found that the masked boy was an informer, who was accompanying the contingent of BSF, headed by the Deputy Inspector General of BSF. That very photograph was published again in the "Rongpur" newspaper later on. As indicated earlier, initially the photograph was published on 8.7.91 in the "India Today". Pabitra Sarma was not picked up by Army till then. It was only on 16.11.91, or according to the Army, 17.11.91, that he was picked up by them. It would be very difficult to fix the identity of a masked person. For that reason, and the reasons disclosed in the report of the CBI, a reference of which has also been made in the report of the District Judge, we find that the said photograph has no relevance. The CBI had verified the facts from the relevant General Diaries and other documents and after examining Shri Saibal Das of Nagaon, representing "India Today" magazine. We therefore, find no merit in this contention raised on behalf of the Army authorities.

11. The other fact which has been urged with vehemence is that the release of Pabitra-Sarma was confirmed by Indra Das, Constable, whose affidavit was also filed. According to the case of the Army authorities, Indra Das, constable of the Civil Police, had prepared his release certificate. The alleged certificate of release in the hands of Indra Das has been rightly not accepted by inquiring authority, viz., the District Judge. The reasons given are cogent and satisfactory. The release certificate does not bear signatures of Pabitra Sarma, not it bears any official seal. Constable Indra Das has also been shifting his stand-even sometimes saying that his signature were obtained on plain paper at the time of making search for preparing no claim certificate. Indra Das has also denied in his evidence that Pabitra Sarma was released in his presence. According to him, he had only confirmed his signature on the release certificate, which was obtained on a plain paper in the circumstances indicated above. He was never explained about the contents of the affidavit by any one. We, therefore, find no force in this contention either, raised on behalf of the Army authorities that Pabitra Sarma was released in the presence of Indra Das.

12. It has already been noticed that this petition was allowed by order dated 11.5.92, and a date was fixed for production of Pabitra Sarma on 28.5.92. Normally, proceedings would come to an end on a petition being allowed. They seem to have been kept alive by giving direction to produce the detainee on a particular date in this Court. Shri A.R. Barthakur, learned Counsel for the Army

authorities submits that fresh writ of Habeas Corpus was issued for production of Pabitra Sarma on 28.1.94, in terms of the judgment dated 11.5.92. Hence according to him, the matter was not closed.

13. In the counter affidavit filed on behalf of Army authorities, about the release of Pabitra Sarma it has been stated that after arrest and interrogation of Pabitra Sarma it was found that he was not the person who was intended to be detained, but it was some one else by the name of Pabitra Hazarika. Major A. Naithani volunteered to give Army jeep to Shri Pabitra Sarma to drop him back at his residence. Their case further is that he refused to use the jeep as he thought that he would be suspected to be collaborating with Army authorities. Therefore, on his request he was let off by Major A. Naithani in the hours of darkness around 5.00 A.M. on November 18, 1991, and it was at the time of his release that release certificate was prepared and duly authenticated by Indra Das, Constable. It is not disputed that Major A. Naithani is now no more (since died). The story as given that Pabitra Sarma declined the offer given by Major A. Naithani to provided him an Army jeep to leave him at his residence and that he was let off in the dark hours at 5.00 A.M. is not substantiated by any circumstances or other material, and so far the release certificate and evidence of Indra Das is concerned, we have already discussed the matter above in the earlier part of this order.

14. The facts which admit of no dispute are that Pabitra Sarma was picked up by Army and on their own showing, he was wrongly picked up since they wanted to pick up some one by the name of Pabitra Hazarika. According to the Petitioner, Pabitra Samra was picked up on 16.11.91, but, according to the Army authorities, he was picked up on 17.11.91. It will not, however, make much of a difference at this stage. The finding, however, is that he was picked up on 16.11.91. Pabitra Sarma was not produced in this Court after the writ of Habeas Corpus having been issued by order dated 11.5.92.

15. A fresh writ in terms of the order already passed was again issued; but, he could neither be traced nor produced before this Court. The main dispute thus is about the alleged release of Pabitra Sarma by the Army. Enquiries have been made by the CBI and the District Judge, under the orders of this Court. Parties had been given full opportunity to adduce evidence-documentary as well as oral. The release certificate is the sheet anchor of the Army authorities, as well as the evidence of Indra Das; but Indra Das, as indicated earlier, took shifting stand, making him totally unreliable to be believed. The release certificate is also not a document which can be relied. The District Judge has rightly recorded the findings in his report on the points indicated above. We do not find any good reason to arrive at any different conclusion from that on the basis of which writ of Habeas Corpus was issued by order dated 11.5.92, passed by a Division Bench of this Court.

16. In these circumstances, the question that arises for consideration is as to what orders are required to be passed to finally dispose of the matter. It is also

not in dispute that Major A. Naithani had picked up Pabitra Sarma for interrogation. He is now no more (since dead). Hence, we are not considering the question of his criminal prosecution in these proceedings. The question which has then been pressed on behalf of the Petitioner is about payment of compensation.

17. By order dated August 20, 1996, this Court had also directed the District Judge to report about the status and financial position of the family of the Petitioner. It has been indicated that Pabitra Sarma, at the time he was picked up was a student of Assam Christian College, Tezpur, in Higher Secondary Second Year Class. He was aged about 19 years. His father is a retired employee of Assam State Transport Corporation, who is not even been getting pension. One of his other brothers is unemployed. Only one brother is employed, who lives separately. There is some small income from rent of the rooms and insignificant cultivation.

18. In support of payment of compensation in the circumstances as involved in the present case, Shri G. Uzir, learned Counsel appearing for the Petitioner, has placed reliance upon cases reported in (1988) 2 GLR 159, Smt. Postsangbam Ningol Thokchom and another Vs. General Officer Commanding and others, Potsangbam Ningol Thokohom Smt and Anr. v. General Officer Commanding and Ors. The plea of release as raised by the Army was not found to be correct and acceptable in the above noted cases. It was found to be a fit case for award of compensation.

19. We, therefore, after taking into consideration all facts and circumstances, find that it is a fit case for award of compensation to the aged parents of the detenu, Pabitra Sarma, who was admittedly picked up by the Army, but whose release as set up by the Army, has not been accepted. We award an amount of Rs. 2 (two) lakhs to the Petitioner and her husband, namely, Shri Budhin Kumar Sarma, which amount shall be paid to them by Respondents Nos. 1 and 2, namely, the Union of India and the Commander-in-Chief, Four Corps, Indian Army, within a period of three months, with cost to be paid by the Respondents indicated above to the Petitioner, which we assess at Rs. 5000/- (Rupees five thousand only.)

The matter stands finally disposed of.