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**(2004) 05 GAU CK 0014**

**Gauhati High Court**

**Case No:** Writ Petition (Criminal) No. 24 of 2002

Padumi Boro

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision:** May 17, 2004

**Acts Referred:**

- Constitution of India, 1950 - Article 21

**Citation:** (2004) 3 GLR 686

**Hon'ble Judges:** P.P. Naolekar, C.J; Amitava Roy, J

**Bench:** Division Bench

**Advocate:** S.C. Biswas, P. Biswas, A.K. Hussain and M. Bordoloi, for the Appellant; G. Singh and A. Hazarika, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

A.H. Saikia, J.

Heard Mr. S.C. Biswas, learned counsel for the petitioner. Also heard Ms. G. Singh, learned Addl. C.G.S.C. and Mrs. A. Hazarika, learned Addl. Senior Govt. Advocate, Assam representing the respective official respondents.

2. The petitioner Smt. Padumi Boro, wife of Sri Dilip Boro, resident of village-Maidangpur under Rangapara Police Station in the district Of Sonitpur has filed this Habeas Corpus petition under Article 226 of the Constitution of India alleging that on 24.5.2002 some jawans of Assam Rifles having its Camp near to the house of the petitioner's husband who has been serving as a Chowkidar in a local M.E./High School, while patrolling in the vicinity, went to their house and asked her husband Sri Dilip Boro to attend positively at Charduwar 5th Assam Rifle Headquarters as the high-ups of Assam Rifle wanted to have a talk with him to which he agreed to visit. Accordingly, on the next day i.e. on 25.5.02, the petitioner's husband came out with his by-cycle informing the petitioner and other members of the house that he was going to the Assam Rifle Headquarters as summoned and he

would come back as early as possible. Thereafter, Sri Dilip Boro went to 5th Assam Rifle Headquarters at Charduwar. But unfortunately, thereafter, her husband did not return back home. Some members of her family went to Charduwar 5th Assam Rifle Headquarter to enquire about the whereabouts of Dilip Boro and on such enquiry it was informed that Dilip Boro was at Bhalukpung Assam Rifle Camp and there he was in good health. The family members were also assured that there was nothing to worry about him and he would be sent back soon. On 30.5.2002 the petitioner alongwith four persons, namely, Sri Sri Bhola Basumatary, Sri Akon Baglari, Sri Hemen Narzari and Smt. Gesao Brahmo went to Bhalukpung 5th Assam Rifle Temporary Camp to see Dilip Boro and on arrival at the place, they saw Dilip Boro in the Camp complex at about 12.30 p.m., but he was not allowed to meet them. As the Assam Rifle did not release her husband after such detention, on 19.6.2002, Sri Dhaniram Boro, the elder brother of Dilip Boro, submitted an application before the Deputy Commissioner, Sonitpur seeking help c of the authority to recover his brother from Assam Rifle as he was not released till that date after his detention by the Assam Rifle. The Deputy Commissioner, Sonitpur, on receipt of such application, passed an order to caused an enquiry into the entire incident by Circle Officer, Charduwar Revenue Circle, who recorded the statements of several persons in that connection. Having failed to get the positive information as regards the whereabouts of her husband, the petitioner, finding no other alternative, also lodged an FIR on 4.7.02 with the Rangapara Police Station. Despite her best efforts, she failed to get any information about her husband for which she has been compelled to file this Habeas Corpus petition.

3. Both the Union of India and State of Assam have filed their respective counters. Denying all the allegations made in the Habeas Corpus petition, in the affidavit-in-opposition filed on behalf of the Union of India, Assam Rifle categorically stated that the husband of the petitioner, Dilip Boro, was never summoned to Assam Rifle Headquarter at Charduwar on 25.5.02 nor did he attend the said Headquarter. It was also denied that anyone had ever visited the Bhalukpung Temporary Camp of 5th Assam Rifle on 30.5.02 and as such there could not be any question of seeing Dilip Boro therein. The State of Assam also refuted the allegations made in this Habeas Corpus petition as regards the taking of Dilip Boro into custody by 5th Assam Rifle.

4. Taking into account all such allegations and counter allegations of the respective parties, this Court by order dated 12.11.02 directed the learned District Judge, Sonitpur to make an enquiry in regard to the allegations made in the application by taking oral and documentary evidence for the purpose of recordings its findings as to the fact of Dilip Boro's custody with 5th Assam Rifle and as regards to his confinement with them.

5. In compliance of the High Court's order, the learned District Judge, Sonitpur caused an enquiry and submitted the detailed report on 27.11.03 with the findings

that the 5th Assam Rifle was responsible for missing/disappearance of the petitioner's husband, Dilip Boro. To arrive at such conclusion, the learned District Judge, Sonitpur basically relied on the statements of the witnesses examined by both the parties.

6. On close perusal of the report it is seen that the petitioner side examined as many as five witnesses wherein three witnesses were examined by the respondents. All the witnesses of the petitioner, side i.e. PW1, Smt. Padumi Boro, the petitioner, PW2, Sri Bhola Basumatary, the father of the petitioner, PW3, Dhaniram Boro, the elder brother of Dilip Boro, PW4 Sri Hemem Narzari and PW5 Smt. Gesao Brahmo categorically stated that on 30.5.02 when they went to the Bhalukpung Camp, they saw Dilip Boro inside the premises of the Camp and thereafter his whereabouts were not known. Both PW1 and PW3 also specifically stated that on 24.5.02 at about 12-00 noon, six jawans of Assam Rifle went to the house of Dilip Boro and asked him to visit to the Headquarter. PW1 and PW3 went to the extent saying that they saw Dilip Boro leaving his house on his by-cycle on 25.5.02 on his way to attend the Headquarter.

7. Three witnesses examined by the respondents were - O.P.W. No.1, Sri Joy Ram Boro, S.I., the then officer-in-charge of Charduar Out Post, O.P.W. No. 2, Sri Basudev Das, Circle Officer, Charduar Revenue Circle and O.P.W. No. 3, Sri Keshar Singh Sirola, Subedar, 5th Assam Rifle Charduar Camp.

8. O.P.W. No.1, Sri Joy Ram Boro stated that on receipt of the written ejahar on 4.7.02 from the PW 1, the petitioner, relevant G.D. entry was made. Then he alongwith O.P.W. No. 2, Sri Basudev Das went to 5th Assam Rifle Camp at Charduar to make an enquiry on the basis of the FIR filed by the petitioner and in course of the investigation they met on 13.7.02, one Major J. Walia of 5th Assam Rifle Who told them that on 24th and 25th May, 2002, no counter insurgency operation was conducted by the Assam Rifle nor was any person detained in either by Charduar or Bhalukpung Camp.

9. O.P.W. No. 2, Sri Basudev Das, Circle Officer, stated that on receipt of the complaint petition of PW3, Dhaniram Boro, forwarded to him by the Deputy Commissioner, Sonitpur, he initiated an enquiry by informing PW1, the petitioner, PW2, PW3 and Sunil Narzay. O.P.W. No. 2 stated that all those persons excluding the petitioner did not state before him about the detention of Dilip Boro by Assam Rifle. It was the petitioner who told him that on 25.5.02 at about 8-00 a.m., her husband, Dilip Boro left the house on a by-cycle for going to Headquarter and jawans of Assam Rifle did not take her husband away. But on cross-examination, O.P.W. No. 2 admitted that he neither served notice on Major J. Walia nor did he record the statement of Major J. Walia. Even this witness, the Enquiry Officer, stated that six jawans had been to the house of Dilip and asked him to visit the Headquarter and on the following morning i.e. 25.5.02, Dilip Boro left for the Headquarter on a by-cycle and since then he did not return.

10. O.P.W. No. 3 Sri Sirola stated that on 16.8.02 he was on duty at 5th Assam Rifle, Charduwar and Major J. Walia was the Major Executant of the Headquarter. According to him, Dilip Boro was not detained by 5th Assam Rifle and nor was he under its custody.

11. From the meticulous scrutiny of the findings recorded by the learned District Judge in his report, it appears that on the basis of positive evidence of PW1, PW2, PW3, PW4, PW5 and PW6 he found that on the particular date i.e. on 24.5.02, six jawans of Assam Rifle visited Dilip Boro's house and asked him to attend the Headquarter at Charduwar Camp of 5th Assam Rifle and on the following day on 25.5.02, Dilip Boro left in his by-cycle on his way to Headquarter at Charduwar Camp stating his wife and other relatives that he would be returned soon. It was also recorded that the said bi-cycle was seized by the police. The learned District Judge, on appreciation of evidence of O.P.W. No. 2, the Enquiry Officer and after going through the findings of the enquiry so conducted by the said Circle Officer as directed by the concerned Deputy Commissioner, found that the enquiry was conducted in a most lackadaisical manner and the findings registered by him did not throw any light on the allegations of Dilip being detained in the Assam Rifle's Camp. It appears from the report that the said Major J. Walia, the Major Executant of the Headquarter, who could have been the best person to explain the entire episode in details, was not at all examined by the respondents.

12. Taking all these factual aspects into account, we are inclined to accept the enquiry report submitted by the learned District Judge, and hold that the Assam Rifle was responsible for missing/disappearance of Dilip Boro from their custody. The Assam Rifle, however, put an objection against this enquiry report by filing their counter on 22.4.2003. But having carefully examined the averments made in the objection in entirety and upon hearing the learned Additional C.G.S.C., we do not find any valid or plausible ground to entertain the said objection.

13. Since the respondents, Assam Rifle has been held to be responsible for missing/disappearance of Sri Dilip Boro as noted above, having regard to the catena of decisions of the Apex Court as well as this Court, we are of the view that such action on the part of the respondent is a clear violation of the right to life and personal liberty guaranteed as fundamental right under Article 21 of the Constitution of India. Respect for such basic human rights of the individual is the bedrock of true democracy. Thus it is incumbent upon the State to repair such damages so caused to the victim as well as the petitioner by its officials and the same is needed to be remedied by way of payment, of monetary compensation. ....

14. As the respondents, particularly, Assam Rifle have failed to produce Sri Dilip Boro before this court till date, we have lost every hope that the said Dilip Boro would be produced before us. That being so, we are of the considered opinion that the ends of justice would be satisfied if an amount of Rs. 1.50 lacs (Rupees one lakhs fifty thousand) only is fixed as compensation to be paid to the petitioner. It is ordered

accordingly. The petitioner shall be at liberty to seek other remedy by way of damages in any civil or other competent court and grant of such compensation would be a subject separate in the facts and the law applicable thereof. The Union of India especially Respondent No. 3 and Respondent No. 4, i.e., the Assam Rifle is directed to pay the said amount within a period of three months from the date of receipt of the certified copy of this order.

15. It is made clear that the entire amount of compensation quantified above shall be deposited by the abovementioned respondents before this Registry and on being deposited, the Registry shall pay the said amount of compensation to the petitioner on proper identification by her counsel.

16. For the forgoing reasons and observations this petition stands allowed. No costs.