

THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court Of Assam, Nagaland, Mizoram and Arunachal Pradesh)

Virtual Court No.4

WP(C)(Suo-Motu) 1/2020

X X X

-versus-

In Re- Union of India and 3 Ors.

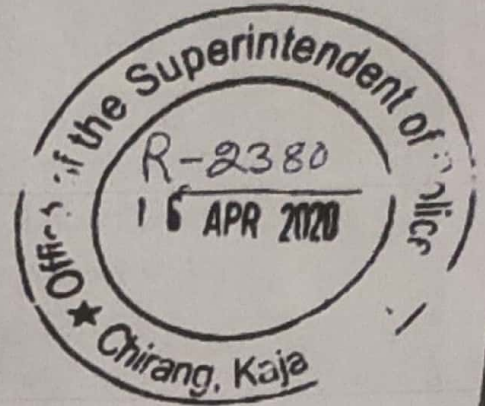
:: BEFORE ::

HON'BLE MR. JUSTICE MANOJIT BHUYAN
HON'BLE MR. JUSTICE AJIT BORTHAKUR

O R D E R

15.04.2020

(Manojit Bhuyan, J)



Borthakur B. J.
Manojit Bhuyan

This *suo-motu* writ petition is taken up today and necessary order passed consequent upon order dated 13.04.2020 passed by the Hon'ble Supreme Court of India in IA No.48215/2020 and IA No.48216/2020, arising out of SUO MOTU WRIT PETITION (CIVIL) No.1 of 2020 (IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS).

We have heard Mr. S.C. Keyal, learned Assistant Solicitor General of India, appearing on behalf of the Union of India as well as on behalf of the State Co-ordinator, National Register of Citizens, Assam i.e. Respondent Nos.1 and 3. Also heard Mr. U.K. Nair, learned Senior Standing Counsel, assisted by Mr. J. Payeng, Advocate, representing the State respondent nos.2 and 4.

With regard to release of detainees who have been declared as foreigners under the provisions of *Foreigners Act, 1946*, the Hon'ble Supreme Court of India had initially passed order dated 10.05.2019 in Writ Petition (Civil) No.1045 of 2018 (*Supreme Court Legal Services Committee v. Union of India and Ors.*) to the effect that the detainees awaiting their deportation and who have completed more than 3(three) years in detention may be released, subject to the conditions laid down in the order. For ready reference, the operative part of the order is reproduced below :

"Insofar as the release of detainees who have served long period of detention in the detention centres awaiting their deportation is

concerned, we are of the view that detenuess who have completed more than three years may be released, subject to the following conditions:-

- (a) Execution of bond with two sureties of Rs.1,00,000/- (Rupees one lakh only) each of Indian citizens;
- (b) He or she specifies verifiable address of stay after release;
- (c) Biometric of his/her iris (if possible) and all ten fingerprints and photos shall be captured and stored in a secured database before release from the detention centres. He or she shall report once every week to the Police Station specified by the Foreigners Tribunal;
- (d) He or she shall notify any change of his or her address to the specified Police Station on the same day, and
- (e) A quarterly report to be submitted by the Superintendent of Police (Border) to the Foreigners Tribunal regarding appearance of such released declared foreigner to concerned Police Station and in case of violation of condition, the DFN will be apprehended and produced before Foreigners Tribunal."

The aforesaid order dated 10.05.2019 underwent modification by virtue of the recent order dated 13.04.2020 passed in the aforesaid IA No.48215/2020 and IA No.48216/2020 to the effect that the 3 (three) year detention period shall stand reduced to 2 (two) years for being entitled to be released on bail and the requirement to furnish a bond in the sum of Rs.1,00,000/- (One Lakh) shall stand reduced to sum of Rs.5,000/- (Five Thousand) with two sureties of the like sum of Indian citizens. The rest of the conditions mentioned in the order dated 10.05.2019 stood maintained.

We are aware that the aforesaid modifications was the outcome of the *suo-motu* proceedings initiated by the Hon'ble Supreme Court of India and in the two Intervention Applications, mentioned above, in the wake of the global outbreak of corona virus and in order to arrest the spread of the disease, not only in prisons but also in the correctional homes, detention centres and protection homes.

Having due regard to the recent order of the Hon'ble Supreme Court of India dated 13.04.2020, we now make a general direction for compliance by the respective Superintendents of Police (Border) of all the present 33 (thirty three)

districts of Assam, namely, Baksa, Barpeta, Biswanath, Bongaigaon, Cachar, Charaideo, Chirang, Darrang, Dhemaji, Dhubri, Dibrugarh, Dima Hasao, Goalpara, Golaghat, Hailakandi, Hojai, Jorhat, Kamrup, Kamrup Metropolitan, Karbi Anglong East, Karimganj, Kokrajhar, Lakhimpur, Majuli, Morigaon, Nagaon, Nalbari, Sivasagar, Sonitpur, South Salmara-Mankachar, Tinsukia, Udalguri and Karbi Anglong West, to take necessary steps in line with the directions made in the order dated 13.04.2020. The concerned Superintendent of Police (Border) shall first take stock of the names and period of detention of such detainees under his/her jurisdiction claiming benefit of release on bail for having completed more than 2 (two) years in detention and thereafter take necessary steps for release of such detainees on bail who are lodged in any of the 6 (six) Detention Centres in the State of Assam, following their declaration as foreigners under the provisions of the *Foreigners Act, 1946*, subject to fulfilment of the following conditions by each of the detainees claiming such release on bail :

- a) Execution of bond with two sureties of Rs.5,000/- (Five Thousand) each of Indian citizens;
- b) Declaration of verifiable address of stay after release;
- c) Capturing and storing of the biometrics of the iris of both eyes and all 10 (ten) fingerprints and photos in a secured database before release from the concerned Detention Centre;
- d) Declaration/Undertaking that the detainee shall report once every week to the Police Station/Out Post (to be specifically named with necessary particulars), located within the vicinity of his/her verifiable address of stay after release;
- e) Declaration/Undertaking that the detainee shall notify any change of his/her address to the said named Police Station/Out Post on the same day; and
- f) Declaration/Undertaking that in case of violation of any of the conditions, the detainee will be liable to be apprehended and produced before the Foreigners' Tribunal concerned.

We further order that the jurisdictional Superintendent of Police (Border) shall submit a quarterly report to the concerned Foreigners' Tribunal regarding appearance of the detainee before the concerned Police Station/Out Post.

We also make an order that the Jurisdictional Superintendent of Police (Border) shall provide the statistics of those detainees who have been released on bail after meeting with the conditions/requirements above and furnish such statistics to the Senior Standing Counsel representing the State respondents enabling the same to be brought on record by means of a comprehensive affidavit.

Let the required steps by the Jurisdictional Superintendent of Police (Border) for release on bail in terms of the directions above be complied with as expeditiously as possible within an outer limit period of 7 (seven) days from today.

Let a copy of this order be furnished to Mr. S.C. Keyal and Mr. U.K. Nair, under signature of the Court Master, during the course of the day, for onward immediate transmission to the respondent no.4 i.e. the Special Director General of Police (Border), Assam, who in turn shall communicate this order to each of the Superintendent of Police (Border) of the 33 (thirty three) districts of Assam forthwith.

Matter be listed immediately after 10 (ten) days. By the next date the respondent no.4 i.e. the Special Director General of Police (Border), Assam shall bring on record the statistics/particulars of the number of persons who have been released on bail in pursuance of the directions above.

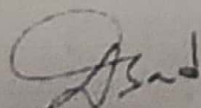
Sd/- Ajit Borahakur,

JUDGE

Sd/- Manojit Bhuyan,

JUDGE

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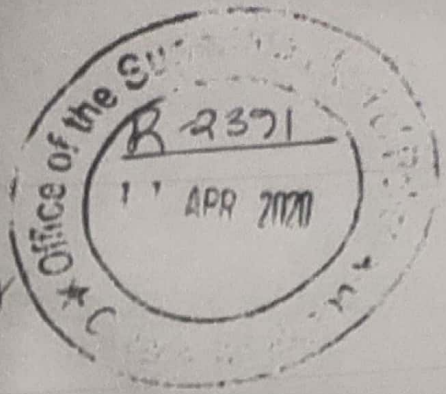


(DIPAK PRASAD)

15.04.2020

COURT MASTER

*Border BT
M. P. B. P. V.
S. P.*



OFFICE OF THE SPL. DIRECTOR GENERAL OF POLICE (BORDER),
ASSAM, SRIMANTAPUR, (BIHANGAGARH), GUWAHATI-32

Memo No. SPL.DGP(B)/III/DC/333/2020/ 671

Date: 16 April, 2020-

From : Shri Prasanta Suika, APS
The Superintendent of Police (B)
Assam, Guwahati.

To : 1. The Commissioner of Police, Guwahati City
2. The Superintendent of Police (B),
..... (All districts)

Sub : Format for furnishing information/status regarding release of Declared Foreign Nationals who have completed detention of 2 (two) years or more in Detention Centres of Assam

Ref : This office Memo No. SPL.DGP(B)/III/DC/333/2020/688 dated 15.04.2020

Sir,

In continuation to the memo referred above, I am directed to forward a copy of a **FORMAT** (enclosed herewith). I am further directed to request you to furnish the information/ status report regarding release of Declared Foreign Nationals, who have completed detention of 2 (two) years or more in Detention Centres of Assam, as per the enclosed Format through email and fax. Additionally, a soft copy in Excel Sheet, may also be mailed to this HQrs at ndgp-border@assampolice.gov.in on the same date, as mentioned in the letter under reference.

Enclosed: As above.

Yours faithfully,

[Signature]
Superintendent of Police (B)
Assam, Guwahati

Date: April, 2020

Memo No. SPL.DGP(B)/III/DC/333/2020/ 671-A

Copy for favour of kind information to:-

1. The Inspector General of Police (BTAD), Kokrajhar
2. All Deputy Inspector General of Police of Ranges of Assam

[Signature]
Superintendent of Police (B)
Assam, Guwahati