



GAHC010087392021

Page No.# 1/14



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

Case No. : WP(C)/2966/2021

MS X

A STUDENT OF 2ND YEAR, B.TECH, CHEMICAL ENGINEERING
DEPARTMENT, R/O DHANSIRI HOSTEL, INDIAN INSTITUTION OF
TECHNOLOGY, GUWAHATI, ASSAM, PIN - 781039.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECRETARY, HOME DEPARTMENT,
GOVT. OF ASSAM, STATE SECRETARIAT DISPUR, PIN-781006, ASSAM

2:THE DIRECTOR GENERAL OF POLICE
GOVT. OF ASSAM
DR. B.K. KAKATI ROAD
ULUBARI, GUWAHATI -781007.

3:THE SUPERINTENDENT OF POLICE
KAMRUP (RURAL)
GOVT. OF ASSAM
GUWAHATI-BIHATA ROAD
KAMPUR, TRIPTI NAGAR
AMINGAON, GUWAHATI-781031
ASSAM

4:THE OFFICER-IN-CHARGE
NORTH GUWAHATI P.S.
ABHAYAPUR
KAMRUP (RURAL)
ASSAM, PIN- 781030

5:THE OFFICER-IN-CHARGE
ALL WOMENS P.S. PANBAZAR
PIN- 781001
ASSAM



6:SRI MUKUT BAISHYA
SUB-INSPECTOR OF POLICE
AMINGAON OUTPOST
AMINGAON
KAMRUP (RURAL)
PIN- 781031, ASSAM

Advocate for the Petitioner : MS. S. SARMA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE N. KOTISWAR SINGH**

ORDER

Date : 28.05.2021

The Court proceedings have been conducted through video-conference.

- 2.** Heard Ms. Sumitra Sarma, learned counsel for the petitioner. Also heard Mr. D. Nath, learned Additional Senior Government Advocate, Assam.
- 3.** The matter had been fixed today for apprising this Court by Mr. Nath, the Ld. Government Counsel of the status of the investigation conducted so far. A copy of the status report dated 24.05.2021 submitted is kept on record.
- 4.** Some of the issues raised in this petition are of seminal importance, though these relate to an individual, the petitioner herein, but will have far-reaching consequences if the allegations made by the petitioner are not properly investigated and brought to their logical conclusion.
- 5.** The issues raised in this petition are based on allegations of sexual harassment, sexual assault and other misconducts meted out to a student by fellow students within the hallowed precincts of a premier educational institution, the Indian Institute of Technology (IIT), Guwahati. From the materials brought on record, there are definitive indications of certain serious offences having taken place, though the full and complete picture is yet to emerge. It is of utmost importance that such serious incidents do not recur in such academic institution



of excellence, for, even allegations of such nature can not only mar the academic reputation of a prestigious institution but also vitiate the academic atmosphere and have a chilling and deleterious effect on many of the students hailing from across the country perusing their studies.

6. It may not be necessary at this stage to go into detail, of the facts and allegations made, but it will suffice if only some of the bare minimum essential facts are adverted to.

7. It is the specific allegation of the petitioner, a student of IIT, Guwahati, that she was subjected to sexual assault by certain fellow student(s) of the IIT, Guwahati in the night of 28.03.2021. It is the undisputed fact that the petitioner was taken to Gauhati Medical College and Hospital (GMCH) in the early morning of 29.03.2021 in an unconscious state. The concerned doctor who examined her in the GMHC informed the nearest Bhangagarh Police Station that a patient (petitioner herein) with a history of indigestion of unknown substance with sexual assault arrived at the Casualty, GMCH on 29.03.2021 at 1:05 am. The said report was forwarded by the Bhangagarh Police Station on the same day in the early morning to Amingaon Police Outpost, under whose jurisdiction the incident occurred, on which basis an FIR was registered as Amingaon P.S. Case No.53/2021 under Section 376 IPC on 30.03.2021. The present respondent No.6 was assigned to investigate the matter on the same day.

8. It appears that on 02.04.2021 at 7 pm another police report was submitted by the Senior Security Officer, IIT, Guwahati before the Officer-in-Charge of Amingaon Police Station on 02.04.2021 at 7 pm stating that on 28.03.2021 at around 11 pm a female student was found unconscious in the Institute premises who was examined in the Institute and was immediately sent by ambulance to Gauhati Medical College and Hospital for further medical examination. It is also mentioned in the said report that the Institute had constituted a committee on 29.03.2021 to investigate the incident, which submitted its report on 02.04.2021 at 6 pm. The said report was also submitted to the police along with the Complaints. The IIT authorities thus formally lodged a Complaints as aforesaid which was duly acknowledged by the police and accordingly, an FIR being, North Guwahati Police Station Case No.55/2021 under Section 376 IPC was registered on 03.04.2021.

9. It appears that subsequently thereafter, the petitioner, not being satisfied with the

investigation or alleged non-action of the investigating authority approached the Officer-in-Charge of All Women Police Station, Guwahati on 07.04.2021 and filed another FIR which was duly registered by the All Women Police Station as North Guwahati Police Station Case No.56/2021 under Sections 376/328/307/120B/34 IPC against as many as 8 fellow students for sexual assault and leaving her unconscious and also defaming her.

10. From the status report of the investigation submitted before this Court, it appears that the Investigating Officer had examined a number of witnesses and investigation is going on.

11. However, the Ld. Counsel for the petitioner has raised serious objections to the manner in which the Respondent No.6, the Investigating Officer is conducting the investigation. Her grievance is that respondent No.6 did not promptly start the investigation after the First Information Report was registered on 30.03.2021. As mentioned in the petition, the Investigating Officer came to examine the victim only on 02.04.2021. There are also allegations that bail sought by some of the accused was not vigorously opposed and five of the students though were picked up by the police were released on the very next day on the ground that there is no evidence regarding their involvement in the case, as also mentioned in the status report.

12. Learned counsel for the petitioner submits that the aforesaid acts of respondent No.6 are questionable as there was tardy investigation even after clear leads were made available to the investigating authority. It has been submitted that the Fact Finding Committee of the IIT constituted immediately after the incident had enquired into the matter and found may disturbing facts as disclosed in the report which clearly indicated the culpability of the main accused as well as others and a copy of the said report was also furnished when the second FIR was lodged by the IIT authorities on 02.04.2021. In other words, though the Investigating Officer had access to the said report of the Committee which indicated involvement of not only the main accused but other students, these students, except the main accused were released on bail without any serious objection by the police.

13. The said report is also part of the pleadings and is annexed as Annexure-2 to this petition. The relevant concluding portion of the report is reproduced herein below:

“After deliberations with all the students, the Committee came to know that from



9.30 pm till 11.45 pm, "X" (*this Court has withheld the name of the victim girl, the petitioner herein*) was unconscious and in the old Akshara school. The committee could not get any concrete answer from Utsav as well from others about what had happened during these 2 hours except that they were trying to regain her senses. There is also a confusion regarding at what time the other students (Bhavya, Parth and Shalmali) arrived at the spot, because according to Utsav, he called Bhavya at around 9.15 pm. But Bhavya mentioned that he got the call at 10.26 pm. However, between 9.30 to 11.45 pm, no attempt was made to call the ambulance. The ambulance was called only after 11.45 pm after Chelsi and Aryan arrived. Given the fact that the girl was unconscious for more than 2 hours and as per the GMCH discharge report as well as depositions made by the students, the committee believes that this could be a possible case of sexual assault. Hence, committee concludes that the case should be shared with **Internal Complaints Committee (ICC) of IITG** for further deliberations."

14. Though the finding of the said Committee cannot be said to be conclusive, it provided crucial leads for the Investigating Authority to examine further. It may be mentioned that subsequently the matter was referred to the **Internal Complaints Committee** (in short, **ICC**) constituted to deal with the sexual harassment/sexual misconducts in the IIT under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Accordingly, the said ICC also investigated the matter and submitted its report. Though copy of the said report is not part of the pleadings, the same has been made available before this Court by the Ld. Counsel for the petitioner, a copy of which has been also furnished to Mr. Nath, Ld. Government Counsel.

15. In this regard, it may be pertinent to mention the recommendations of the said Internal Complaints Committee, which are as follows:-

6. ICC recommendations

Given the severity of the incident of sexual assault and the remarkably nonplussed reaction that it received from the 3 students who were at the scene on 28th March, the ICC would like to suggest to the institute that the following

recommendations be carried out as a measure of their punishment for involvement in this case.

The ICC also seeks that a message of zero tolerance to sexual offences goes out to the campus residents, and simultaneously, seeks to have a positive bearing on its work culture by showing that violence against women will be dealt with utmost severity. The current atmosphere of fear and anxiety among girls and women in the campus must be viewed as a detrimental factor to its growth as an institute of international importance.

Therefore, the recommended actions against

Bhavya Agarwal

Shalmali Gaekwad

Parth Bajaj

- (i) For putting **X's** (name withheld by the Court) life in grave danger and not informing anyone about sexual assault, battery and substance and narcotics abuse.
- (ii) For causing mental trauma, pain, suffering and emotional distress to the victim.
- (iii) For the loss in career opportunity (she resigned from FEC club and was not taken in by another club of technical board for no valid reason).
- (iv) For Medical expenses incurred by the victim for physical treatment.

According to the provisions of the Sexual Harassment Act, Section 3 (1) and 3(2) (iv) and (v)

“(i) No woman shall be subjected to sexual harassment at any workplace.

(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(v) humiliating treatment likely to affect her health or safety.”

The following actions are recommended to the head of the institute



- 1) expulsion of one academic semester with immediate effect.**
- 2) Expulsion from hostel for a year.**
- 3) Payment of a sum of Rs.50,000/- each to "X"**(name withheld by the Court)
- 4) Suspended rustication if sexual abuse is proven by a court of law**
and recommended action against

Sudhanshu Bhatia

Tushar Bohra

- (i) For being aware of a premeditated event criminal activity against a woman and not reporting it
- (ii) For discussing X's (name withheld by the Court) name unfavourably so as to severely affect her physical and mental health causing her emotional distress.

According to the provision of the Sexual Harassment Act, Section 3 (2)(iv) and (v)

“(iv) interference with her work or creating an intimidating or offensive or hostile work environment for her; or

(v) humiliating treatment likely to affect her health or safety.”

The following actions are recommended to the head of the institute

- 1) Expulsion from hostel for a year**
- 2) Payment of a sum of Rs.40,000/- each to "X"** (name withheld by the Court)
- 5) Suspended rustication of Sudhanshu Bhatia if sexual abuse is proven by a court of law.**

7. General recommendations

- 1) Apart from this the ICC would like to request IIT Guwahati to sensitise and make security staff aware of the possibility of these incidents in the campus.

- 2) Also make sure that abandoned buildings, half constructed buildings should be sealed and if that's not possible, there should be security personnel installed at all these places.
- 3) The message of strict action against sexual offences is the need of the hour. But for the prevention of these sexual offences, greater gender sensitization of the students is absolutely necessary. The gender imbalance in IIT campus is quite well known and in campuses where a girl student cannot expect to be safe along with their own fellow students is a severe indictment of a toxic culture of gender intolerance which seems to be present.
- 4) We believe that student leadership and representative ought to play a more proactive role in demanding harsh punishment against sexual offenders, demand that all steps be taken to ensure that woman and girls are safe in all places at any time inside the campus, and in the event that anything happens, ensure that there is no defamation. This culture where a victim can be most easily blamed for her suffering is the bane of all societies where women face routine sexual harassment and violence. Doing this, emboldens future perpetrators of violence on women, and must be studiously avoided at all costs. This has to be rooted out not by segregating the genders but by encouraging a more proactive role from all stakeholders and genders so as to ensure a safe and equal campus for women."

16. The aforesaid Internal Complaints Committee set up under a statute has also given certain findings and recommendations. It is to be noted that such findings are arrived at after an enquiry in a summary manner, based on the principle of preponderance of probability, which cannot be at all compared to a full-scale criminal investigation which being presently undertaken. Yet the findings of such committee provide very clear indices to the incident on the basis of which the criminal investigating agency can explore all angles for ferreting the truth. Many a times, it has been observed that criminal proceedings have faltered in the court of law because of faulty or defective investigations. We do not wish that it happens in this case.



From the records though it appears that criminal investigation is being carried out, considering the nature of the case, perhaps it will require a more comprehensive investigation than what has been already undertaken and accomplished, in the light of the aforesaid findings and recommendations of the Fact Finding Committee and Internal Complaints Committee of the IIT as referred to above.

There are many factual aspects which have been narrated in these reports, but this Court does not wish to reproduce them to avoid any prejudice to any party at this stage. However, in the opinion of this Court, these documents constitute very critical and important sources of evidence and provide crucial leads for proper investigation of the matter and this Court would expect the investigating agency to examine these aspects highlighted in these reports and make further and more comprehensive investigation so that the truth ultimately comes out.

17. In this regard, this Court would like to refer to the guidelines issued by the Ministry of Home Affairs (Women Safety Division), Government of India under Letter/Notification No.F.N.15011/190/2020-SC/ST-W dated 09.10.2020 which was circulated to all the Chief Secretaries/ and Advisers to Administrators relating to the mandatory actions to be taken by police in cases of crime against women. The said letter also refers to the Standard Operating Procedure (SOP) for investigation and prosecution of rape against women prepared by the Bureau of Police Research and Development, Government of India (BPR&D). The said SOP lays down the guidelines in detail starting from the stage of recording of FIR, treatment of victim, investigation, recording of evidence, bail related matters, witness protection, filing of charge within time bound period, rehabilitation of the victim, handling of media, etc.

18. This Court will only refer some of the relevant provisions of the said SOP for the purpose of this order. In the SOP at Serial No.7 thereof, it has been clearly mentioned that as far as possible, investigation of crime against women shall be conducted by a woman officer. Whenever necessary, investigation team should be formed, consisting of three to four experienced police personnel of whom one should be designated as the Chief I.O.

It has been further provided that there should be, at least, one lady officer in the team. Rape case should usually be investigated by a senior and experienced police officer as far as

possible, it being a grave offence.

Coming to the investigation, the said SOP also lays down various instructions as to the recording of evidence not only of the victim but also of witnesses and if necessary, under Section 164Cr.PC. It has also been mentioned about proper collection of electronic evidence.

19. From the records, it appears that there was mobile communication amongst the accused, as well as with the victim. Therefore, this Court would expect the Investigating Agency to collect all the electronic/digital data as may be available in the mobile phones or any other electronic devices which might have been used or where such evidence might have been recorded/stored and or subsequently deleted. If necessary, such mobiles phones and electronic devices of all the concerned suspects and persons of interest should be seized for proper investigation of the case.

20. The SOP at Sl. No. 15 deals with the manner in which the evidences have to be collected and to take the help of scientific teams, particularly in matters relating to lifting of fingerprints etc., taking photographs of the scene of crime etc. This Court expects the investigation to be carried out meticulously in the manner laid down in the SOP.

21. It may be also mentioned that giving false information in respect of an offence committed is punishable offence under 203 IPC. Further, destruction of document or electronic record to prevent its production as evidence is also a punishable offence under Section 204 IPC.

Investigating authority shall keep the aforesaid and other provisions of law in mind as regards any attempt to destroy the evidence and take appropriate actions in accordance with law.

22. The SOP at Sl. No.23also mentions of completion of investigation within a period of two months as required under Section 173 Cr.P.C.. However, it may be mentioned that the offences invoked in the case includes Sec. 376 IPC as well as Sec. 307IPC and Sec. 328 IPC which are offences if proved, punishable by imprisonment of not less than 10 years in which event, the investigation has to be completed within three months in the light of the *proviso (a)(i) to sub-section (2) of Section 167 Cr.P.C.* Though Section 173 Cr.P.C. states that investigation in relation to offence under Section 376 IPC shall be completed within two



months from the date the information was recorded by the Officer-in-Charge of the Police Station, in the light of the provisions of Section 167(2) Cr.P.C. referred to above, perhaps the investigation may have to be given time to complete within a period of three months.

It has been also mentioned at Serial No.21 of the SOP that bail application should be opposed with relevant grounds by the prosecution and if bail application is presented by the accused, or on behalf of the accused, before the Court, it shall be the duty of the concerned Prosecutor/Investigating officer to inform the victim about such application within an appropriate time in order to give her an opportunity to oppose such application, if she so desires.

23. Therefore, this Court would expect that the investigation will be completed within three months as also mentioned in the status report submitted by Mr. Nath, learned Government counsel. The charge-sheet should be filed within three months and if necessary, supplementary charge sheet can be filed later on. It may be noted that, failure to complete the investigation without cogent reasons should be taken seriously by all the authorities concerned including the court as, such unwarranted delay also affords undeserving default bail to an accused against whom there may be substantial material evidences. There should be no scope for any suspicion that the investigation has been slag in timely completion of investigation, causing delay in filing of the charge-sheet, considering the fact that persons alleged to be involved have been already identified.

24. This Court, thus, considering the seriousness of the allegations as depicted in the reports submitted by the Fact Finding Committee of the IIT and the Internal Complaints Committee's (ICC) of the IIT, is of the view that the case needs to be investigated further in a more comprehensive manner, for which this Court, after taking into consideration the view of the Ld. State Counsel in this regard, directs the Respondent authorities to constitute a new Investigating Team consisting of three experienced officers to investigate the case, to be headed by Ms. Mrigakshi Deka, IPS, presently SDPO, Rangia with other two members to be selected by the Superintendent of Police of the District in consultation with Ms. Mrigakshi Deka. This direction to reconstitute the Investigating Team has been prompted by the requirement of the SOP referred above and considering the seriousness of the allegations made and materials on record, so that the investigation can be completed within time and the

culprits brought to book at the earliest, without casting aspersions on the investigation already undertaken by the earlier I.O. of the case, the Respondent No. 6.

The newly constituted Investigating Team shall review the investigation undertaken so far and tie loose ends in the investigation, if there be any, and continue with the investigation, more particularly, in the light of the findings given by the Fact Finding Committee as well as the Internal Complaints Committee of the IIT, Guwahati which disclose very crucial aspects of the case and complete the investigation at the earliest. The urgency is dictated not only by the requirement of law but also the need to restore the sanctity of the academic institution and purge it of such defilement at the earliest.

25. The learned counsel for the petitioner has also raised another disturbing issue stating that the petitioner's parents have been subjected to threat by the family members of the main accused and others. It has been also alleged that many witnesses have been also threatened. Though this Court, at this stage, does not wish to make any observation as regards the correctness of the same, the fact that such an allegation has been made is sufficient enough for the investigating authority to examine the same.

26. It goes without saying that if such threat had been issued as alleged, these are offences which are punishable depending on the nature of threat issued for which the Investigating Authority shall investigate and take all necessary actions in this regard in accordance with law.

The investigation authority will take all necessary action to prevent any of the witnesses or relatives of the victim being threatened by anyone for which necessary proceedings shall be initiated against such persons.

Further, if there be any need to invoke the provisions of the "**Witness Protection Scheme 2018**", approved by the Hon'ble Supreme Court in **Mahendra Chawla and Ors. vs Union of India and Ors., (2019) 14 SCC 615**, the same may be done.

27. It has been also brought to the notice of this Court that as per the status report submitted by Mr. Nath, certain seized articles have been sent for forensic examination to the FSL, Guwahati. This Court, accordingly, directs the FSL, Guwahati, though not impleaded as a party respondent in this petition, to furnish the result/report at the earliest so as to enable



the investigation team to complete the investigation within the period of 3 (three) months as mentioned above. There ought not be any delay on the part of the FSL which may lead to failure in filing the charge sheet within three months.

This Court expects that the investigation shall be completed within the period of 3 (three) months.

A copy of this order may be furnished to Mr. Nath, learned Additional Senior Government Advocate to enable him to communicate to all the concerned authorities including the Head of the FSL, Guwahati.

28. It is also directed that the Director General of Police, Assam, the Respondent no.2, shall also ensure that the Letter/Notification No. F.N.15011/190/2020-SC/ST-W dated 09.10.2020 issued by the Ministry of Home Affairs (Women Safety Division), Government of India which was circulated to all the Chief Secretaries/ and Advisers to Administrators relating to the mandatory actions to be taken by police in cases of crime against women, be circulated to all the Police Stations in the State of Assam for compliance of these guidelines read with the relevant statutes, as these will hold the field till appropriate rules/regulations/statutes are framed by the State Government in this regard.

29. We have also noted the prompt enquiries being conducted by the Fact-Finding Committee and Internal Complaints Committee of the IIT. Even though the IIT authorities are not parties in this proceeding, it is expected that they shall take all the necessary consequential institutional punitive and remedial actions and shall also extend full co-operation to the Investigating Team in connection with the aforesaid investigation. There should be also no scope for misplaced sympathy on the part of any of the authorities. Accordingly, the Registry of this Court is directed to furnish a copy of this order to the Director of the IIT for information and compliance, both by means of usual communication method and electronic/digital means.

30. A copy of this order may be also furnished to Ms. Sarma, learned counsel for the petitioner.

31. List the matter again on 21.06.2021 for apprising this Court as to the progress/developments in the investigation in terms of the directions issued by this Court



today, as this Court proposes to monitor the progress of the investigation of the case till filing of charge-sheet before the competent court.

Sd/- N. Kotiswar Singh
JUDGE

Comparing Assistant