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2026:GAU-AS:418-

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

Case No. : WP(C)/1098/2017

ANIL NARZARY
S/OL T. DEUBAR NARZARY R/O VILL- KHANIBHUR P.O. BENG TAL, P.S.
RUNIKHATA DIST. CHIRANG, BTAD, ASSAM.

VERSUS

THE UNION OF INDIA and 7 ORS.
REP. BY SECRETARY DEFENCE, GOVT. OF INDIA, NEW DELHI.

2:THE G.O.C. EASTERN COMMAND
NARENGI
GUWAHATI

3:THE COMMANDING OFFICER
7TH SIKH LI REGIMENT RUNIKHATA CAMP
DISTRICT-CHIRANG

4:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY
HOME
DISPUR
GUWAHATI-781006

5:THE SUPERINTENDENT OF POLICE
DIST. CHIRANG BTAD
ASSAM

6:THE SUPERINTENDENT OF POLICE
DIST. KOKRAJHAR BTAD
ASSAM

7:THE OFFICER-IN-CHARGE

RUNIKHATA POLICE STATION
DIST. CHIRANG BTAD
ASSAM

8:THE OFFICER-IN-CHARGE
KOKRAJHAR POLICE STATION
DIST. KOKRAJHAR BTAD
ASSA

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Advocate for the petitioner : Mr. A. Choudhury

Advocate for the respondent(s) : Mr. D. Nath, Sr. Govt. Adv

Advocate for the respondent(s) : Mr. B. Deka, CGC

Date on which judgment was reserved : **16.09.2025**

Date of pronouncement of judgment : **08.01.2026**

Whether the pronouncement is of the : **NA**

operative part of the judgment?

Whether the full judgment has been : **Yes**

pronounced?

JUDGMENT & ORDER (CAV)

(Rajesh Mazumdar, J)

Heard Mr. A. Choudhury, learned counsel for the petitioner. Also heard Mr. D. Nath, learned Senior Government Advocate for the State respondents and Mr. B. Deka, learned CGC for the Union of India.

The present writ petition has been filed by the petitioner who claims to be the brother of one Ratan Narzary, who was killed in an encounter with the police authorities on 28.12.2016. The prayers, which have been pressed during hearing of the writ petition are for entrusting the investigation into the unnatural death of the brother of the petitioner to an impartial and neutral agency and for an enquiry by the concerned District and Sessions Judge and also for payment of compensation to the family of the deceased for causing the death of the brother of the petitioner while in custody.

At the outset, it is important to note that while the Writ petition was initiated on the premise that the brother of the petitioner had been illegally taken into custody by the state authorities and thereafter had been put to death, the case projected by the respondents is that the brother of the petitioner was killed in an ambush laid by the state authorities when he was trying to deal illegally in arms and ammunition with underground militant outfits.

Case projected in the writ petition.

2. As per the projection made in the writ petition, the deceased Ratan Nazari was a cultivator by profession who resided in the District of Chirang and his family consisted of his wife and three children. On the early hours of 28.12.2016, the wife of the deceased was informed that her husband had been killed by the Indian Army in a fake encounter at a place under the jurisdiction of Bismuri police outpost under the Kokrajhar Police Station in the district of Kokrajhar. The family members thereafter rushed to Kokrajhar Police Station where, after completion of formalities including post mortem, the mortal remains were handed over to the members of the petitioner's family.

3. With regard to the aforesaid incident, the In-charge of the Bismuri police outpost, namely Sub Inspector Ritu Jyoti Nath, had lodged an FIR on 28.12.2016 before the Officer-in-Charge of the Kokrajhar Police Station to the effect that a joint operation was led by the then Additional Superintendent of Police (Head Quarter), Kokrajhar, and comprising of the informant along with other police personnel and the 7th Sikh Light Infantry Army personnel on 28.12.2016 at about 0130 hours in the general area of Laopani Jungle. The FIR further quoted that an ambush was laid on two strategic points. It was further quoted that at about 0520 hours, 3 or 4 suspected NDFB cadre personnel arrived with sophisticated weapons. On being asked to stop, the miscreants opened indiscriminate fire from their weapons. The police team opened retaliatory fire. After the firing had stopped, on a cautious search, a severely injured militant was found lying in the jungle while the other cadre members had managed to escape. The FIR further quoted that the injured militant was evacuated to a civil hospital in Kokrajhar, where he was declared brought dead at 0658 hours.

4. Simultaneously, the wife of the deceased lodged an FIR at about 2230 hours on 28.12.2016 before the In Charge of the Bengtol outpost which fell under the jurisdiction of Runikata Police station in the Chirang district. In the FIR, it was alleged that on 27.12.2016, the deceased allegedly received a phone call from one Jagat Brahma at around 4:00 PM in the evening and accordingly he left towards the Bengtal bazaar on his motorbike bearing registration number AS 20 2805 to meet the said Jagat Brahma and thereafter did not return home. On the next day, information was received from the

Runikata Outpost that her husband had been killed in an encounter with the Indian Army. The FIR prayed for an investigation against the persons in the Indian Army who had killed her husband in a fake encounter. The said FIR was forwarded to the officer in charge of Runikata Police Station after making GD entry number 662 dated 28.12.2016 at Bengtol Out Post. The Runikata Police Station on receipt of the FIR registered Runikata Police Station Case No. 68 of 2016 under section 120(B)/302 of the Indian Penal Code and started investigation.

5. Being apprehensive that investigation by the police authorities may not be wholly impartial, the prayers for investigation by a neutral agency and/or District and Sessions Judge, as noted hereinabove, have been made.

Case projected by the respondents

6. A. Case projected by the State:

Two affidavits were filed on behalf of the State respondents.

On behalf of the police authorities of Chirang district, an affidavit has been filed by the Deputy Superintendent of Police Headquarters Chirang. In this affidavit, the deponent has stated that as per intelligence input, one Ratan had offered to sell 1000 rounds of live ammunitions including 300 rounds of AK series weapons and 700 rounds of M16 rifle to some NDFB cadres who were sheltering at the Indo Bhutan border across Kokrajhar District of Assam. As per another Intelligence Report, one Jagat, who was a surrendered NDFB Cadre wanted to sell 600 rounds of ammunition of AK series rifle and 300 rounds of ammunition of M16 rifle to the NDFB cadres. It has been asserted in the affidavit that upon receipt of the information regarding lodging of the FIR by the wife of the deceased, the officer in charge Runikata police station registered a case bearing No. 68 of 2016 under sections 120(B)/302 IPC. The affidavit also states that, in the investigation so far conducted in the said case, the statements of the complainant and the witnesses available were examined. In the affidavit in opposition, it is stated that the officers in-charge of the Bishmuri outpost in Kokrajhar district had informed the officer in-charge of Runikata police station of Chirang district over telephone that Ratan Narzary was killed in an encounter with the police and the army in Kokrajhar district. A request was made to the officer in charge of Runikata police station to inform his family members. The deponent in the affidavit further stated that the accused Jagat Brahma was arrested in connection with Kokrajhar Police Station Case No. 737 of 2016 and was under judicial custody at the Kokrajhar jail. However, on the basis of the FIR lodged by the wife of the deceased, the said Jagat Brahma was brought from Kokrajhar jail on strength of production warrant and was interrogated. He was shown arrested in connection with the Runikata PS

Case No. 68 of 2016 also. The deponent further stated that as per the witnesses who were examined during the investigation, two witnesses had stated that they had seen Jagat Brahma riding the motorcycle, which was earlier being driven by the deceased, behind a Bolero vehicle which did not have a number plate near the Bathow Mission Tiniali, Bangtal. It was stated in the affidavit that till the time of filing of the affidavit, the investigation was continuing.

The Superintendent of Police Kokrajhar Assam had filed another affidavit in opposition wherein the assertions regarding the intelligence input of the deceased keeping 1000 rounds of live ammunition was reiterated. The deponent further stated that based on inputs received, a joint operation was launched by the Kokrajhar Police and the 7th Sikh Light Infantry on 28.12.2016 at about 0130 hours in the general area of Laopani Jungle. It was further stated that at about 0520 hours, three or four suspected NDFB cadres armed with sophisticated weapons were observed approaching the operation team and, instead of stopping when they were asked to do so, the suspects opened indiscriminate fire upon the operational team. Finding no alternative and in self-defense, the operational team retaliated and as a result Ratan Nazari sustained injuries and succumbed. The allegation that the militant was killed by the Indian Army in a fake encounter was denied. It was further asserted in the affidavit in opposition that Jagat Brahma was apprehended at about 2300 hours on 28.12.2016 only and thereafter, at 2330 hours on 28.12.2016, had led a joint operational team to a forest near the Audang Bazaar to the recovery of one country made rifle and live rounds. It was thus projected in the affidavit in opposition that since Jagat Brahma was apprehended only at about 2300 hours on 28th of December 2016, the question of the said Jagat Brahma assisting the operational team at the time of the death of the brother of the petitioner could not arise. The deponent further asserted that in accordance with the guidelines of the National Human Rights Commission New Delhi issued on 12th of May 2010, the investigation of the case had been given to an independent investigation officer through a letter dated 6th of January 2017. As a part of the scientific investigation, all the seized exhibits, i.e. the arms and the ammunition had already been sent for examination to the Forensic Laboratory, Assam at Guwahati. At the request of the District Police Kokrajhar, the District Magistrate Kokrajhar has also passed an order on 31st of December 2016 for a magisterial enquiry to be conducted by Sri Wilburn S Daimari, Additional District Magistrate, Kokrajhar.

Thus, the stand of the official respondents in the Police Department as reflected from the affidavit in opposition is that the deceased was a member of a militant outfit who was trying to sell live rounds of ammunition to other extremists in the early hours of 28th of December 2016 and he lost his

life in an encounter with the law keeping agencies.

B. Case projected by the Union of India

An affidavit in opposition, sworn entirely on the basis of knowledge, without referring to records, has been filed on behalf of the Union of India by the Company Commander in the office of the Army Camp, Kajalgaon. At this stage, we may note that as per the version of the Police authorities, the Army personnel involved in the operation were from the Runikhata camp and not from the Kajalgaon Camp. Nonetheless, since an affidavit has been brought on record, the contents thereof are noted, however with some concern. The deponent in the affidavit has stated that on 27th of December 2016 the Officer Commanding the Army Camp Runikata had received a telephonic call from the Additional Superintendent of Police, Kokrajhar at around 1830 hours requesting for an Army Team to guide Kokrajhar Police till Laupani river from the area of responsibility of the Army Camp at RuniKata for some operation whose information was not shared on telephone. On 28th December 2016 at around 0130 hours, the Additional Superintendent of Police, Kokrajhar, came to the Army Camp at Runikata with his team. A small party under the Officer Commanding guided the Kokrajhar police team till the eastern bank of Laupani river in district Chirang and thereafter stayed at that location as a stop. The affidavit further states that, at around 0530 hours, the army personnel heard gunshots from far distance and on establishing contact with the Kokrajhar police after stopping of the gunfire, the police team informed that three or four suspected cadres had been observed by the police ambush party and during the exchange of retaliatory firing, which lasted for almost 20 minutes, the police ambush team found one militant severely injured while the other militants had managed to escape. The affidavit specifically highlighted that the army personnel were not involved in the operation and did not fire a single bullet on 28th December 2016. The Army had only guided the Kokrajhar police team up to the eastern bank of Laupani River as requested by the police team. The affidavit also stated that no FIR was filed by the army authorities as they were not part of the operation.

From the contents of the affidavits filed by the respondent authorities, the cumulative stand of the respondents is that, upon receipt of intelligence inputs by the Kokrajhar Police authorities and on a request made by the Additional Superintendent of Police, Kokrajhar, army personnel from the Army Camp at Runikata had guided the police personnel to the eastern bank of the Laupani river. The police personnel, under the command of the Additional Superintendent of Police, Kokrajhar, laid an ambush. The deceased along with some other cadre members had approached the ambush area at about 0530 hours on 28.12.2016 and when they did not stop on being asked to and rather opened fire on the police

personnel, the police personnel retaliated in a controlled manner which led to the death of the brother of the petitioner. The army personnel had acted only as guides to the location and did not participate in the ambush or operation.

Developments during pendency of the writ petition.

7. During the pendency of this litigation, case records of Runikhata PS Case No. 68 of 2016 had been handed over in a sealed cover to the Court of the learned Chief Judicial Magistrate, Kokrajhar and accordingly Kokrajhar PS Case No. 571/2020 was registered. The enclosures and documents relating to the inquiry Report dated 4th of May 2017 by the Additional District Magistrate, Kokrajhar, were also placed before the Court. A final report bearing FR No. 170 of 2023 dated 29th of May 2023 was submitted in connection with Kokrajhar PS Case No.734 of 2016.

By order dated 06.12.2024, this Court had directed the Registry to call for the scanned copy of the records of Kokrajhar PS Case No. 734 of 2016 including the case diary and other documents appended there to, if available, and a copy of the final report with all the enclosures submitted in connection with Kokrajhar PS Case No. 734 of 2016 was also directed to be scanned and sent to the Court. The Court was informed that after investigation, Final Report No. 133 of 2023 had been submitted to the concerned Court in connection with Kokrajhar PS Case No. 571/2020.

Issues which require a scrutiny of the Court:

8. The fact that Ratan Narzary met an untimely death due to gunshot wounds inflicted upon him is not in dispute. It is also not in dispute that the gunshots were inflicted upon him by shots fired from the weapons carried by state authorities on the night of 28th December 2016. The issue which would require the scrutiny of this Court is as to whether due process of law had been followed by the state authorities while preparing for the ambush/encounter, during the encounter and also whether there was due investigation, as required under the prevalent law, into the incident which led to death of the brother of the petitioner herein. To determine these issues, we have to look into the stand taken by the State authorities and also the records of the different enquiries and investigations stated to have been conducted by the State into the circumstances leading to the unfortunate incident.

Submissions on behalf of the contesting parties

9. Mr. A Choudhury, learned counsel representing the petitioners has drawn reference to the

different documents annexed to the petition and has submitted that the brother of the petitioner had met an untimely demise at the hands of the State authorities. He has submitted that the deceased had been seen in the market place shortly before evening on a motorcycle and there are statements of eye witnesses who have asserted that Jagat Brahma was seen following a unnumbered four-wheeler on the bike being used by the deceased in the evening preceding the alleged encounter. He has further submitted that upon being informed about the alleged encounter, the wife of the deceased had lodged an FIR, giving all the details known to her.

10. He has submitted that the deceased was not known to be involved in insurgent/terrorist activities of any sort; rather he was known to be an agriculturist, dedicated to his family. The learned counsel has submitted that there is a reasonable apprehension that the deceased had been killed in a fake encounter with the involvement of Jagat Brahma, who was a known surrendered extremist and who was known to have still continued to have links with the underground extremists. He has submitted that there was some personal enmity between the two and the fake encounter was a result of such animosity, which was carried out with the help of police and the army who had vested interests.

11. He has submitted that in cases of such an encounter, not only proper enquiries are called for, adequate compensation to the victim/family of the victim is the settled norm. He has submitted that the family of the deceased has lost their bread earner in the prime of his youth and therefore, deserve to be adequately compensated. He has submitted that the enquiries which have been conducted up till now into the alleged encounter cannot inspire judicial confidence and therefore, an enquiry by a Central agency is required to bring the truth behind the alleged encounter.

12. The learned counsel has referred to the judgment of the Apex Court in the following cases:

I. Peoples' Union for Civil Liberties -Versus- Union of India, reported in (2014) 10 SCC 635 at para 31.3 to emphasize the manner in which an independent investigation is required to be carried out in such cases.

II. State through Central Bureau of Investigation -Versus- Hemendra Reddy and Another, reported in (2023) 16 SCC 779 to impress that further investigation is permissible even after the final report is laid before the Ld. Magistrate and is accepted.

III. Neetu Kumar Nagaich -Versus- State of Rajasthan and Others, reported in (2020) 16 SCC 777 and

IV. Mandakini Diwan and Another -Versus- The High Court of Chattisgarh and Others,

reported in (2024) 10 SCC 560 to impress the law regarding fresh/de novo/reinvestigation when the investigations already concluded did not inspire confidence.

V. Tarulata Devi versus State of Assam, reported in 2001 (2) GLR 534

VI. State of Assam -Versus- Tarulata Devi, reported in 2006 (4) GLT 189

VII. Union of India -Versus- Junu Gayari, reported in (2020) 17 SCC 490

VIII. R S Sodhi -Versus- State of Uttar Pradesh, reported in (1994) Suppl SCC (1) 143

IX. Rashmi Behl -Versus- State of UP reported in (2015) 12 SCC 531 and

X. Extra-Judicial Execution Victim Families and Another -Versus- Union of India, reported in (2019) 12 SCC 359, to emphasize on his submissions on investigations by the CBI and Magisterial Enquiry.

XI. Rohtash Kumar -Versus- State of Haryana reported in (2013) 14 SCC 290 and

XII. Pooja Pal versus Union of India, reported in (2016) 3 SCC 135 with regard to his submissions on fair investigations, fake encounters and compensation.

13. The learned counsel has, therefore, submitted that the cause of death and the series of incidents leading to the death of the brother of the petitioner requires a better investigation and further the family of the deceased victim requires to be adequately compensated by the State.

14. **Per contra**, Mr. D. Nath, learned Sr. Government Advocate has submitted that the record maintained by the State respondents and the Court of the learned CJM would stand proof to the fact that the incident was investigated through different investigation processes, each independent of the other. He has submitted that the records placed before this Court, which also include the investigation which was carried out under the supervision of the Senior Superintendent of Police Kokrajhar as well as the records of G.R Case No. 1300/2016 and G.R Case No. 997/2020 in connection with Kokrajhar PS case No. 734/2016 and Kokrajhar PS Case No. 571/2020 (previously Runikhata PS Case No. 68/2016) respectively, would amply demonstrate that it was on the receipt of intelligence input that the Additional Superintendent of Police, Kokrajhar had approached the army authorities located nearby to render assistance to track down, nab and apprehend and stop illegal trade of arms and ammunition between the deceased and unidentified cadre of extremist groups.

15. The learned Senior Government Advocate has submitted that though the army authorities did not participate in the ambush, they had extended their help by leading the State Police to the location near

which the unfortunate incident occurred in the wee hours of 28.12.2026. As per the information given by the Officer-in-Charge of Runikata Out post to the Kokrajhar Police Station immediately after the incident, the deceased and some unidentified persons were demanded to reveal their identity and to stop but the deceased and other persons accompanying him opened fire upon the Police authorities. After being injured in the retaliatory fire from the Police authorities he succumbed to the injuries before he could be given medical attention in a hospital.

16. The learned Sr. Government Advocate has submitted that two FIRs had been lodged with regard to the incident, one at the Runikata Outpost being lodged by the wife of the deceased, which was registered as Runikhata PS Case No. 68/2016, under Section 120(B)/302 IPC, (later renumbered as Kokrajhar PS case No. 571/2020) and the other at Kokrajhar Police Station, filed by the incharge of of Bishmuri out post and was registered as Kokrajhar PS case No. 734/2016. Each of the investigations were taken up within their own Police Stations initially, but when it was realized that the incident complained of in the FIR lodged by the wife of the deceased/sister-in-law of the petitioner herein had occurred within the territorial jurisdiction of the Kokrajhar district, then with due permission of the learned CJM, Chirang, the records of the Runikhata PS Case No 68/2016, were transferred to the Court of the learned CJM, Kokrajhar. The learned Sr. Government Advocate has submitted that the records would reveal that another independent investigation had also been carried out under the supervision of the Superintendent of Police, Kokrajhar who was an officer higher in rank than the Additional Superintendent of Police, Kokrajhar who had led the Police party which was involved in an encounter.

17. The learned Sr. Government Advocate has placed reliance on the records before this Court relating to the independent investigation conducted and he had also referred to the record/scanned copy of the record obtained from the Court of the learned CJM Kokrajhar with regard to the two FIRs which had been lodged in connection with the death of the brother of the petitioner. He has referred to the statement of the different witnesses who were questioned during the independent enquiries into the two FIRs, one lodged by the Police authorities and the other by the wife of the deceased. He has submitted that no relevant witnesses had been left out and due process of forensic examination, as is required under the law in cases of an encounter, was duly followed.

18. He has submitted that as apparent from the record received from the Court of the learned CJM Kokrajhar, both the FIRs had culminated in filing of final reports. He has pointed out that in the case of the FIR lodged by the Police authorities involved in the encounter, the same culminated in the final report since the suspect/accused had succumbed in the encounter and therefore, there was no necessity

to proceed further. With regard to the FIR lodged by the wife of the deceased, the learned Sr. Government Advocate submits that she had put in an appearance before the learned CJM Kokrajhar on being summoned and she had expressed her no-objection in the Court of the learned CJM in accepting the final report in connection with the FIR lodged by her.

19. He has submitted that the independent investigation also did not find any fault on the part of the State authorities and instrumentalities in the entire incident.

20. The learned Senior Government Advocate submits that in view of the three different investigations into the same incident, none of which found any fault with the State instrumentalities, the present writ petition is misconceived. He has further submitted that since every angle of the incident has been duly probed and nothing further remains to be investigated, the prayer of the petitioner for a *de novo* inquiry/ further enquiry/ re-inquiry is uncalled for, more so, when no shortcomings in any of the enquiry has been pointed out by the petitioner.

21. The learned Senior Government Advocate has relied upon the judgment of the Apex Court in **Sube Singh -Versus- State of Haryana & Ors**, reported in (2006) 3 SCC 178 to emphasize that it is only in cases where violation of the rights guaranteed under Article 21 is established that the Courts may award compensation in a proceeding under Article 32 or 226. However, before awarding compensation, the Court will have to pose to itself the following questions: (a) Whether the violation of Article 21 is patent and incontrovertible, (b) whether the violation is gross and of a magnitude to shock the conscience of the Court, (c) whether the custodial torture alleged has resulted in death or whether custodial torture is supported by medical report or visible marks or scars or disability. He has submitted that where allegations are not supported by any medical report or other corroboration evidence, or where there are clear indications that the allegations are false or exaggerated fully or in part, Courts may not award compensation as a public law remedy under Article 32 or 226.

22. Concluding his argument he has submitted that the brother of the petitioner had fallen during an encounter with the Police, which was inevitable since the brother of the petitioner had initiated the firing by an automatic weapon and therefore, no fault can be attributed to the State to justify payment of compensation to the family of the deceased. He thus prayed for a closure of the writ petition.

23. Mr P. K. Medhi, learned CGC, appearing on behalf of the Union of India has submitted that on a request made by the Additional Superintendent of Police, Kokrajhar for guidance to reach the Laopani river, the army personnel had guided the police authorities to the river and did not go further to take part either in the ambush or in the encounter. He has submitted that since the Army personnel were not

involved in the operation, no FIR was lodged on their behalf and further, the Union of India would not stand liable for the actions of the police authorities of the State.

Discussions:

24. The learned Senior Government Advocate is correct when he submitted that the records of the independent enquiry and the records of the two GR cases from the Court of the learned CJM, Kokrajhar reveal that several witnesses had been examined by the investigating authorities in the process. There is consistency in the statements made by the police personnel involved in the encounter. The seized articles were sent for forensic tests as per procedure. Independent witnesses, in the form of villagers who were named in the FIR lodged by the wife of the deceased, were also examined. The acceptance of the Final report given by the police authorities in the Court of the learned CJM, Kokrajhar, was not objected to by the wife of the deceased, who was the informant in the case.

25. There is however, another aspect of the matter. Records reveal that certain intelligence reports were received by the police authorities manning the district of Kokrajhar to the effect that one Ratan Narzary @Rotan Narzary, who was the brother of the petitioner, was making attempts to sell some ammunition of particular makes of weapons to underground extremists and that the deal was not being settled. There were further intelligence inputs that some attempt to deal in the ammunition may take place on or about 27th or 28th December 2016. The pleadings filed on behalf of the State police authorities assert that the operation was undertaken on the basis of specific intelligence input about movement of underground extremists near the Laupani jungle area. The assertion by the State is that the said Additional Superintendent of Police (HQ), Kokrajhar had gone to the Bishmuri Outpost and on his directions, the in-charge of the outpost along with one section of police personnel of 8th Battalion and one section of Commando Battalion accompanied him to conduct a search operation in the Laopani Jungle Area.

26. What is intriguing in the projection of the respondents is that while the State Police authorities have been repeatedly referring to a “joint operation” with the 7th Sikh Light Infantry, the affidavit filed by the Army authorities totally deny such a joint operation and rather, it is asserted by them that the Army unit was requested only to guide the Police party to the eastern bank of the river and that the Army did not participate in any encounter or ambush laid by the police personnel.

27. Two aspects of the matter are revealed, first that there is no documentary record available that the leader of the “search and ambush” had requested the Army authorities for guidance and second, that

the Army authorities admit that they provided so called “guidance”, which included accompanying the State Police authorities, without keeping any documented record of such activity. No documents have been placed before the Court to show that the Additional SP (HQ), Kokrajhar, had kept any record of his intent to conduct a search and ambush on the basis of intelligence reports on that fateful day. Additionally, the affidavit on behalf of the Army authorities has been sworn only on the basis of knowledge and not on the basis of records. The source of knowledge has not been divulged.

28. It transpires from records that attempts were made to find out the truth of the allegations levelled in the FIR lodged by the wife of the deceased, but ironically, the intent of the requirement of an investigation under a higher ranking police official into the incident does not appear to have been given due importance. There are ample documentary records made available to impress that there were several intelligence reports that the deceased had several rounds of ammunition of sophisticated firearms with him and that he intended to sell them to underground extremists. Inputs placed before this Court are dated 09-11-2016 and 26-12-2016.

29. In the face of such specific information, it would stand to reason that the police authorities ought to have kept a close eye on the deceased, so that he could be nabbed before he actually attempted to sell the ammunition, perhaps even at the time of retrieving the ammunition from its hiding to sell. However, it appears that action was taken only when the Additional SP decided to intercept the deceased only when he attempted to deliver the goods to the underground militants, that too after preparing himself with support from the Bishmuri Outpost. Had an appropriate action been taken to intercept the suspect at an earlier point of time when specific intelligence was available, the loss of a human life could have been perhaps prevented.

30. This Court cannot ignore that the pursuit of the deceased does not fall in the category of ‘hot-pursuit’ since, admittedly it did not arise all of a sudden, leading to an encounter, rather the state had specific intelligence inputs as long back as in 09.11.2016 itself and even on 26.12.2016, there was specific input about the deceased assuring a particular person about supply of ammunition. This Court is not indicating or imputing that the state instrumentalities had any motive contrary to law since that is an aspect which ought to have been the subject matter of the independent enquiry held under the supervision of the superior officer to see whether there were lapses, which required departmental action or were deliberate, in which case they would be acts of crime. The reasons for not taking immediate action on the specific intelligence inputs and the reasons for the delay in attempting to intercept the suspect and the reasons for attempting to do so only when there was a high probability of the suspect

being in actual possession of firearms, which he would, in all probability, use upon the intercepting party, was not probed by any of the investigating agencies. The reasons for not making any official request to the Army for guidance and the reasons for the Army authorities to not keep documented records of such guidance provided were not probed. Since the Army personnel had reached close to the place of incidence, it cannot be ruled out that they were also at risk of facing an untoward situation and in such circumstances, it is beyond reason that such a “guidance” expedition would remain undocumented.

31. One more aspect of the matter comes to notice. Despite there being specific references to the motorcycle being ridden by the brother of the petitioner when he was last seen by his family members or villagers and which was later allegedly driven by Jagat Brahma, none of the reports refer to the fate of the motorcycle after the encounter. At one point of time, on 28.3.2019, the investigating officer states that he has not been able to trace out the motorcycle. Thereafter, there is no reference at all to the motorcycle in any of the reports.

Conclusions:

32. The incident is nearly 9 years old. The Final Report filed in connection with the FIR lodged by the wife of the deceased has been accepted by the Court of jurisdiction after the informant had expressed her no objection on 10.9.2024 during the pendency of this litigation. This Court therefore, is of the opinion that no fruitful purpose would be served by directing a fresh/de-novo enquiry or further enquiry into the incident.

33. This Court is of the opinion that in the facts and circumstances of the case, timely appropriate action on the intelligence inputs was expected from the state instrumentalities, which if done, could have led to the interception of the suspect at a prior point of time and avoided the loss of life of the deceased. The laxity displayed while acting on the intelligence inputs and the sudden and hurried decision to lay an undocumented ambush played a vital role in creating a situation which led to exchange of fire between the deceased and the police, leading to his death. We stop short of concluding that the ambush was laid to achieve predicted outcomes. The encounter was, in the opinion of this Court, avoidable had timely action been taken on the intelligence inputs and if that be so, it has to be held that the fundamental right of the deceased and his legal heirs under Article 21 of the Constitution have been infringed, deserving relief in the form of appropriate compensation.

34. The Apex Court, in *Nilabati Behera -Versus- State of Orissa*, reported in (1993) 2 SCC 746, has held as follows:

“34. This Court and the High Courts, being the protectors of the civil liberties of the citizen, have not only the power and jurisdiction but also an obligation to grant relief in exercise of its jurisdiction under Articles 32 and 226 of the Constitution to the victim or the heir of the victim whose fundamental rights under Article 21 of the Constitution of India are established to have been flagrantly infringed by calling upon the State to repair the damage done by its officers to the fundamental rights of the citizen, notwithstanding the right of the citizen to the remedy by way of a civil suit or criminal proceedings. The State, of course, has the right to be indemnified by and take such action as may be available to it against the wrongdoer in accordance with law - through appropriate proceedings. Of course, relief in exercise of the power under Article 32 or 226 would be granted only once it is established that there has been an infringement of the fundamental rights of the citizen and no other form of appropriate redressal by the Court in the facts and circumstances of the case is possible. The decisions of this Court in the line of cases starting with Rudul Sah v. State of Bihar, [\(1983\) 3 SCR 508](#), granted monetary relief to the victims for deprivation of their fundamental rights in proceedings through petitions filed under Article 32 or 226 of the Constitution of India, notwithstanding the rights available under the civil law to the aggrieved party where the Courts found that grant of such relief was warranted. It is a sound policy to punish the wrongdoer and it is in that spirit that the Courts have moulded the relief by granting compensation to the victims in exercise of their writ jurisdiction. In doing so the Courts take into account not only the interest of the applicant and the respondent but also the interests of the public as a whole with a view to ensure that public bodies or officials do not act unlawfully and do perform their public duties properly particularly where the fundamental rights of a citizen under Article 21 is concerned.”

35. For 9 (nine) years following the encounter, the petitioner had to pursue this litigation, probably in the face of financial constraints, which must have had its own cascading effects on the family of the deceased, including the care and maintenance of the wife and children of the deceased. This Court is conscious that the petitioner in the present petition is the brother of the deceased and he has prayed for payment of compensation to the wife of the deceased. The deceased is survived by his wife and three children. We have referred to different office memorandums issued by the Government of Assam which relate to payment of compensation in cases of death incurred, amongst others, in acts of extremism/ violence/ accidents. The compensation in cases of death due to firing of security forces under certain

circumstances stands at Rs. 5,00,000/- to the next of kin. In the present case, keeping in view the reasons for grant of compensation and also other factors which include, but are not restricted to, the amount of time elapsed in the matter attaining finality, the age of the children of deceased etc., and in the light of *Nilabati Behera -Versus- State of Orissa, (supra)*, which was also followed in *Rohtash Kumar -Versus- State of Haryana*, reported in (2013) 14 SCC 290, we direct respondent No. 1, The Union of India, through the Secretary to the Government of India, Ministry of Defence and the respondent No. 4, the State of Assam, through the Commissioner and Secretary to Government of Assam, Home Department to respectively pay a sum of Rs. 5,00,000/- each to Sarabati Narzary, wife of late Ratan Narzary, village Kumguri, P.S. Runikata, District Chirang, Assam and a sum of Rs. 2,50,000/- by each of respondent no 1 and respondent no 4 respectively to each surviving child of deceased Ratan Narzary, as compensation for the death of Late Ratan Narzary. The payment shall be made by way of demand drafts drawn in favour of the respective beneficiaries within a period of one month from the date of receipt of a certified copy of this order. The drafts shall be handed over to the beneficiaries / their natural/legal guardians, in case they are minors, upon proper identification through the office of the District Commissioner of the concerned district where the beneficiary resides.

36. In *Rudul Sah v. State of Bihar (supra)*, the Apex Court, while observing that the compensation being granted was of interim nature, has also held as follows:

“12. This order will not preclude the petitioner from bringing a suit to recover appropriate damages from the State and its erring officials. The order of compensation passed by us is, as we said above, in the nature of a palliative. We cannot leave the petitioner penniless until the end of his suit, the many appeals and the execution proceedings. A full-dressed debate on the nice points of fact and law which takes place leisurely in compensation suits will have to await the filing of such a suit by the poor Rudul Sah. The Leviathan will have liberty to raise those points in that suit.”

37. In *Shakila Abdul Gafar Khan VS Vasant Raghunath Dhoble*, reported in (2003) 7 SCC 749 compensation was granted to the mother and children of the deceased and the Apex Court clarified that the amount of compensation shall be as a palliative measure and does not preclude the affected person(s) from bringing a suit to recover appropriate damages from the State and its erring officials if such a remedy is available in law.

38. In the circumstances of the present case also, we hold that the award of the compensation herein will not come in the way of the aggrieved person claiming additional compensation in an appropriate

forum of law, in enforcement of the private law remedy. Keeping in tune with the observations of the Apex Court in *Nilabati Behera (supra)*, we further direct that the award of compensation in this proceeding would be taken into account for adjustment, in the event of any other proceeding taken by the petitioner for recovery of compensation on the same ground, so that the amount to this extent is not recovered by the petitioner twice over. The award of this compensation, apart from the direction for adjustment of the amount as indicated, will not affect any other liability of the respondents or any other person flowing from the untimely death of Ratan Narzary.

39. Writ petition accordingly stands allowed to the extent indicated herein above.

JUDGE

JUDGE

Comparing Assistant