

THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA: MANIPUR: TRIPURA:
MIZORAM AND ARUNACHAL PRADESH)

No. HC.III - 4/2007/ 3001 IG

From: Shri D. Ullah,
Joint Registrar (Vig. & Estt.),
Gauhati High Court, Guwahati.

To

THE DISTRICT & SESSIONS JUDGE,
BARPETA / BONGAIGAON / CACHAR, SILCHAR / DARRANG,
MANGALDOI / DHEMAJI / DHUBRI / DIBRUGARH / GOALPARA /
GOLAGHAT / HAILAKANDI / JORHAT / KAMRUP, GUWAHATI /
KARIMGANJ / KOKRAJHAR / LAKHIMPUR, NORTH LAKHIMPUR /
MORIGAON / NAGAON / NALBARI / SIVASAGAR / SONITPUR,
TEZPUR / TINSUKIA / UDALGURI, ASSAM

Dated Guwahati, the 7th August, 2012

**Sub: Matter relating to Under Trial Prisoners and implementation of
Section 167 and 436 A of Cr.P.C. as per order passed in WP(C)
(Taken Up) 4299/2006.**

Sir,

With reference to the subject cited above, I am directed to inform you to submit a list of under Trial Prisoners initially those who are released and entitled to be released under section 167 or 436 A of the Cr.P.C. (as per the enclosed proforma) month wise commencing from 15.04.2010 and shall submit report upto July, 2012 to this Registry within **25.08.2012** and thereafter month-wise report, within the 7th day of the succeeding month.

Further the Chief Judicial Magistrates as well as Sub-Divisional Judicial Magistrates in the State of Assam, Tripura and Manipur are required to hold court within the premises of the District/Sub-Divisional Jails at least once a month preferably on the 2nd/4th Saturday or on a Sunday and shall pass order with regard to the Under Trial Prisoners who are entitled to be released under section 167 and 436 A and shall submit report to this Registry in each month upto July, 2012 to this Registry within **25.08.2012**, and thereafter, month-wise report within the 7th day of the succeeding month.

You are further requested to forward this letter to the Chief Judicial Magistrates and Sub-Divisional Judicial Magistrates under your jurisdiction for compliance.

Kindly treat the matter as **Most Urgent**.

Yours faithfully,

Encl:

- i) The copy of order dated 25.03.2010 passed in WP(C) (Taken up) 4299/2006
- ii) Proforma as stated



JT. REGISTRAR (VIG. & ESTT.)

N.B. This Notification can be downloaded from the website of the Gauhati High Court.

CG 2/8/12

Memo No. HC III – 4/2007/

/G Dated: 7th August, 2012

Copy to:

1. The Registrar (Vig. / Admn./Judl.), Gauhati High Court, Guwahati.
2. The Jt. Registrar-cum Principal Secretary to Hon'ble the Chief Justice, Gauhati High Court, Guwahati.
3. C.A. to the Registrar General, Gauhati High Court, Guwahati.
- ✓ 4. The System Analyst, Computer Section, Gauhati High Court, Guwahati. He is requested to upload the letter alongwith its enclosures in the website of the Gauhati High Court.



JT. REGISTRAR (VIG. & ESTT.)

Noting by Officer or Advocate	Serial No.	Date	Orders, orders or proceedings with signature
1	2	3	4
			<p style="text-align: right;"><u>WP(C) (Taken UP) 4299/2006</u></p> <p style="text-align: center;">BEFORE HON'BLE MR. JUSTICE RANJAN GOGOI, CHIEF JUSTICE (ACTING) HON'BLE MR. JUSTICE A.C.UPADHYAY</p> <p>25.3.2010 Ranjan Gogoi, CJ (Acting)</p> <p>We have heard Mr D.K. Mishra, learned amicus curiae; Mr U Bhuyan and Ms S Sharma, the Court appointed Commissioners; Mr BJ Talukdar, learned Govt. Advocate, Assam; Mr T Ao, learned Govt. Advocate, Nagaland; Dr. BP Todi, learned Addl. Advocate, General, Meghalaya and Mr SK Deka, learned counsel appearing on behalf of the State of Manipur. The States of Mizoram and Tripura are not represented.</p> <p>The Court having passed elaborate orders in the present taken-up matter and having also monitored implementation of its orders, it would now be appropriate to summarise what had happened in the past.</p> <p>This taken-up writ petition had been initiated on the basis of a communication, addressed to Registrar General of this Court by the Assam Human Rights Commission with regard to the continued detention of a large number of Under Trial Prisoners in different jails of the State of Assam. Accordingly, on the basis of the said communication after registration of this taken-up writ petition, information was sought from different north-eastern States in respect of the Under Trial Prisoners who are languishing in jail notwithstanding the expiry of the statutory period of limitation under Section 167 Cr.P.C. and also their entitlement for release under the provisions of Section 436A of the Cr.P.C. The information sought for and received by the office, as placed before the Court, was improved upon from time to time by submission of detailed upto date position. Presently, on the basis of the monitoring done till</p>

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date a large number of Under Trial Prisoners who were entitled to be released from custody under the aforesaid two provisions of the Cr.P.C. have been so released though there are still some Under Trial Prisoners in custody on account of their failure to furnish appropriate bail to which effect orders have also been passed.



As various orders passed in the present proceeding with regard to release of Under Trial Prisoners under Section 167 and 436A of the Cr.P.C. have been implemented in different States, we are of the view that the stage has come when the future events must undergo some transformation for a more effective monitoring of the implementation of the orders of this Court keeping in mind the limited judicial time available at our disposal.

With the aforesaid objective in mind, we are of the view that commencing from the month of April (15.4.2010) each State in the north-eastern region will submit a list of Under Trial Prisoners in each jail of the State together with the number of Under Trial Prisoners who are entitled to be released either under Section 167 or Section 436A of the Cr.P.C. The said list reflecting the above figures as on 15.4.2010 will be submitted to Mr. D.K. Mishra, learned amicus curiae so as to reach him on or before 20.4.2010.

Mr Mishra, learned amicus curiae on receipt of the said information from each of the seven States will satisfy himself with regard to the implementation of the Court's orders for release of the Under Trial Prisoners under Section 167 or Section 436A of the Cr.P.C and if any substantial deviation or irregularity comes to his notice he will be at liberty to point out the same to the Court. For the aforesaid purpose the present proceeding will continue to remain pending.

The process indicated above will be repeated for each successive month and the date(s) mentioned for the month of April, 2010 will be adhered to by the concerned authority of the States for

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			<p>each successive month. The Court requests Mr. Mishra, learned amicus curiae to monitor the situation on the basis of such reports as may be submitted to him from time to time and take suitable steps to inform the Court of any irregularity or deviation as and when such irregularity or deviation comes to his notice.</p> <p>In continuation of our order dated 17.9.2009, we direct the Chief Judicial Magistrates as well as Sub-Divisional Judicial Magistrates in the States of Assam, Tripura and Manipur to hold Courts within the premises of the District/ Sub-Divisional Jails at least once a month, preferably on the 2nd / 4th Saturday or a Sunday and pass orders with regard to the Under Trial Prisoners who are entitled to be released under Section 167 and 436A of the Cr.P.C. We also make it clear that in the event the persons who are found to be entitled to be released on bail under the aforesaid two provisions of the Cr.P.C. are unable to furnish adequate bail to the satisfaction of the learned Magistrate(s) in accordance with law, the question of release of such Under Trial Prisoners having regard to the gravity of the offence and other relevant circumstances will be decided by the learned Magistrate(s) who may deal with the matter in a manner considered appropriate.</p> <p>We have also noticed that in so far as the State of Tripura and Nagaland are concerned, some additional information in terms of the queries made by the learned amicus curiae is required to be placed before the Court. Answers to the queries made by the learned amicus curiae, which have been read and considered by us, is absolutely essential to ensure that what has been ordered by the Court has been implemented by the authorities of the aforesaid two States as claimed by them in their affidavits filed. Mr. Mishra has also submitted that in so far as the State of Nagaland is concerned, some convicted persons have been released pursuant to the Court's orders though the purport and effect of such orders</p>

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			<p>were intended for the Under Trial Prisoners. Though the Chief Secretary of the State of Nagaland in his affidavit has denied the said fact, in view of the assertions made by the learned amicus curiae, we would request the learned Govt. Advocate, Nagaland to submit the precise details in the above matter to the learned amicus curiae who, in turn, will be at liberty to place the same before the Court if the need so arises. In this regard, we request Mr. Mishra to furnish the details of the queries made by him in respect of the States of Tripura and Nagaland to the learned Govt. Advocates of the aforesaid two States.</p> <p>In so far as the condition of the Central Jail in Guwahati is concerned, we have perused the report submitted by the two Court appointed Commissioners, Mr U Bhuyan and Ms S Sharma. At this stage, we direct the office to furnish a copy of the said report (s) along with all enclosures to the Inspector General of Prisons, Assam who will submit his response in the matter within four weeks thereafter. As this matter will now be posted before the Court on the judicial side only on a mention being made by the learned amicus curiae, we direct the Inspector General of Prisons, Assam to address his response to the report of the Court appointed Commissioners to the learned amicus curiae who, thereafter, will be at liberty to place the same before the Court.</p> <p>Copies of this order be furnished to the learned Advocate Generals and the learned Govt. Advocates of all the seven States and also to the learned counsel assisting Mr D.K. Mishra, learned amicus curiae.</p> <p style="text-align: center;">  JUDGE </p> <p style="text-align: center;">  CHIEF JUSTICE(ACTING) </p> <p>skd</p>

Report in Compliance with order dated 25.03.2010 passed in WP(C) (Taken up) 4299/2006

District: **Name of Jail/Jails:** **Month & Year:**

SL. No	Name of UTP's in the jail	Names of UTP who are entitled to be released either u/s 167 Cr.P.C. of u/s 436 A Cr.P.C.	Names of UTP who are released u/s 167 Cr.P.C. or u/s 436 A Cr.P.C.	Remarks

District & Sessions Judge