

GAHC010013972023



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

**Case No. : Crl.Rev.P./23/2023**

BELLAL ALI SHEIKH @ BELLAL ALI SK  
S/O JALAL SHEIKH  
VILL- AIRONGJONGLA, PT.III  
P.S. DHUBRI  
DIST. DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR  
REP. BY THE PP, ASSAM

2:NAYAN ALI  
S/O LT. MAHAMAD ALI  
VILL- PAKHIRIGURI  
P.S. KRISHNAI  
DIST. GOALPARA  
ASSAM  
PIN-78312

**Advocate for the Petitioner : MR. N UDDIN**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE  
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

**Date : 17.02.2023**

Heard Mr. N. Uddin, learned counsel for the petitioner. Also heard Mr. Bhaskar Sarma, learned APP appearing for the State.

2. Aggrieved by the impugned order dated 09.01.2023, passed by the learned Special Judge, Goalpara in connection with Krishnai P.S. Case No. 115/2022, by which the prayer for custody/zimma in respect of the passenger car bearing registration no. AS-01-EQ-8976 was rejected. Accordingly, the present composite petition has been filed under section 397 Cr.P.C., read with section 401/482 Cr.P.C.

3. The learned counsel for the petitioner has submitted that the petitioner is the owner of the aforesaid passenger vehicle. It is submitted that his vehicle was driven by the FIR named accused no.3, namely, Akhtarul Islam and the FIR named accused nos.1 and 2 had hired the vehicle to come to Guwahati. On reaching the place of incident, the FIR named accused nos.1 and 2 had tried to commit fraud upon a bank customer in connection with his ATM card and when he screamed, police came and in course of search of the vehicle, 27 nos. of ATM card, 3 mobile phones, cash amount of Rs.3380/-, AADHAAR card, PAN Card, Voter card, Driving License as well as suspected heroin weighing 4 grams were seized and accordingly, Krishnai P.S. Case No. 115/2022, under sections 120(B)/379/511 IPC was registered.

4. The learned APP has oppose the prayer for custody and in this regard, he has produced copy of written communication received from the I/O dated 06.02.2023, wherein it has been mentioned that the said vehicle is required for further investigation. Accordingly, it is submitted that as the vehicle is required for the purpose of further investigation. The learned APP has placed reliance in the case of *The State of Assam & Anr. Vs. Lalhruaizela, Crl. Pet. 597/2022, decided on 16.09.2022* and submitted that if the vehicle is required for the purpose of investigation, the custody of the vehicle ought not to be given to the owner. Paragraphs 16 to 20 of said case is quoted below:

*“16. The word ‘investigation’, as defined in Section 2(h) CrPC is different from the word ‘inquiry’, as defined in Section 2(g) CrPC. It is not in dispute that while the impugned judgment and order was passed by the learned Sessions Judge, Hailakandi, the case has not been charge sheeted and was under the investigation and as held by the Hon’ble Supreme Court, during ‘investigation’, the power under Section 451 CrPC cannot be exercised by Criminal Courts. It is to be noted here that the power under Section 451 CrPC can be exercised only during inquiry and trial as stated in the case of Nevada Properties (P) Ltd. (supra). In the case of Sunderbhai Ambalal Desai (supra), also it has been held that Section 451 CrPC empowers the Court to pass appropriate order with regard to property for proper custody, pending conclusion of the inquiry or trial. Therefore, it would not come into aid of the learned counsel for the respondent, though she has relied upon it heavily.*

*17. In view of above settled proposition of law, the impugned judgment and order passed by the learned Sessions Judge, Hailakandi seems to be not in conformity with the law, so laid down by the Hon’ble Supreme Court. A co-ordinate Bench of this Court also, in Crl. Revision Petition No.16/2022, vide order dated 29.04.2022 has held that “investigation is different from that of inquiry” and as no charge sheet in the case has been submitted before the learned Court below, where in custody of the*

*vehicle is being sought for, releasing of the same to the petitioner is not maintainable in law and is pre-mature and further it is held that the petitioner will be at liberty to file a fresh petition seeking custody of the seized vehicle after filing of the charge sheet.*

*18. In view of the doctrine of binding precedent, this Court is not entitled to take a different view and this has rightly been pointed out by Mr. P.N. Goswami, learned Addl. Advocate General, Assam and the case law of Official Liquidator (supra) also bolstered his submission.*

*19. In view of the above discussion and finding, this Court is of the considered opinion that the impugned judgment and order dated 23.05.2022, passed by the learned Sessions Judge, Hailakandi in Crl. Revision No.38/2022 failed to withstand the test of propriety and correctness and accordingly the same stands set aside.*

*20. Since the seized areca nuts are subject to speedy and natural decay and since it was seized in the month of April, 2022 and several months have already been elapsed, and the investigation is yet to be completed, this Court is of the view that balance of equity can be maintained if the seized areca nuts are put to auction and the sale proceeds thereof be deposited in the Government treasury and subject to outcome of the criminal case, the same may be disposed of."*

5. In the said cited case, areca nuts were seized in connection with Badarpur GRPS Case No. 33/2022. It appears that investigation was being carried out as to whether the seized areca nuts have been smuggled from outside the Country and the observations of this Court was made under the said facts and circumstances.

6. In the present case in hand, the subject matter of investigation is 4 grams of contraband narcotic substance. However, it could not be shown that

the vehicle in question is the subject matter of investigation.

7. On a specific query made by the Court, the learned APP has collected information from the I/O that till date no charge-sheet has been filed and no proceeding has been initiated for confiscation of the vehicle which was used for transporting the contraband narcotic substances. It further appears that the accused persons were intercepted and arrested on 17.12.2022 and they were forwarded on 18.12.2022. Accordingly, today is the 61<sup>st</sup> day from the date of production of the accused persons on their arrest in connection with the aforementioned case.

8. It appears that going by the weight of 4 gram of heroin seized, the quantity would be within the meaning of small quantity. Nonetheless, as per instruction received, no charge-sheet has been filed till date.

9. Under such circumstances, the Court finds that in facts, the case of *Lalhruaizela (supra)* is distinguishable as the vehicle in question is not the subject matter of investigation.

10. Accordingly, the Court is inclined to interfere with the order dated 09.01.2023, passed by the learned Special Judge, Goalpara in connection with Krishnai P.S. Case No. 115/2022 and said order is set aside. Accordingly, the petition no.43/2023 filed under section 451 Cr.P.C. is restored to file and the petitioner is relegated to approach the Court of learned Special Judge, Goalpara within 10 (ten) days from the date of the order and along with the certified copy of this order, file an application for disposal of petition no.43/2023 in accordance

with law.

11. It is provided that in the event the learned trial Court exercises its discretion to pass an order in favour of the prayer made by the petitioner, it would be open to the said learned Court to impose strict conditions so as to ensure that the vehicle in question is not disposed of and to ensure that the said vehicle is produced for investigation as and when required.

12. This application stands allowed to the extent as indicated above.

13. Note of the I/O dated 06.02.2023 is returned.

14. It is made clear that the learned trial Court, while adjudicating the application made by the petitioner shall not be prejudiced by any observation made in this order.

**JUDGE**

**Comparing Assistant**