

GAHC010027122023



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

Criminal Petition No. 130/2023

1. Md. Kapil Uddin,
S/o. Md. Rohim Uddin.
R/o. Vill-Choudhury Bazar,
P.O: Choudhury Bazar
P.S.- Murajhar, District-Hojai, Assam

.....Petitioner

-Versus-

1. The State of Assam,

.....Respondent

Before

HON'BLE MRS. JUSTICE MALASRI NANDI

Advocate for the Petitioner:

Mr. F.K.R. Ahmed,

Advocate for the Respondents:

Mr. P. Borthakur,

Date of Hearing : 06.06.2023
Date of Judgment : 08.08.2023

JUDGMENT AND ORDER

1. The petitioner has filed an application under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 against the order dated 19.10.2022 passed by the learned SDJM (M) Charaideo, Sonari in Zimma Petition No. 751/2022, whereby the petition filed by the petitioner seeking custody of the seized articles vide M.R. No. 109/2022 and M.R. No. 112/2022 has been rejected merely on the ground of objection raised by the Investigating Officer.
2. The case of the petitioner is that he is a businessman and running a Tea stall in the name and style of Spice Oven Tea Shop located at Thahekhu Village, Dimapur, Nagaland with valid trade license issued by Thahekhu Village Council, Dimapur, Nagaland.
3. The petitioner has also been working as business correspondent banking agent of a company namely DhanHind Utility Pvt. Ltd. which is a corporate Business Correspondent, Working with bank in the business of associated ATM, Domestic Money Transfer, Digital Payments, Banking Operation and other financial activities in accordance with guidelines issued by the Reserve Bank of India.
4. The petitioner has also been appointed as Business Correspondent/Agent of Yes Bank Ltd. through Mobisafar Services Pvt. Ltd.

5. It is submitted by the learned counsel for the petitioner that being rightful owner of the seized articles, he filed a petition under Section 451/457 of Cr.P.C. before the learned SDJM(M), Sonari seeking custody of the seized articles on the ground that since the day of seizure 7(seven) months have already been elapsed and the seized articles are lying in the custody of the police and apart from that trial of the case is yet to start. The petitioner being involved in money transaction business and the seizures be kept under custody of police for indefinite periods, there is every possibility of damage and decay of the said valuable documents and the petitioner is facing immense difficulties in money transaction business.

6. It is also the submission of the learned counsel for the petitioner that the case in hand falls within the ambit of Section 451 Cr.P.C. as the property in question has been seized by the police and the same has been produced before the Court and the trial is yet to start. Therefore, if the zimma of the seized articles is given to the petitioner putting any such condition as the Court may deem fit and proper, it would be proper and fair administration of justice.

7. By referring the decision of Hon'ble Supreme Court in *Sunderbhai Ambalal Desai Vs. State of Gujrat* reported in AIR 2003 SC 638, the learned counsel for the petitioner has contended that no useful purpose would be served to keep valuable articles in police custody for years till the trial is over and in such cases, Magistrate should pass appropriate orders as contemplated under Section 451 of the Cr.P.C.

8. According to the learned counsel for the petitioner, in view of the law laid down by the Hon'ble Apex Court the petitioner being rightful owner is entitled to custody of the seized articles.

9. It is reported by the Investigating Officer that as the Charaideo district is highly sensitive as per extremists point of view, there is every possibility of again committed such type of crime by the accused petitioner for banned outfit organization who are causing waging war against the Government of India as well as creating terror amongst the peace loving people since long.

10. It is also reported that though the accused petitioner is resident of Choudhury Bazar under Murajhar Police Station district Hojai, but he used to reside at Thahekhu Village, Dimapur, Nagaland. It is further submitted that the case is still pending for arrest of the other co-accused. So at this stage, learned Additional Public Prosecutor prays for dismissal of the prayer of the petitioner.

11. I have considered the submissions of learned counsel for the parties. I have also perused the case diary. It appears that as per seizure list on 07.07.2022, 1(one) Samsung Mobile, Handset, 2(Two) Redmi Mobile Handsets and 1(one) HP Laptop have been seized vide Sonari P.S. M.R. No. 109/2022. On 15.07.2022, 7(seven) ATM Cards of Axis Bank, 2(two) SBI Cards, 1(one) SBI Cash Card, 3(three) numbers of passbooks of Axis Bank and 5(five) cheque books of Axis Bank, 1(one) Rocket and Pocket agent certificate in the name of accused Kapil Uddin, 1(one) Mobisafar ATM (Transaction Device) and 8(eight) Transaction Device of Credopay (Rocket and Pocket) have been seized vide Sonari P.S. M.R. No. 112/2022 from the possession of accused petitioner Kapil Uddin.

12. It is reported by the Investigation Officer that during the course of investigation it reveals that the said seized items belonged to the accused-petitioner.

13. Case diary reveals that one Inspector of Sonari P.S. lodged the FIR alleging that there are ULFA(I) cadre/Linkmen active in the area of Tingalibam, Kanubari, Namtola and Balijan Grant who are giving extortion threat through phone calls, Whatsapp, Letters for extorting money to be utilized by ULFA(I), a banned terrorist organization. It has come to his knowledge that one Shri Indrajit Sharma, a businessman and owner of Sharma Hardware in Namtola market, has received extortion demand from a cadre/linkmen of ULFA(I) by the phone no. 6901476707. Accordingly, a case was registered vide Sonari P.S. Case No. 106/2022 under section 120B/121/121A/387 IPC read with section 10/13 of UA (P) Act.

14. On perusal of the case diary, it cannot be ascertained whether the sim no. 6901476707 belongs to the present petitioner, through the said mobile handset which were seized in connection with this case. However, at this stage we cannot go into the merit of the case. Regarding zimma of the articles as per report of the Investigating Officer, the said seized articles belong to the present petitioner.

15. It is not known whether investigation culminated in the charge-sheet. As per the order of the learned SDJM (M), Sonari, the Magistrate rejected the Zimma Petition only on the objections raised by the Investigating Officer with a view that there is every possibility of committing such type of crime by the accused-petitioner for banned outfit organization, i.e. ULFA (I). It cannot be ascertained from the report of the Investigating Officer whether such seized articles vide M.R. No. 109/2022 and 112/2022 are required for further investigation of the case.

16. Though the Investigating Officer has raised objections in giving zimma of

the seized articles to the petitioner, but the Investigating Officer did not submit any such specific report about necessity of such articles during investigation, neither the learned Trial Court made any exercise to obtain specific report in this regard at the time of passing of the order.

17. Matter regarding zimma can be dealt with at the time of enquiry or trial as per the provision of Section 451 and Section 457 Cr.P.C. and it is incumbent on the part of the Court to pass an effective order, having regard to the interest of the investigation, nature of offence and the entitlement of the person concerned. So far as regards the disposal of the seized articles, the Hon'ble Supreme Court in the case of *Sunderbhai Ambalal Desai (supra)* has observed that the matter of custody and disposal of seized property pending trial can be dealt with under Section 451 of the Cr.P.C.

18. The Hon'ble Supreme Court is of the view that the powers under Section 451 of the Cr.P.C. should be exercised expeditiously and judiciously which would serve various purposes, namely: -

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.
2. Court or the police would not be required to keep the article in safe custody;
3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. This jurisdiction of the Court to record evidence should be exercised promptly

so that there may not be further chance of tampering with the articles.

19. In view of the proposition laid down by the Hon'ble Apex Court, the present petition stands disposed of with a liberty to the petitioner to file a fresh Zimma Petition before the learned Trial Court and the learned Court will dispose of the same in accordance with law after obtaining specific report from the Investigating Officer concerned, in the light of the guidelines above.

JUDGE

Comparing Assistant