

GAHC010069432023



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

Case No. : Crl.Pet./335/2023

MANDIRA DEORI
W/O JINOD @ JINUD DEURI
VILL- MAJOR CHAPORI GAON
P.O. MAJOR CHAPORI
P.S. ARAYANPUR
DIST. NORTH LAKHIMPUR, ASSAM
PIN- 784164

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : RAJU DEURI

Advocate for the Respondent :

BEFORE
HONOURABLE MR. JUSTICE AJIT BORTHAKUR

ORDER

Date : 29.05.2024

Heard Mr. R Deuri, learned counsel for the petitioner as well as Mr. B Sharma, learned Addl. P.P., Assam for the State respondent.

By this petition under Section 482/401 of the CRPC, the petitioner has prayed for setting aside and quashing of the impugned order, dated 20.02.2023 passed in Zimma petition by the learned Special Judge (NDPS Act), Lakhimpur, North Lakhimpur whereby the prayer for Zimma of Mobile Handset of model oppo Reno 6 and vehicle of model CIAZ ZDI in connection with Bihpuria PS Case No.220/2022 has been rejected. .

The petitioner's contention is that she is the registered owner of a Maruti Suzuki bearing Registration No.AS 23Q-2737. The petitioner's further contention is that the Mobile Handset of model oppo Reno 6 used by her husband was seized from the possession of her husband in connection with Bihpuria PS Case No. 220/2022 . Her husband Shri Jinod @ Jinud Deori usually drives the said vehicle for private hiring or for family members and on the date of occurrence co-accused Kapil Deori hired the vehicle to travel to North Lakhimpur. On their way to North Lakhimpur, the police intercepted their vehicle at Banderdewa and on search recovered and seized 11.752 Kg of Ganja. Accordingly, upon having lodged an FIR, the same was registered as Bihpuria PS Case No.202/2022 under Sections 20(b)/29 of the NDPS Act and presently, the trial of the case is going on against both of them.

The petitioner, who is the registered owner of the seized vehicle filed petition No.147/2023 No.148/2023 in the court of learned Special Judge (NDPS Act), Lakhimpur at North Lakhimpur, under Section 457 CrPC praying for release of the vehicle as well as the mobile handset in her custody. However, upon hearing of both sides and perusal of record, the trial court held the opinion that in view of the mandate of Section 60 of the NDPS Act, rejected the petitions vide the impugned order, dated 20.02.2023 passed in Special (NDPS) Case No.01/2023. The record shows that the seized quantity of contraband ganja falls within the

intermediate quantity under the NDPS Act. Record also shows that the accused Jinud Deuri used the mobile for committing the offence. It may be pointed out that the special court is vested with the power to grant interim custody of vehicles seized under the provisions of the NDPS Act invoking the power under Section 457 Cr.P.C. although under Section 60(3) of the NDPS Act, such property is liable to confiscation under Sub-Section 1 or Sub-Section 2 unless the owner proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any and that all reasonable precautions were taken against such misuse. In the instant case, as the petitioner claimed to be the registered owner of the seized vehicle and has claimed interim custody of the seized vehicle, there is question of fact to be enquired into. The record shows that no confiscation proceeding has been drawn up or ordered for confiscation till date. The vehicle has been stated to be at an open space and getting damage day by day since seized on 18.10.2022. The impugned order shows that no inquiry has so far been made yet as required under Section 60 of the NDPS Act for confiscation.

Therefore, the petition stands **partly allowed** setting aside the impugned order with direction to the learned trial Court of Special Judge(NDPS Act), Lakhimpur at North Lakhimpur to make an inquiry including scrutiny of all the relevant documents and pass an appropriate fresh order on the prayer of interim custody of the seized vehicle as well the mobile Handset as prayed for by the petitioner. Accordingly, the petitioner shall appear before the learned trial court, on or before **15.06.2023** to receive further instructions.

With the above direction, the petition stands disposed of.

JUDGE

Comparing Assistant