

GAHC010073322023



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

Case No. : CrI.Pet./330/2023

PHUL KUMAR SARKAR
S/O SADHAN SARKAR
R/O ASHWINI BISWAS PARA
BAMUTIA RAGUTIA
DIST. WEST TRIPURA

TRIPURA-799211

VERSUS

THE UNION OF INDIA
REP. BY THE PUBLIC PROSECUTOR
ASSAM

Advocate for : MR. K K HANDIQUE
Advocate for : SC
NCB appearing for THE UNION OF INDIA

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

19.06.2023

Heard Mr K K Handique, learned counsel appearing for the petitioner and S C Keyal, learned Standing Counsel, NCB, appearing on behalf of the respondent.

2. By this application filed under Section 482 CrPC, read with Sections 397/401 CrPC, the petitioner, Phul Kumar Sarkar, has prayed for quashing the order dated

13.03.2023, passed in NCB Case No. 01/2023, whereby the custody of the seized truck bearing Registration No. TR-01/AU-1771 was rejected.

3. The brief facts of the case is that on receipt of an information from a reliable source, the Intelligence Officer of NCB, Guwahati Zonal Unit, along with the team of NCB Guwahati, who was authorized for search, seizure and arrest, vide Office Order No. 04/03/NCB/GHY/OO-ZD/09/Vol-II/01 dated 01.01.2023, on 02.01.2023, at around 02:00 hours, intercepted the truck bearing No. TR01 AU 1771, along with one Ranjit Singh, from whom the Registration Certificate of the vehicle was recovered, wherein the name of the petitioner, i.e., Phul Kumar Sarkar was mentioned as the owner of the truck and on making search, 6483 bottles of Phensedyl Codeine based cough syrup were recovered and seized by the NCB team, along with the truck. Thereafter, a case being NCB Case No. 01/2023 was registered under Section's 21(c)/29 of the NDPS Act, 1985. Later on, one Pramod Yadav @ Tinku was also found involved in the case and both Ranjit Singh and Pramod Yadav @ Tinku were arrested in connection with the case.

4. It is submitted by the learned counsel for the petitioner that the petitioner is the registered owner of the aforesaid truck bearing registration No. TR-01-AU-1771. The petitioner preferred an application under Section 457 CrPC, before the learned Court of Special Judge, Kamrup, praying for granting custody of the seized truck. On the other hand, the NCB had also filed written objection against the prayer of the zimma of the truck. Thereafter, after hearing both the parties, upon consideration of the contents in the zimma petition and written objection of the NCB, the learned Special Judge, Kamrup rejected the zimma petition filed by the petitioner.

5. It is further submitted by the learned counsel for the petitioner that the seized truck was purchased by the petitioner in the month of November, 2022, by availing loan and if the said truck is kept in custody of the NCB and not released to the petitioner, he will suffer irreparable loss, since he has to pay the monthly installment to the financier.

6. Being highly aggrieved and dissatisfied with the order dated 13.03.2023, the petitioner has filed the present criminal petition.

7. On the other hand, referring to the objection report filed on behalf of the NCB in connection with this criminal petition learned Standing Counsel, NCB has submitted that after the registration certificate of the seized truck-TR01AU 1771 was recovered from the accused Ranjit Singh, during the search operation made by the NCB, a letter was sent to the Regional Transport Officer, Agartala, West Tripura, Tripura, through speed post, to ascertain the verification details of the registration certificate for investigation of the instant case, whereafter a reply was received from the Joint Transport Commissioner, Agartala, West Tripura, which ascertained that the petitioner, Phul Kumar Sarkar is the registered owner of the vehicle. Thereafter, though notices under Section 67 (C) of the NDPS Act were served upon the petitioner on four occasions, but he has not appeared before the Investigating Officer, NCB, till date and thereby, has not cooperated in the investigation of the case.

8. It is further submitted by the learned Standing Counsel that the vehicle bearing Registration No. TR 01 AU 1771 was used for transportation of seized contraband, i.e., 6483 bottles of codeine based Phensedyl cough syrup, in specially made cavity and petitioner is the registered owner of that vehicle, who was issued notice under Section 67(c) of the NDPS Act, 1985, but he did not appear before the investigating officer till date. It is also submitted that investigation of the case is going on and evidences are being collected. At this juncture, if zimma of the vehicle is granted, there is every possibility to hamper with the investigation process

9. I have heard the submissions made by the learned counsel for both the parties. I have perused the record, along with the documents annexed and have also gone through the objection report.

10. It appears that 6483 bottles of codeine based phensydydyl cough syrup were recovered from the alleged truck, which are commercial quantity. The truck was used for transportation of seized contraband in specially made cavity inside the truck, which is not possible without the consent of the truck owner. Admittedly, petitioner is the registered owner of the truck.

11. After hearing learned counsel for the respective parties, this Court is of the considered view that the petitioner has failed to make out any case that the vehicle has been detained unauthorisedly and it cannot be believed that the inner cavity in the truck was built without the consent of the petitioner. The petitioner cannot be so ignorant of the acts committed by his so called alleged driver or handiman. This Court finds no merit in the petition. Accordingly, the prayer of the petitioner to release his vehicle bearing Registration No. TR-01/AU-1771 stands rejected.

12. With the aforesaid directions, this Criminal Petition stands disposed of.

JUDGE

Comparing Assistant