

GAHC010096502023



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

Case No. : Crl.Pet./441/2023

SAROJ DEY
S/O LT. NITYA GOPAL DEY
R/O VILL- NAYA BAZAR
(LENGTISINGA), P.S. ABHAYAPURI
DIST. BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

14.06.2023

Heard Mr H Das, learned counsel for the petitioner and Mr D P Goswami, learned Additional Public Prosecutor for the State of Assam.

2. This is an application filed by the petitioner, Saroj Dey, under Sections 482 read with Section 397 CrPC, praying for quashing of the impugned order dated 10.03.2023,

passed by the learned CJM, Goalpara, in PRC Case No. 119/2023, refusing to give zimma of 17 (seventeen) items of the petitioner, as per the petition filed by him.

3. The allegation made against the petitioner is that the petitioner by impersonating himself as an employee of GTL Infrastructure Limited, had approached the informant and requested them to remove one mobile tower along with its parts, on the basis of fake NOC and thereafter, dismantled the Tower and also took away its parts. Hence, an FIR was lodged by the Company, on 21.10.2022, which was registered as Goalpara PS Case No. 238/2022, under Sections 419/420/468/379/120(B) IPC.

4. It is submitted by the learned counsel for the petitioner that the petitioner was arrested in connection with the aforesaid PS Case and some items were seized by the Goalpara Police, but unfortunately, the seizure list prepared by the Police was not identical with the actual seized items, which belonged to the petitioner. Thereafter, after obtaining bail, the petitioner went to the spot where the seizure was made and he found that all the items which were actually seized by the Police were not inserted in the seizure list. Thereafter, the petitioner, filed an application before the learned CJM, Goalpara, which was registered as PRC Case No. 119/2023, along with a zimma application, with a prayer to release 18 items, which were seized by the Police. However, out of 18 items only one item, i.e., the vehicle of the petitioner was released, along with his personal documents like voter ID, Pan Card, Aadhar Card etc. were released on execution of a bond of Rs. 4,00,000/-, and rejected the prayer of zimma for the other 17 items, which were listed in the zimma petition.

5. Being aggrieved and dissatisfied with the said order, the petitioner has filed the present application.

6. On the other hand, the learned Additional Public Prosecutor submits that as the charge sheet has been submitted by the Police against the petitioner, the petitioner may approach the learned trial Court, for release of the articles.

7. I have considered the submissions made by the learned counsel for both the parties. I have also gone through the documents which are available in the record and the report which has been submitted by the learned Chief Judicial Magistrate, Goalpara.

8. The report of the learned CJM dated 26.05.2023, reveals that in the instant case, the Police has submitted charge sheet for the offence under Sections 490/420/468/379/120(B) IPC, on the basis of the FIR for theft/dismantling of mobile tower and other ancillary equipment located in the premises of one Mr Nur Hussain (TAPA) and four others. The Police along with the report under Section 173 CrPC, submitted 8 (eight) numbers of seizure list which have been marked as MR Nos. 252/2022, 253/2022, 254/2022, 255/2022, 256/2022, 257/2022, 272/2022 and seizure list dated 27.11.2022, which has not been entered in MR register and finally concluded that on perusal of the list, it appeared that most of the articles seized in the case were machinery and equipment used in tele-com towers and the trial of the case has not been commenced yet.

9. In view of the facts and circumstances of the case and the report of the learned CJM, this criminal petition stands disposed of with a direction to the petitioner to appear before the learned trial Court, along with all the relevant documents in support of the seized 17 (seventeen) articles, against which he claims to have supportive documents and the learned trial Court shall consider the prayer of zimma of the said seized 17 (seventeen) articles, on proper verification of the documents and as per provision of law.

JUDGE

Comparing Assistant