

GAHC010117322023



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

Case No. : Crl.Pet./518/2023

DEEPAK ARJYA AND ANR
S/O HARI CH. ARJYA
R/O VILL-KAWATIKA
P.O. KAWATIKA
P.S. BIJNI
DIST. CHIRANG, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

2:MAYNAL HOQUE
S/O LT. MIRAJAFAR SHEIKH
VILL- DOTURI PT.II
P.O. AND P.S. BIJNI
DIST. CHIRANG
ASSA

Advocate for the Petitioner : MR. A ALI

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 21-08-2023

1. Heard Mr. R Ali, learned counsel for the petitioners. Also

heard Mr. P Borthakur, learned Addl. PP, Assam.

2. The present application is filed under section 482 Cr.P.C read with section 397/401 Cr.P.C praying for zimma of two vehicles bearing registration No.AS 01 AA 0657 and AS 19 D 0851 which were seized from the possession of one Dipak Arjya and Maynal Hoque in connection with Crime Branch PS Case No.01/2022 under sections 120(b)/379/411/465/471 IPC.

3. The present petitioners filed an application before the learned court below for zimma of the vehicle and during the aforesaid proceeding, the learned court below by its order dated 28.12.2022, considering the report submitted by the I.O that zimma of the vehicles cannot be granted as same is required for further proceeding of the case, rejected the prayer for zimma. However, the petitioners were granted a liberty to approach the I.O along with all the original documents and it was further provided that the I.O upon his satisfaction, that if the vehicles are no longer required for investigation may release the same after proper verification by furnishing a bond of Rs.5,00,000 each to its true and registered owner.

4. Though a statement has been made that the petitioners had approached the I.O and the I.O had rejected the zimma of the vehicles, however, the petitioners have not annexed any application that has been filed before the I.O annexing the documents in respect of ownership of such vehicle.

5. In the meantime, pursuant to an order passed by this Court the I.O had submitted a report that during investigation the ownership

of the two vehicles had been ascertained. It was further reported that though these vehicles are private vehicles and passenger carrying vehicles but were used for illegal transportation of suspected burmese areca nuts.

6. Be that as it may, according to the report the ownership of the vehicle has been identified. The vehicles are with the custody of the police since at least 28.12.2022, this Court in terms of the ratio laid down in the case of ***Sunder Bhai Ambala Desai Vs. State of Gujrat*** reported in ***(2002) 10 SCC 283*** while dealing with the power of a magistrate under section 451 and 457 Cr.P.C., regarding disposal of seized material has laid down the following proposition of law:-

I. That the application for zimma of seized material shall be dealt expeditiously and judiciously with the object that the owner of the seized article should not suffer for it being remaining unused or by its misappropriation,

II. The hon'ble apex court at paragraph 17 observed that whatever the situation be, it is of no use to keep the materials more particularly seized vehicles at police station for a long period.

7. In view of the aforesaid settled propositions of law, this court in the given facts of the present case is of the view that the seized vehicles be released to the registered owner subject to the following conditions:

I. The investigating authority shall prepare proper panchnama of the vehicles and take photographs of such vehicle and get the signature of the owner or representative

of the owner and the owner shall give a bond that such articles should be produced on issuing a bond of Rs.5,00,000/- each.

II. The petitioner/owner shall not change the colour or structure of the vehicle and shall not also dispose of the vehicle till disposal of the case.

III. The petitioner/owner shall produce the vehicle before the I/O or concerned authority as and when called for the purpose of investigation or trial.

8. With the aforesaid the present petition stands allowed.

Comparing Assistant