

GAHC010131702022



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

Case No. : Crl.Rev.P./338/2022

HANIF UDDIN AND ANR
S/O- AHMAD ALI, R/O- VILL.- JAWRIMARI CHAR, P.S. KALGACHIA, DIST.
BARPETA, ASSAM

2: MUSTT. MOMTAJ BEGUM
W/O- HANIF UDDIN
R/O- VILL.- JAWRIMARI CHAR
P.S. KALGACHIA
DIST. BARPETA
ASSA

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE P.P., ASSAM

2:ASI NIPUMONI CHOUDHURY
S/O- LATE RABINDRA KUMAR CHOUDHURY
GOALPARA
P.S. AND DIST. GOALPARA
ASSA

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : MR. K K PARASAR(ADDL.PP)

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 21-02-2023

Heard Mr. H.R.A. Choudhury, learned Senior Counsel assisted by Mr. I.A. Hazarika , learned counsel for the petitioner. Also heard Mr. K.K. Parasara, learned Addl. P.P. for the State of Assam.

2. This petition is filed by the petitioner Nos. 1 and 2 under Sections 397/401 of the Code of Criminal Procedure, 1973 (Cr.P.C. for short) challenging the order dated 06.05.2022 passed by the Court of the Special Judge, Goalpara in connection with Goalpara P.S. Case No. 85/2022 under Sections 20(b)(ii)(B)/29 of the Narcotic Drugs and Psychotropic Substances Act (the Act for short) whereby the zimma petition filed by the petitioner No. 1 for custody of the seized boat owned by petitioner No. 1 bearing S.R. No. 19.20 M boats 3.30 M, Engine No. 200.7003/2220 was rejected.

3. It is submitted on behalf of the petitioner that the order was passed without proper appreciation of material on record. The petitioner No. 1 belongs to a respectful family and is a businessman by profession and owner of an engine boat which he has purchased by procuring a loan. It is submitted that the petitioner's livelihood depends on the income earned by plying the boat. The boat was seized in connection with this case and the FIR unfolds that on 12.04.2022 at about 4.45 AM on the basis of an information regarding transportation of suspected *ganja* from Jaurimari Ghat, Barpeta to Kachari Ghat, Goalpara by engine boat, the informant along with the staff reached the Kachari Ghat and detained the boat and apprehended three persons. Four polythene packets containing suspected *ganja* was recovered and the same were seized alongwith the boat. The petitioner No. 1 was arrested by the police in connection with the afore-mentioned case and produced before the Court of the CJM at Goalpara and thereafter the petitioner was forwarded to custody and finally the petitioner was released on bail vide Order dated 13.06.2022 of this Court in B.A. No.

1203/2022. It is submitted on behalf the petitioner that a false case has been slammed against the petitioner No. 1. The petitioner No. 1 purchased the afore-mentioned boat for commercial purpose and engaged two employees, who are also the co-accused, as helpers for running the boat. The petitioner's boat was registered to ferry passengers by the Inland Water Transport Department. It is submitted that on the date of the incident there were around seventy to eighty passengers travelling on the boat and the police detained the boat for searching. Four polythene packets containing the suspected *ganja* were kept in one bag containing vegetable by some unknown miscreants without the

knowledge of the petitioner No. 1. It is submitted that the petitioner purchased the boat for Rs. 8 lacs by acquiring a loan as well as through other resources.

4. It is submitted that the petitioner is innocent and he is not a repeat offender. No occurrence of this nature is likely to be committed through petitioners or even by any other unscrupulous elements. He is not guilty of conscious possession of the *ganja* seized from the boat. The petitioner is however prejudiced as he has been arrested in connection with this case. The total weight of the *ganja* seized from boat was found to be 3.751 kgs. The petitioner's wife is verbally authorized to take necessary steps for the custody of boat, which is lying unattended in the river.

5. It is averred that the trial of this case is yet to commence and charge-sheet has not been submitted. There is every likelihood that during the pendency of the trial confiscation proceeding will be initiated. Moreover the boat is prone to damage as it is lying unattended in the water. It is submitted that the learned Court of the Special Judge ignored the fact that the

petitioner No. 1 as well as his co-accused were not in conscious possession of the *ganja* seized from the boat. The petitioner has appended the order of bail in Bail Application No. 1203/2022 dated 13.06.2022 as Annexure-3. I have perused the scanned copies of the LCR and the order impugned by the petitioner. The order dated 21.07.2022 reveals that charge-sheet has been laid against the petitioner No. 1 and the co-accused persons dated 21.07.2022 under Section 20(b)(ii)/29 of the Act. The operative part of the impugned order is reproduced herein below:

“I have scrutinized the case diary as well as the case record. On scrutiny of record, it has been revealed that on 12.4.2022, at about 10:45 am, as per information received, three persons, namely (1) Hanif Uddin, S/o Ahmed Ali of Jawrimari Char, P.S. Kalgachia, Dis. Barpeta, 2) Farman Ali, S/o Shah Alom of village Nizmoinbori, P.S. Kalgachia, District Barpeta and 3) Ismail Hussain, S/o Iman Ali of Village Jawrimari Char, P.S. Kalgachia, Dist. Barpeta were illegally transporting ganja from Jawrimari Ghat, Barpeta to Kachari Ghat, Goalpara by the Engine Boat. Accordingly, the matter was informed to DSP (HQ), Goalpara and a team was formed for the execution. Accordingly the police party proceeded to Goalpara Kachari Ghat, detained one single Engine Boat bearing Engine No. 2H.7003/2220039 and apprehended above three named persons from the boat and on being searched, found four numbers of polythene packet containing ganja. Thereafter the same was seized, inventory was prepared and samples were drawn. From the record it reveals that arrested accused Hanif Uddin, Farman Ali and Ismail Hussain used the boat in carrying and transporting the contraband item. The present petitioner is not the owner of the seized boat and prima-facie

materials present in the record reveal that the seized boat had been used for carrying and transporting the contraband item ganja and under Section 60 of the NDPS Act, any substance, articles or conveyance used in carrying and transporting contraband items are liable to be confiscated. The Section 60 of the NDPS Act is reproduced herein below:

Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.

(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant, cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.]

(2) Any narcotic drug or psychotropic substance 2[or controlled substances] lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured, possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance 2[or controlled substances] which is liable to confiscation under sub-section (1) and their receptacles, packages and coverings in which any narcotic drug or psychotropic substance 2[or controlled substances], materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance 2[or controlled substance], or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

The boat was used by its owner accused Hanif Uddin in carrying contraband item with his knowledge. As such, the petitioner who is not the owner of the boat and is a third party and when the owner of the boat has knowledge about the uses, transporting contraband item ganja in the boat, the prayer of the petitioner

for zimma of the boat is hereby rejected an the boat is liable to be confiscated to the State.”

6. The learned counsel for the petitioner has submitted that the petition was rejected as the petitioner’s wife who is not the owner of the boat applied for the *zimma* of the boat when the order dated 06.05.2022 was passed. At the stage of trial the question of confiscation of the boat does not arise. It has to be proved beyond reasonable doubt that an offence under this Act has been committed to initiate confiscation of the boat.

7. I have given my anxious consideration to the submissions at the Bar. The petitioner has already been enlarged on bail. The petitioner has pledged to co-operate with the trial. He has vouched that he is the owner of the boat and has submitted the relevant documents along with the petition. Charge-sheet has already been laid against the petitioners. The documents regarding the boat is marked as Annexure-3 series. The petitioner is the owner of the boat. The boat has been obtained by procuring a loan and the petitioners livelihood depends on the boat. The boat will be damaged during the pendency of this case.

8. The learned Addl. P.P. has raised no objection if an order is passed for interim custody of the boat till disposal of the corresponding Goalpara P.S. Case No. 85/2022 pending against the petitioner and the co-accused persons.

9. Considering all aspects and in view of my foregoing discussions, I deem it proper to allow interim custody of the boat till disposal of the Goalpara P.S. Case No. 85/2022. The Special Judge can pass an order directing interim custody of the afore-mentioned boat to its registered owner under conditions which the learned Special Judge deems fit and appropriate.

This disposed of the petition.

JUDGE

Comparing Assistant