

GAHC010141572022



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

Case No. : Crl.Pet./692/2022

KAYEM UDDIN
S/O LATE DHAMAK ALI,
VILL- HALANGABARI, P.S. PATACHARKUCHI, DIST. BAJALI, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. A LAL

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
ORDER

21.08.2023

1. Heard Mr. A. Lal, learned counsel for the petitioner. Also heard Mr. P. S. Lahkar, learned Additional Public Prosecutor for the State of Assam.
2. This criminal petition is filed under Section 482 read with section

397/401 Cr.P.C praying for zimma of the vehicle bearing registration No. AS-15-L-6247 which was seized in connection with in Gossaigaon Police Station Case No. 46/2021 registered under Sections 289/379/411/417/307 IPC read with Section 11(1)(a)(d)(e)(h) of Prevention to Cruelty to animal Act, 1960 read with Section 184/179 of M.V. Act.

3. The present petitioner filed an application before the learned Sub Divisional Judicial Magistrate, Gossaigaon for zimma of the vehicle and during the aforesaid proceeding, the learned court below by its order dated 19.01.2022, 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 petitioner was granted a liberty by the learned Court below 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 vehicle is no longer required for investigation may release the same after proper verification by furnishing a bond of Rs.5,00,000/- to its true and registered owner.
4. Though a statement has been made that the petitioner had approached the I.O and the I.O had rejected the zimma of the vehicle, however, the petitioner has 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 vehicle had been ascertained. It was further reported that though this vehicle is private vehicles and passenger carrying vehicles but was used for illegal transportation of alleged illegal cattle.

6. Be that as it may, according to the report the ownership of the vehicle has been identified. The vehicle is with the custody of the police for more than 6 months. The Hon'ble Apex Court 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 vehicle 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/-.

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.

JUDGE

Comparing Assistant