

GAHC010162192023



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

Case No. : Crl.Rev.P./285/2023

MD. MUKSIDUL ISLAM
S/O IMAM HUSSAIN
R/O VILL- BRAHMA BEEL,
SAMAGURI, P.S. SAMAGURI,
DIST. NAGAON, ASSAM
PIN-782138

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR A DEKA

Advocate for the Respondent : PP, ASSAM

BEFORE
THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY
O R D E R

17.08.2023

Heard Mr. A Deka, learned counsel for the petitioner. Also heard Mr. RJ Baruah, learned Additional Public Prosecutor, Assam.

2. This is an application filed under Section 397 and 401 read with Section

482 Cr.P.C. assailing an order dated 06.06.2023 whereby the prayer of the petitioner for zimma of vehicle bearing No. AS 22 E 6131 (Mahendra TUV 300) has been rejected during the period of investigation.

3. This court sought report from the I/O whether the zimma of the vehicle can be given. On the basis of such report, the I/O has submitted a report on 10.08.2023 and requested that the zimma may not be granted as the case has already been charge-sheeted in the matter.
4. 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 that:-
 - I. The power under Section 451 Cr.P.C. and 457 Cr.P.C. should be exercised expeditiously and with the object that the owner of 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 vehicle at police station for a long period and a Magistrate is to pass appropriate order immediately by taking appropriate bond and guarantee as well as security for return of vehicles, if required at any point of time.
 - III. Referring to Section 451 Cr.P.C. of the paragraph 5 of the judgment Sunderbhai Ambala Desai (supra) the court opined that the power under Section 451 Cr.P.C. is required to be exercised expeditiously and judiciously with the object that the owner of the

article would not suffer because of its remaining unused or by its misappropriation.

5. Considering the aforesaid proposition, if the vehicle is allowed to be kept, the vehicle may get damaged. Accordingly, this Court is of the considered opinion that the Investigating Officer shall forthwith release and handover the zimma of the seized vehicle bearing No. AS 22 E 6131 (Mahendra TUV 300) seized in connection Bokakhat PS case No. 38/2023 under Section 379/411 IPC read with Section 13(1) of the Assam Cattle Preservation Act and read with Section 11(1)d of Prevention of Cruelty to Animals Act 1960 to its owner, after getting a bond of Rs. 7,00,000/- (Seven lakhs) executed from the owner of the said vehicle with the following conditions:
 - a) The owner shall submit a bond declaring that he shall not change the colour and structure of the vehicle and shall not alter or destroy it till disposal of the case.
 - b) The owner shall produce the vehicle before the I/O or concerned court as and when called for.
 - c) The I/O is further directed to take photographs of the seized vehicle and keep it with the case record for further reference.
6. With the aforesaid observation and direction, this criminal petition stands disposed of.

JUDGE

Comparing Assistant