

GAHC010164672023



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

Case No. : Crl.Pet./791/2023

RUNUMANI BEGUM
D/O KHALIL ALI
C/O ALI AKBAR
R/O BARLECHAKONA, MADHUKUCHI
P.O. MADHUKUCHI, P.S. RANGIA
DIST. KAMRUP, ASSAM
PIN-781354

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. D P BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

24.08.2023

Heard Mr. D.P. Borah, learned counsel for the petitioner and Ms. S.H. Bora, learned Addl. P.P. for the State respondent.

2. As a common question of law and common sets of facts are involved in these 3 petitions and as agreed by learned counsel for both the parties, it is

proposed to dispose of all these 3 petitions by a common order.

3. In **Criminal petition No. 791/2023- Smti. Runumani Begum;** and in **Criminal Petition No. 793/2023 Md. Mafidul Islam; and in Criminal Petition No. 794/2023 Md. Khairul Islam** have put to challenge the order dated **18.07.2023**, passed by the learned Chief Judicial Magistrate in **Hamren P.S. Case No. 17/2023, corresponding G.R. Case No. 117/23**. It is to be mentioned here that vide impugned order, the learned Chief Judicial Magistrate, Hamren had dismissed the prayer of the petitioners seeking custody of the seized vehicle, bearing registration No. AS-25-FC-2006; and AS-25-EC-3711; NL-01-K-8127, AS-01-JC-8126; and AS-25-FC-2064.

4. The background facts leading to filing of these 3 petitions, under Section 482 of the Cr.P.C., are adumbrated as under:-

“On 26.06.2023, one Moon Ch. Deka, Senior Geologist, Directorate of Geology and Mining, lodged one FIR with the Officer In-Charge of Hamren Police Station to the effect that he along with Assistant Geologist, Dibakar Das; Biswajeet Gogoi; and Monjit Bora found 5 nos. of Truck, bearing registration Nos. AS-25-FC-2006; AS-25-FC-2064; AS-25-FC-3711; AS-01-JC-8126; and NL-01-K-8127, loaded with quartz mineral at about 4 pm, being stationed at Anglong Service Station, Bharat Petrol Pump near District Jail Hamren and on asking the driver and handyman of the said Trucks failed to produce any documents of the same. Upon the said FIR the Officer In-Charge, Hamren Police Station registered **Hamren PS Case No. 17/2023**, under Section 447/379/120[B] of the IPC read with

Section 21[4] of the MMRD Act and seized the vehicles loaded with quartz, preparing seizure list, in presence of witnesses. After the Trucks loaded with quartz mineral being seized by the police, 3 petitioners namely, **Runumani Begum; Mafidul Islam; and Khairul Islam** filed a petition before the learned CJM, West Karbi-Anglong at Hamren. But, vide order dated 18.07.2023, the learned Court below had dismissed the prayer of custody of the seized vehicle.”

5. Being aggrieved the petitioners approached this Court by filing the present petition for releasing the vehicle in their interim custody on following grounds :-

(i) That the Trucks were not intercepted by the Officials of Mining and Minerals Department on the road, the same being stationed for the process of obtaining Transit Permit in the Petrol Pump, which is adjacent to the mine of said minerals and that since the date of seizure i.e. 26.06.2023, the vehicles are lying in the open space with the loaded quartz stone and if not released in the interim custody the petitioner i.e. the owner of the vehicles will suffer irreparable loss.

6. Mr. Bora, learned counsel for the petitioners submits that the petitioners are registered owner of the seized vehicles and that they have not committed any offence as they were engaged by another person to carrying the minerals and the owner of the minerals had valid license for mining and that the vehicles are lying unattended in the open space and the petitioners will suffer irreparable loss, in the event of damage of the vehicle and that they are ready

to produce the vehicle as and when required by the Police or any other authority and therefore, it is contended to allow the petition.

7. On the other hand, Ms. Bora, learned Addl. P.P. by producing a report of the Investigating Officer, submits that the seized vehicle are involved in illegal mining of quartz causing damage to the environment and loss of revenue to the Government and the person, who took the vehicle on hire do not have a permit for mining and he has been absconding and the confiscation proceeding will be started shortly and in view of the report of the IO, Ms. Bora, contended to dismiss the petition.

8. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and the report of the Investigating Officer.

9. It is not in dispute that the petitioners are the registered owner of the aforementioned Trucks. Further, it appears that the Trucks were seized by the police on 26.06.2023, and since then the same are lying unattended in open sky, in the campus of the Police Station and their values are diminishing day by day. The I.O. also got sufficient time for investigation. And by keeping the vehicles in open space for further period, no purpose of any quarter will be served.

10. The report of the IO, produced by the learned Addl. P.P. before this Court, indicates that the vehicles are involved in mining of quartz, causing damage to the environment and loss of revenue to the Government and if the same are given in the Zimma of the petitioners then they will again use the vehicle for the same purpose. Further, it appears that the confiscation proceeding of the vehicles have not yet been started.

11. Considering the reason assigned by the I.O. and also having regards to the submissions of learned counsel for both the parties, and further considering the law presently occupying the field, this Court is inclined to dispose of all these 3 petitions, at this motion stage itself, by directing the learned court below to release all the five vehicles in the interim custody of the petitioners, on their executing a bond of Rs.10,00000/(Rupees ten lacs) each and on furnishing a solvent surety of like amount.

12. The above order is, however, subject to the following conditions :-

[i] the petitioners shall produce the same before the IO, as on when directed and

[ii] the petitioners shall not alienate the vehicle or alter its colour or change its character, without the leave of the court.

[ii] the learned court below shall be at liberty to impose any further condition to ensure production of the vehicle before the I.O. or before it.

JUDGE

Comparing Assistant