

GAHC010166712023



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

Case No. : Crl.Pet./787/2023

SAJID KHAN
S/O SARFUDDIN
VILL- WARD NO. 7, DHIDARA, MEWAT, JAIPUR
DIST. JAIPUR, RAJASTHAN

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY PP, ASSAM

2:WAHIDUL ISLAM
S/O SAIDUL ISLAM
FOREST RANGE
OFFICER

DEPARTMENT OF ENVIRONMENT AND FOREST
ASSAM
ABHAYAPURI FOREST RANGE OFFICE CAMPUS
ABHAYAPURI
DIST. BONGAIGAON
ASSAM

3:S.I. PAULUS NARZARY
S/O LATE ROPEN NARZARY
BOITAMRI OUT POST
P.S. ABHAYAPURI
DIST. BONGAIGAON
ASSA

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND
ORDER

22.11.2023

Heard Mr I A Choudhury, learned counsel for the petitioner, Sajid Khan.

2. The petitioner has filed this application under Section 482 CrPC against the Judgment and Order dated 17.07.2023, passed by the learned Additional Sessions Judge (FTC), North Salmara, setting aside the order dated 10.05.2023, passed by the learned SDJM (M), North Salmara, Abhayapuri, whereby the zimma of the vehicle in question was granted to the petitioner.

3. Heard Mr D Gogoi, learned Standing Counsel, Forest.

4. I have considered the submissions at the Bar.

5. The genesis of the case was that an FIR dated 25.11.2021 was lodged by SI Paulus Narzary alleging *inter alia*, that on a tip-off one truck bearing Registration No. RJ-14GJ-5670, transporting timber illegally, was detained after naka checking and it was found that wooden planks hidden under rice husk was being transported by the vehicle. The Abhayapuri PS Case No. 994 of 2021, under Sections 379/420/468/411/224 of the IPC, read with rule 41 of the Assam Forest Regulation Act, 1891, was registered and the petitioner, being the owner of the commercial vehicle, which was being plied by the driver has claimed innocence relating to driver's activities. The petitioner's vehicle was hired to deliver 30 kgs of rice, but without the petitioner's knowledge, the seized timber was transported by the driver of the vehicle. Apprehending arrest, the petitioner filed a petition for pre-arrest bail, which was granted to him vide order dated 11.04.2023, passed by this Court in AB No. 3769 of 2022. The petitioner, thereafter, preferred the Zimma Petition No. 195/2023 for zimma of the vehicle and the learned SDJM (M),

North Salmara, Abhayapuri, vide order dated 25.04.2023, called for a report from the Forest Range Officer. The report was submitted on 08.05.2023 and it was mentioned in the report that the confiscation proceeding was initiated with respect to the vehicle bearing registration number captioned above. Vide order dated 10.05.2023, the petitioner was granted zimma of the vehicle bearing Registration No. RJ-14-GJ-5670.

6. It was held by the order dated 10.05.2023 that-

“In the present case, the above mentioned seized vehicle has been lying unused in custody of the Forest Office since 24.01.2022 and no confiscation proceeding has been initiated or pending. The ground taken by the Forest Range Officer that the lawful owner of the vehicle is yet to be ascertained appears to be not satisfactory as so much time has elapsed since custody of the truck was handed over to the Forest Office. Further, no intimation as required under sub-section (5) of Section 49 was sent to this Court at any point of time so as to inform about the intent to initiate confiscation proceeding.

The seized vehicle mentioned above has already been in physical custody of the concerned Forest Range Office for so long and keeping it in unused condition any further would not only diminish its value but may result in its severe damage. It would be justifiable for all practicable purposes that the seized vehicle be released to the petitioner on his execution of a bond of suitable amount with sufficient sureties as he has been able to prima facie establish his claim over the same.

Accordingly, in exercise of the power vested under Section 50 of the Assam Forest Regulation, this Court hereby directs the Forest Range Officer, Abhayapuri Forest Range to release the seized truck bearing registration no. RJ-14-GJ-5670 to the petitioner, Sajid Khan, after taking photographs and on his executing an indemnity bond of Rs.15,00,000/- (Rupees Fifteen Lakhs) with two local sureties/guarantors of like sum and subject to the following conditions:

- i) *The petitioner shall produce the truck before the Court/Forest Range Officer as and when required until disposal of the case;*
- ii) *The petitioner shall not transfer/alienate ownership of the truck to any third person until disposal of the case.*

Violation of any of the above conditions shall entail forfeiture of the bond.

Zimma Petition No. 195/23 stands disposed of.

Communicate this Order to the Forest Range Officer, Abhayapuri Forest Range.”

7. The Forest Department filed a revision, being Criminal Revision No. 12(2)/2023, challenging the legality and propriety of this order and vide order dated 17.07.2023, the order dated 10.05.2023, passed by the learned SDJM (M), North Salmara, Abhayapuri, was set aside by the learned Additional Sessions Judge (FTC), North Salmara, Abhayapuri. This order dated 17.07.2023 is under challenge before this Court on the grounds that the learned SDJM(M), North Salmara's order has been erroneously interfered and set aside. As per report dated 08.05.2023, submitted by the IO the vehicle was not under confiscation proceeding. The revisional Court while passing the impugned order failed to appreciate Section 49 (5) of the Assam Forest Regulations, 1891 and Section 49 (5) (a) of the said Regulations. The learned SDJM(M) has spelt out sound reasonings while handing over the zimma of the vehicle to the petitioner. The order was set aside without any illegality.

8. The learned Standing Counsel, Forest, has raised objection against the petition, stating that the learned Additional Sessions Judge (FTC) has passed a correct order that the vehicle is involved in a forest offence and the zimma of the vehicle has to be dealt with strictly and the vehicle should not be released as a course of normal practice. The learned Standing Counsel has prayed to dismiss the petition.

9. I have considered the submissions at the Bar with circumspection.

10. It is true that a scrutiny of the orders clearly reveal that the order dated 10.05.2023, passed by the learned SDJM(M), North Salmara, Abhayapuri, does not suffer from any illegality or impropriety. No confiscation proceeding was initiated for confiscation of the vehicle. The vehicle is lying in the open and is prone to damage. Thereby, keeping in view the peculiar facts of this case, the order dated 17.07.2023, passed by the learned Additional Sessions Judge (FTC), North Salmara, Abhayapuri, in Criminal Revision No. 12 (2) of 2023, is hereby set aside and the order dated 10.05.2023, passed by the learned SDJM(M), North Salmara, Abhayapuri, is upheld.

11. Criminal Petition stands disposed of.

JUDGE

Comparing Assistant