

GAHC010175902022



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

Case No. : Crl.Rev.P./441/2022

ABDUL MAJID
S/O- ABDUL SANA, R/O- BORAYANGI KHUJAO PALLI, P.S. KUMBI, DIST.
BISHNUPUR, MANIPUR.

VERSUS

UNION OF INDIA AND ANR
TO BE REPRESENTED BY THE DIRECTORATE OF REVENUE
INTELLIGENCE, GUWAHATI ZONAL UNIT, GUWAHATI, PIN- 781005.

2:SAROJ RANJAN KUMAR
SENIOR INTELLIGENCE OFFICER
DIRECTORATE OF REVENUE INTELLIGENCE
GUWAHATI ZONAL UNIT
GUWAHATI
PIN- 781005

Advocate for the Petitioner : MR. A AHMED

Advocate for the Respondent : SC, DRI

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI
ORDER

02.06.2023

Heard Mr A Ahmed, learned counsel for the petitioner and Mr S C Keyal, learned Standing Counsel, appearing on behalf of the Directorate of Revenue Intelligence (DRI), for respondent Nos. 1 and 2.

2. The petitioner, as the owner of the vehicle, Maruti Desire bearing No. AS-01 FA-0867, has filed an application before this Court under Sections 401/397 CrPC, claiming zimma of the said vehicle against the order dated 04.06.2022, passed by the learned Special Judge, Kamrup (Metro) in Misc Case No. 69/22, arising out of DRI Case No. 01/CL/NDPS/HEROIN/DRI/GZU/2022-23, dated 05.04.2022, whereby the zimma application preferred by the petitioner was rejected.
3. The case of the petitioner is that he is the registered owner of the Maruti Desire bearing No. AS-01 FA-0867, which has been seized by the officers of DRI in connection with DRI Case No. 01/CL/NDPS/HEROIN/DRI/ GZU/2022-23, dated 05.04.2022. According to the petitioner the said vehicle is a passenger car, which is normally driven by Md Rakibuddin. On the relevant day, Md Rakibuddin while traveling with his passenger Md Laki Amir, was intercepted by the DRI officials. The petitioner, who is the owner of the said vehicle was not present and he had no knowledge of carrying of any contraband by the passenger. The seized contraband were allegedly recovered from the rear seat where the passenger was sitting.
4. The petitioner moved a zimma petition under Section 457 CrPC, being Misc Case No. 69 of 2022, before the learned Special Judge, Kamrup (Metro), Guwahati, seeking custody of the vehicle, but the learned Special Judge, on receipt of the report from the Investigating Officer, pursuant to the zimma petition filed by the petitioner rejected the same vide order dated 04.06.2022.
5. It is also stated that the seized vehicle owned by the petitioner is lying under the open sky at the DRI office at Guwahati and exposed to various natural vagaries. Under such circumstances, there is every likelihood of the vehicle being damaged by such exposure to sun, rain etc., in absence of proper care and handling, which may cause heavy losses to the petitioner. The vehicle of the petitioner is exposed in such manner for such long duration, which does not serve the purpose of investigation of the case. As such, the custody of the vehicle may be given to the petitioner on any conditions thereon.
6. Learned counsel for the petitioner has submitted that the learned Special Judge, while passing the impugned order dated 04.06.2022, has failed to assign any reason for rejecting

the zimma petition filed by the petitioner and passed the same mechanically on the basis of the report of the Investigating Officer, which also does not contain any reasons for the custody of the vehicle for the purpose of investigation.

7. Learned counsel for the petitioner also by referring to the decision of the Hon'ble Apex Court in the case of ***Sunderbhai Ambalal Desai –Vs- State of Gujarat; AIR 2003 SC 638***, has stated that the concerned Magistrate should take immediate action to release the vehicle on zimma in favour of the registered owner. The articles are not kept for a long time at Police station or elsewhere in any case for not more than 15 days to one month.

8. It is also submitted by the learned counsel for the petitioner that charge sheet has already been submitted and the petitioner has not been shown as accused in the charge sheet. As the petitioner is the registered owner of the vehicle, he is entitled to get the zimma of the same and he is no way connected in the offence as alleged. Hence, being the registered owner, his vehicle be released accordingly in his favour.

9. In support of his submission the learned counsel for the petitioner has relied upon a decision of this Court, dated 09.11.2021, passed in Criminal Revision Petition No. 234 of 2021 (***Nekibud Zaman vs. State of Assam & Anr.***)

10. On the other hand, Mr Keyal has also admitted that though charge sheet has been submitted, the petitioner has not been shown as accused in the charge sheet. As the status of the case has been changed and the charge sheet has been submitted, under such backdrop, the petitioner may approach before the learned trial Court seeking zimma of the vehicle.

11. I have considered the submissions of the learned counsel for both the parties.

12. I have also perused the order of the learned trial Court, rejecting the prayer of the zimma of the vehicle, which is reproduced as follows:-

“....Report has been submitted by the DRI praying not to release the vehicle in zimma of the petitioner at this stage. It is submitted by the learned Special Counsel appeared on behalf of the DRI that report from DTO, Kamrup, Betkuchi is still awaited in regards to the ownership of the vehicle and the angle of involvement of the owner of the vehicle and his antecedent verification is still going on as the case is still at the earliest stage of investigation and the vehicle may be needed for further investigation of the case, as well as,

to ascertain the involvement of the owner in the alleged offence.....”.

13. On perusal of the order of the learned Special Judge, it reveals that basically the prayer of zimma was rejected as the report from DTO, Kamrup was not received regarding ownership of the vehicle and the investigation was also at the initial stage, holding the view in respect of involvement of the present petitioner in the alleged offence. As it now appears that the charge sheet has been submitted and the petitioner has not been shown as an accused in the said case, which is pending in the Court of learned Special Judge, Kamrup (Metro), under such scenario, the submissions made by the learned counsel for the DRI can be looked into.

14. Considering the submissions of the learned counsel for the parties, the petitioner is directed to approach before the learned trial Court, along with the relevant documents of the vehicle, with a view to the fact that the charge sheet has been submitted and the petitioner has not been shown as an accused in the charge sheet and that being the position, on filing of an application, praying for zimma of the vehicle, the learned trial Court shall consider the matter on verification of the relevant documents, and pass necessary order(s), as per the provision of law.

15. With the aforesaid directions, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant