

GAHC010176102023



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

Case No. : Crl.Pet./834/2023

SHAHANUR HUSSAIN
S/O AKBAR ALI
VILL- KADAMTOLA PART-II
P.O. AND P.S. BILASIPARA
DIST. DHUBRI, ASSAM
PIN-783348

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:PADMAPANI BORAH
SUB-INSPECTOR OF POLICE
BILASIPARA POLICE STATION

S/O LT. BIPUL CHANDRA BORAH

C/O THE OFFICER-IN-CHARGE
BAGRIBARI POLICE STATION

P.O. BILASIPARA

DIST. DHUBRI
ASSAM
PIN-78334

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI**

ORDER

Date : 04.10.2023

Heard Mr. M.U. Mandal, learned counsel for the petitioner. Also heard Mr. B.B. Gogoi, learned Additional Public Prosecutor for the State/respondents.

2. This is an application under Section 482 Cr.P.C. against the order dated 27.07.2023 passed by the learned SDJM(M), Bilasipara in Bilasipara P.S. Case No. 206/2023(G.R. No. 377/2023) under Section 302/457 IPC r/w Section 27 of Arms Act and added Section 120(B)/34 IPC, whereby the petition for zimma of the vehicle No. AS-01FN-1767 filed by the petitioner was rejected.

3. The background of the case is that the petitioner has purchased a car vide chassis No. MALFD81BLPM435209, engine No. G4LAPM442394, model No. Venue 1.2 Kappa MT SC, colour-titan grey, Maker- Hyundai Motor India Ltd. Subsequently, on 12.05.2023, the said vehicle was registered bearing Regd. No. AS-01-FN-1767. The petitioner has purchased the said vehicle on 21.03.2023 by taking loan from Mahindra & Mahindra Finance Service Ltd. for the period of 5 years. The petitioner is the registered owner of the vehicle vide Regd. No. AS-01-FN-1767.

4. On 25.05.2023, one S/I of Police of Bilasipara P.S. lodged an FIR before the officer-in-charge stating that on 25.05.2023 at about 2:11 a.m., a telephonic information was received stating that some unknown miscreants shot down one person Baser Ali who resided in a rented

house at Bilasipara town area. Accordingly, a GDE number was recorded vide GDE No. 755 dated 25.05.2023. Subsequently, an FIR has been registered vide Bilasipara P.S. Case No. 206/2023 under Section 457/302 IPC r/w Section 27 Arms Act and seized the said vehicle in connection with the alleged offence.

5. Thereafter, the petitioner before the learned SDJM(M), Bilasipara by filing a petition sought zimma of the aforesaid vehicle being owner of the same.

6. I have perused the order passed by the learned SDJM(M), Bilasipara. On perusal of the order, it reveals that on 25.05.2023, i.e. on the same day of the incident, a blue colour Hundai Venue without any registration number was found to be abandoned near Nuisadhap under Athani out post district- Dhubri. The said vehicle has duly seized as per procedure and the seizure list vide MR No. 160/23. The investigating officer also reported that the seized vehicle has been found without any registration number or number plate and efforts are being made to find out the actual owner of the said seized vehicle and accordingly, on the basis of the report submitted by the investigating officer, the zimma petition filed by the petitioner was rejected. Hence, this petition.

7. It is submitted by the learned counsel for the petitioner that the petitioner is the registered owner of the seized vehicle vide No. AS-01-FN-1767. It is also submitted that the petitioner was arrested by police purely on suspicion and he is no way connected with the alleged offence. The vehicle was seized by the police on 25.05.2023, since then, the vehicle was kept in the campus of the police station and in absence of

proper maintenance of the vehicle, it can be damaged day by day. It is also submitted that articles are not to be kept for a long time at police station, in any case, for not more than 15 days to one month by referring a judgment of Hon'ble Supreme Court in *Sunderbhai Ambalal Desai vs. State of Gujarat* reported in AIR 2003 SC 638.

8. On the other hand, Mr. Gogoi, learned Additional Public Prosecutor for the State/respondents submits that it is reported by the investigating officer that the petitioner is the registered owner of the seized vehicle but the vehicle was used at the time of commission of the crime. At present, the vehicle is kept at Athani out post under safe custody. The said vehicle was used by the prime accused Shahjahan Ali and found in abandoned condition at river side area of Nuisadhap, after the incident of murder of the victim Baser Ali. The investigating officer also reported that the case is still under investigation and it is important to ascertain the nature of involvement of the vehicle in the offence. It is further submitted that the owner of the seized vehicle i.e. the present petitioner was arrested in connection with alleged offence and he was involved in the conspiracy of murder of victim Baser Ali. According to the learned Addl.P.P. the zimma petition filed by the petitioner may not be considered at this stage of investigation.

9. I have considered the submissions made by the learned counsel for the parties. I have also perused the impugned order passed by the learned SDJM(M), Bislasi para.

10. In *Sunderbhai Ambalal Desai Vs. State of Gujarat*, reported in (2002) 10 SCC 283, the Hon'ble Supreme Court held that in case of seized

vehicles, it is no use of keeping them at police stations for long and it is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and bank guarantee as well as security for return of the said vehicles.

11. In view of the above mandate, it is desirable that the claim of the petitioners for interim *zimma* of the seized vehicles is settled expeditiously and judiciously so as to prevent any damage to the vehicles and loss to the owners.

12. Therefore, it is provided that the learned Magistrate shall decide the matter regarding ownership of the vehicle and release the same to interim *zimma* as per procedure provided in Section 451 Cr.P.C. within a period of 2(two) weeks from the date of receipt of a copy of this order.

13. In order to enable the learned Magistrate to decide the claim of ownership of the vehicle afresh as per procedure, the petitioner shall file appropriate petition supported by relevant documents in original.

14. With the above directions, the criminal petition stands disposed of.

JUDGE

Comparing Assistant