

GAHC010182182023



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

Case No. : Crl.Rev.P./330/2023

NEKIB ALI
S/O ABDUL ALI
R/O VILL-BAGAL HABI
P.S. SIVASAGAR,
DIST. SIVASAGAR, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. T CHUTIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 23-08-2023

1. Heard Mr. T Chutia, learned counsel for the petitioner. Also heard Mr. P Borthakur, learned Addl. PP, Assam.
2. The present application is filed under section 397/401 Cr.P.C read with section 482 Cr.P.C praying for modification of the impugned

order dated 12.06.2023 passed in connection with Dhemaji PS Case No.56/2022 by the learned Additional CJM, Dhemaji allowing the prayer of the petitioner for giving custody/zimma of the vehicles bearing registration No.AS 04V 6936 with a condition to furnish bank guarantee of Rs.8,00,000/-

3. By the impugned order dated 12.06.2023, the learned Court below had directed the IO to give Zimma of the vehicle TATA Tiagor XM (O) bearing registration No.AS-04-V-6936 on his furnishing of bank guarantee of Rs.8 lakhs against the seized vehicle.

4. The learned counsel for the petitioner had submitted that the petitioner had enquired with the bank and that the bank requires 100% collateral security for grant of bank guarantee. Hence, it is submitted that the vehicle was purchased by taking loan and the petitioner does not have the capacity to provide bank guarantee.

5. The learned APP opposes the said prayer.

6. It is not disclosed from the impugned order dated 12.06.2023 passed by the learned Additional Chief Judicial Magistrate, Dhemaji that the vehicle of the petitioner is subjected to any confiscation proceedings, this Court is inclined to take notice of the inability of the petitioner to furnish bank guarantee for a sum of Rs.8 lakhs and hence the Court is inclined to opine that this is an appropriate case to direct the learned Additional Chief Judicial Magistrate, Dhemaji not to insist on the furnishing of the bank guarantee for a sum of Rs.8.00 lakh as a pre-condition for release of the hereinbefore referred vehicle in zimma to the petitioner.

7. However, in lieu of the bank guarantee, the petitioner shall

furnish a personal bond for a sum of Rs.8.00 lakh along with a bond of a solvent surety as a condition for release of the said vehicle in zimma to the registered owner subject to the following conditions:

I. The investigating authority shall prepare proper panchnama of the vehicles and take photographs of such vehicle and get the signature of the owner or representative of the owner and the owner shall give a bond that such articles should be produced on issuing a bond of Rs.8,00,000/-.

II. The petitioner/owner shall not change the colour or structure of the vehicle and shall not also dispose of the vehicle till disposal of the case.

III. The petitioner/owner shall produce the vehicle before the I/O or concerned authority as and when called for the purpose of investigation or trial.

8. The petitioner is permitted to produce a certified copy of this order before the learned Court of Additional Chief Judicial Magistrate, Dhemaji.

9. The matter is accordingly disposed of.

JUDGE

Comparing Assistant