

GAHC010182312023



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

**Case No. : Crl.Rev.P./331/2023**

ABHISHEK DAS  
S/O LT. DIPAK DAS  
R/O VILL-BIHU FIELD  
P.O. AND P.S. GOALPARA  
DIST. GOALPARA, ASSAM  
PIN-783101

VERSUS

THE STATE OF ASSAM  
REP. BY THE PP, ASSAM

**Advocate for the Petitioner : MR. M R KHANDAKAR**

**Advocate for the Respondent : PP, ASSAM**

**BEFORE**  
**THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY**  
**O R D E R**

**01.09.2023**

The present application is filed under Section 482 of the Cr.P.C. assailing the orders 16.11.2022 and 05.01.2023 passed by the learned Special Judge, Goalpara in Special (NDPS) Case No. 29/2022 corresponding to GR

No. 805/2022 under Section 21(b)/29 NDPS Act, whereby the zimma of the vehicle allegedly, from which the alleged contraband was recovered was rejected.

2. From the impugned order it is seen that the learned court below has come to a conclusion that the petitioner is the registered owner, however, for the reason that the petitioner has failed to explain the reason how the alleged contraband was found in the vehicle, inside the seat of the driver. Accordingly, the zimma petition was rejected.

3. The Hon'ble Apex Court in the case of ***Sundarbhai Ambala Desai vs State of Gujrat*** reported in ***(2002) 10 SCC 283*** while dealing with the power of a Magistrate under Section 451 and 457 Cr.P.C., regarding disposal of the seized material has laid down the following proposition of law:

I. The power under Section 451 Cr.P.C. and 457 Cr.P.C., should be exercised expeditiously and judiciously with the object that the owner of article should not suffer for it being remaining unused or by its misappropriation.

II. The Hon'ble Apex Court at paragraph 17 observed that whatever the situation be, it is of no use to keep the materials more particularly seized vehicles at police station for a long period and a Magistrate is to pass appropriate order immediately by taking appropriate bond and guarantee as well as security for return of vehicles, if required at any point of time.

III. Referring to Section 451 Cr.P.C. of the paragraph 5 of the judgment of ***Sundarbhai Ambala Desai (supra)*** the court opined that the power under Section 451 Cr.P.C. is required to be exercised

expeditiously and judiciously with the object that the owner of the article would not suffer because it its remaining unused or by its misappropriation.

4. Now coming to the present case whether the registered owner is instrumental or a part of the offence as alleged is to be determined during the trial. As discussed hereinabove, the Hon'ble Apex Court in ***Sundarbhai Ambala Desai (supra)*** opined that the power under Section 451 Cr.P.C. is required to be exercised expeditiously and judiciously and it is clear from the aforesaid judgment that the object of such determination is that owner of the article should not suffer because of its remaining unused or by its misappropriation.

5. In view of the aforesaid dictum, this court is of the opinion that grant of zimma of the vehicle in question will in no way hamper the trial/ investigation in the case inasmuch as laid down in ***Sundarbhai Ambala Desai (supra)*** certain conditions can be put to protect the interest of the trial as well as the investigation.

6. In view of the aforesaid report, this Court is of the considered opinion that the Investigating Officer shall forthwith release and handover the zimma of the seized vehicle bearing registration No. AS-01ET/9434 (TATA Tiago XT) in connection with Special NDPS Case No. 29/2022 to its owner, after getting a bond of Rs. 5,00,000/- (Five lakhs) executed from the owner of the said vehicle with the following conditions:

a) The owner shall submit a bond declaring that he shall not change the colour and structure of the vehicle and shall not alter or destroy the vehicle till disposal of the case.

- b) The owner shall produce the vehicle before the I/O or concerned authority as and when called for the purpose of investigation.
  - c) The I/O is further directed to take photographs of the seized vehicle and keep it with the case record for further reference.
7. With the aforesaid observation and direction, this criminal revision petition stands disposed of.

**JUDGE**

**Comparing Assistant**