

GAHC010187972023



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

Case No. : Crl.Rev.P./349/2023

DIPAK CHOUDHURY @ DWILANG
S/O LATE JOGIRAM CHOUDHURY
R/O VILL- 2 NO. BALABARI
P.S. GORESWAR
DIST. BAKSA, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : G UDDIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

28.08.2023

Heard Mr. G. Uddin, learned counsel for the petitioner and also heard Ms. S.H. Bora, learned Additional Public Prosecutor, Assam, appearing for the State respondent.

2. In this petition, under Section 397/401 read with Section 482 of the Code of Criminal Procedure, the petitioner, namely, Dipak Choudhury @ Dwilang has put to

challenge the order dated 31.07.2023 (sic 31.07.2022) passed by the learned Additional Sessions Judge FTC No.3, Kamrup(M), Guwahati, in Misc. Case No.115/2023, arising out of Noonmati P.S. Case No.313/2021, registered under Section 120B/121A/122/124A IPC, read with Section 25(1A) of the Arms Act, 1959 read with Section 16(1)(b)/18 of the Unlawful Activities (Prevention) Act, 1967.

3. It is to be noted here that vide impugned order dated 31.07.2023, the learned Court below has directed to release the motorcycle of the petitioner on the condition of furnishing of a bank guarantee of ₹ 70,000/- of a nationalized bank to the satisfaction of the Investigating Officer, which was seized in connection with Noonmati P.S. Case No.313/2021, registered under Section 120B/121A/122/124A IPC, read with Section 25(1A) of the Arms Act, 1959 read with Section 16(1)(b)/18 of the Unlawful Activities (Prevention) Act, 1967.

4. Mr. Uddin, learned counsel for the petitioner submits that the petitioner is the registered owner of the motorcycle bearing Registration No.AS01-EK-1531 and the same was seized in connection with Noonmati P.S. Case No.313/2021, under Section 120B/121A/122/124A IPC, read with Section 25(1A) of the Arms Act, 1959 read with Section 16(1)(b)/18 of the Unlawful Activities (Prevention) Act, 1967 and thereafter, the petitioner filed a petition under Section 457 Cr.P.C. before the learned Court below and the learned Court below vide order dated 31.07.2023 (sic 31.07.2022) has directed to release the aforesaid vehicle in the interim custody of the petitioner on his furnishing a bank guarantee of ₹ 70,000/- from the nationalized bank in favour of the Court and to the satisfaction of the I.O. of the case imposing some more conditions.

5. Mr. Uddin further submits that the petitioner is a poor person and he is not in a position to furnish bank guarantee of ₹ 70,000/- and therefore, the petitioner approached this Court for modification of the dated 31.07.2023 (sic 31.07.2022) passed by the learned

Court below. Mr. Uddin also referred one case law of Hon'ble Supreme Court in **Ikram Vs. The State of Rajasthan**, in **Petition(s) for Special Level to Appeal (Crl.) No.4797-4799/2023**, in support of his submission.

6. Ms. Bora, learned Additional Public Prosecutor, Assam, also submits that since the petitioner is not in a position to furnish bank guarantee, as directed by the learned Court below, the same may be modified, so that the petitioner can take the vehicle in his custody.

7. Having heard the submission of learned Advocates of both sides, I have gone through the petition and the documents placed on record and also gone through the case law in **Ikram** (supra) referred by Mr. G. Uddin, learned counsel for the petitioner.

8. In view of the submission of learned counsel for both the parties and also in view of the fact that the petitioner is not in a position to furnish bank guarantee of ₹ 70,000/- of a nationalized bank, as directed by the learned Court below, for the interest of justice, this Court is inclined to allow this petition. Accordingly, it is provided that instead of furnishing bank guarantee of ₹ 70,000/- of a nationalized bank, the petitioner shall furnish an indemnity bond of ₹ 70,000/- in favour of the learned Court below and also to the satisfaction of the I.O.

9. In terms of above, the order dated 31.07.2023 (sic 31.07.2022) stands modified and accordingly, this criminal revision petition stands disposed of.

Sd/- Robin Phukan
JUDGE

Comparing Assistant