

GAHC010192472023



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

Case No. : Crl.Rev.P./361/2023

MD AINUL HOQUE
S/O LATE ABDUL MALEK
R/O VILL- BHAGAMUR,
P.S. SAMAGURI
DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MS. G BORAH

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

Date : 14-09-2023

Heard Ms. G. Borah, learned counsel for the petitioner. Also heard Ms. S. H. Bora, learned Additional Public Prosecutor for the State respondent.

2. This present Revision Petition has been filed under Sections 397 & 401 of the Code of Criminal Procedure, 1973, praying for modification of the impugned Order dated 26.07.2023 in connection with Sonapur P.S. Case No.167/22, registered under Sections 120(B)/379/411 of IPC *read with* Section 11(a)(b)(d), the Preservation of Cruelty to Animal Act, 1960, *read with* Section 13(1), the Assam Cattle Preservation Act, passed by the learned JMFC, Kamrup(M), by directing to release the Vehicle bearing registration No.AS-01-JC-1763 in favour of the petitioner subject to furnishing a bank guarantee of the value of the aforesaid vehicle.

3. Ms. G. Borah, learned counsel for the petitioner has submitted that the present petitioner is a registered owner of the seized vehicle and apart from that he is no way involved in the alleged offence, however, it is fact that the vehicle was hired by the accused person for transportation of cattle from a registered animal market for the purpose of selling. But, the investigating agency had seized the vehicle of the petitioner without any reasons. Thereafter, the petitioner filed a petition No.2408/23 in connection with Sonapur P.S. Case No.167/22 before the learned JMFC, Kamrup(M), praying for zimma of the seized vehicle. Accordingly, the Trial Court allowed the petition in favour of the petitioner subject to furnishing a bank guarantee of the value of the aforesaid vehicle.

4. He also submitted that petitioner is managing his family by doing a petty business of car rental and therefore, he is not in a position to furnish the value of the seized vehicle in the form of bank guarantee, which is more than Rs.10(ten) lakhs. He further prays for accepting the security in the form of landed property or any other form of bond to release the aforesaid vehicle and also submits that the petitioner is ready to comply with any condition, if the same is modified by this Court. Thus, this instant petition has been filed for modification of the impugned order dated 26.07.2023 passed by the learned JMFC, Kamrup(M).

5. In support of his submission, the learned counsel for the petitioner also relies on the decisions rendered by the Co-ordinate Bench which was passed in ***Crl.Rev.P.No.206/2022 dated 12.05.2022 and Crl.Petn.No.952/2023 dated 12.09.2023***, wherein, in the said orders, the petitioner was directed to furnish indemnity bond instead of the bank guarantee considering the value of the vehicle and accordingly released the same.

6. In this context, Ms. S. H. Bora, learned Additional Public Prosecutor has submitted that the learned Trial Court had rightly passed the impugned Order complying the Section 11(5) of the Assam Cattle Preservation Act. Hence, the condition to furnish the bank guarantee equivalent to the value of the seized vehicle is the mandate as per Section 11(5) of the said Act. Hence, there is no reason to make any interference in the order passed by the learned Trial Court. She further submitted that the petition is liable to be dismissed.

7. After hearing the submissions made by the learned counsels of both sides, and after perusing the impugned Order dated 26.07.2023 passed by the learned JMFC, Kamrup(M) in Sonapur P.S. Case No.167/2022, it is seen that the zimma

petition was allowed and the vehicle was directed to release in favour of the petitioner with a condition to furnish a bank guarantee of the value of the vehicle in question complying to the provision laid under Section 11(5) of the said Act, which read as under;

”Section 11(5), On receipt of the report, the Judicial Magistrate First Class may, on this being satisfied that there is enough material to presume that a prima-facie offence under this Act has been committed or intended to be committed, release the seized materials including vehicle/conveyance except cattle on furnishing of a bank guarantee, equal to the value of the material or vehicle/conveyance *[****], to the satisfaction of the Court, pending disposal of the criminal proceedings instituted in respect of the alleged offence.”

8. Thus, it is seen that the learned Trial Court has committed no error or mistake while allowing the zimma of the vehicle with a condition of Bank Guarantee.

9. The order of the Co-ordinate Bench of this Court, which is relied by the learned counsel for the petitioner had modified the condition of zimma and asked the petitioner to furnish indemnity bond instead of Bank Guarantee. But, there is no mention as to whether the order of zimma was passed under this Act, wherein, the Act has specifically provided for zimma in Section 11(5) to be the Bank Guarantee. No other provision has been provided.

10. In view of the above, I find that the learned JMFC, Kamrup(M), has committed no error or mistake to make any interference of this Court in the impugned Order dated 26.07.2023 and accordingly order is upheld.

11. Accordingly, the present petition stands dismissed.

JUDGE

Comparing Assistant