

GAHC010221722023



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

Case No. : Crl.Pet./1069/2023

SAJAL BISWAS
S/O KANAI BISWAS
PERMANENT RESIDENT OF LOCO COLONY,
RAILWAY QUARTER L- 31, P.O. LAMDING
P.S. LAMDING
DIST. HOJAI, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PP, ASSAM

2:THE DIVISIONAL FOREST OFFICER

SONITPUR WEST DIVISION

SONITPUR
TEZPUR
ASSAM
PIN-784001

3:THE RANGE FOREST OFFICER

SADER RANGE
TEZPUR
DIST. SONITPUR
TEZPUR
ASSAM
PIN-78400

Advocate for the Petitioner : MR. T DEURI

Advocate for the Respondent : PP, ASSAM

- B E F O R E -

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

17.10.2023

1. Heard Mr. A. Dhar, learned counsel for the petitioner. Also heard Mr. D. Gogoi, learned Special Public Prosecutor for the Forest Department, Government of Assam, who has seriously opposed the present petition.
2. The present application is filed under section 482 Cr.P.C read with Section 397 and 401 of Code of Criminal Procedure, 1973 assailing the order dated 08.08.2023 passed by the learned Sessions Judge, Sonitpur, Tezpur, Assam in Criminal Revision No. 33 (S-3)/2023 whereby the order dated 20.06.2023 passed by the learned Additional Chief Judicial Magistrate, Sonitpur, Tezpur, Assam rejecting the prayer for zimma of the vehicle bearing registration No. AS-02-BC-7258 (Bolero Pickup Van) filed by the present petitioner seeking custody of the seized vehicle was upheld.
3. The present petitioner filed an application before the learned court below for zimma of the vehicle and during the aforesaid proceeding, the learned court below by its order dated 20.06.2023 rejected the petition filed by the petitioner on the ground that same is required for further investigation of the case.
4. On perusal of the record it reveals that the petitioner is the registered owner of the aforesaid vehicle. The vehicle is with the

custody of the police since 05.11.2022.

5. The Hon'ble Apex court in the case of ***Sunder Bhai 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 seized material has laid down the following proposition of law:-

- I. That the application for zimma of seized material shall be dealt expeditiously and judiciously with the object that the owner of the seized 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.

6. In view of the aforesaid settled propositions of law, this court, in the given facts of the present case is of the view that the seized vehicle be released to the registered owner subject to the following conditions:

- I. The investigating authority shall prepare proper panchnama of the vehicle and take photographs of such vehicle and get the signature of the owner or representative of the owner along with the I.O. over such photograph and the owner shall give a bond of Rs.6,00,000/-.
- 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.
 - IV. The forest materials found in the vehicle can be retained/seized by the Forest Department by following due process of law.
7. With the aforesaid the present petition stands allowed.

J U D G E

Comparing Assistant