

GAHC010221882023



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

Case No. : Crl.Rev.P./432/2023

HIFJUR RAHMAN
S/O LATE AJIJUR RAHMAN
R/O VILL- SONAPUR PATHAR,
NEAR WATER SUPPLY, SONAPUR,
P.S. SONAPUR,
DIST. KAMRUP (METRO), ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. N J DUTTA

Advocate for the Respondent : PP, ASSAM

- B E F O R E -

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

19.10.2023

1. Heard learned counsel for the parties.
2. The present application is filed under section 401 read with Section 397 of the Cr.P.C. assailing the order dated 14.09.2023 passed

by the learned Additional Chief Judicial Magistrate, Morigaon whereby the learned trial court rejected the zimma prayer for the vehicle (Maruti Swift ZXI Car) bearing registration No.AS-01 EG-6815 which was seized in connection with Jagiroad Police Station Case No. 238/2023 under Section 279/333/307/427/420/468/471/34 IPC.

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 14.09.2023 rejected the petition filed by the petitioner considering the report submitted by the I/O and also considering the fact that investigation of the case is under progress.

4. On perusal of the order dated 14.09.2023, it reveals that the petitioner is the registered owner of the aforesaid vehicle.

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 and the owner shall give 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.

7. With the aforesaid the present petition stands allowed.

J U D G E

Comparing Assistant