

GAHC010229042022



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

Case No. : Crl.Pet./1130/2022

HIRAN ALI
S/O- TURAB ALI, R/O- MILIJULI PATH, BORAGAON, OPP. EXCEL CARE
HOSPITAL, P.O. GOTANAGAR, P.S. JALUKBARI, GHY- 781033

VERSUS

THE STATE OF ASSAM
REP. BY P.P., ASSAM

Advocate for the Petitioner : MS R R MUZIB

Advocate for the Respondent : MS. S H BORA(ADDL.PP, ASSAM)

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

JUDGMENT

Date : 03-05-2023

1. Heard Mr. A. Chaudhury, learned counsel for the petitioner and Ms. S.H. Bora, learned Addl. P.P. for the State of Assam.

2. The petitioner has approached this Court aggrieved by the order dated 13.10.2022

passed by the Court of the learned Chief Judicial Magistrate, 1st Class, Cachar, Silchar whereby the learned Court rejected the petition No. 2264/2022, preferred by the petitioner seeking zimma/custody of vehicle bearing registration No. AS-01-GC-2434 (the vehicle for short), seized in connection with Silchar P.S. Case No. 2133/2022.

3. From the First Information Report (FIR) lodged in connection with Silchar P.S. Case No. 2133/2022 by the Incharge, Arunachal Outpost on 05.09.2022, pursuant to Arunachal Outpost G.D. Entry No. 48 dated 04.09.2022 it transpires that 80 bags of Burmese Supari were concealed in the boot space of the bus bearing registration No. AS-01-GC-2434, and the bus along with the Burmese Supari were seized in connection with this case. The petitioner Sri Hiran Ali has claimed to be the registered owner of the afore-mentioned bus. Two petitions were filed before the Court of the Chief Judicial Magistrate, Cachar at Silchar being petition No. 2264/2022 and 2265/2022 with prayer for custody of the vehicle along with 80 bags of Burmese Supari respectively. The petition No. 2264/2022 was filed on behalf of the present petitioner whereas the petition No. 2265/2022 was filed by another petitioner, namely, Mominul Islam Mazumdar for custody of the bags of Burmese Supari. Both the petitions were rejected by the learned Chief Judicial Magistrate vide a common order dated 13.10.2022. A report was to be obtained by the Additional P.P. from the IO regarding the vehicle and the Supari seized in connection with this case.

4. It is submitted on behalf of the petitioner that his livelihood depends on the bus. It is submitted on behalf of the petitioner that the driver and the handyman who were arrested in connection with Silchar P.S. Case No. 2133/2022 were forward to jail and vide order dated 07.09.2022 the bail petition of the driver and the handyman were rejected by the learned CJM observing that their bail will hamper the investigation. Vide the impugned order dated

13.10.2022, the learned CJM rejected the petition of prayer for zimma of the afore-mentioned vehicle observing that the release of the vehicle will prejudicially affect the investigation. The additional affidavit was filed on behalf of the petitioner placing on record that three petitions being petition Nos. 2246/2022, 2264/2022 and 2265/2022 had been filed before the learned CJM, Cachar. The orders passed in connection with those petitions have also been appended as Annexure-1 series.

5. The learned Addl. P.P. has submitted that the driver and the handyman were arrested in connection with this case as they have failed to produce valid documents relating to the transportation of the seized Burmese Supari. The learned CJM can decide the prayer for zimma of the vehicle on the basis of an appropriate petition lodged by the petitioner before the CJM.

6. The learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai v. State of Gujarat*, reported in (2002) 10 SCC 283, wherein it has been observed that –

“7. In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

7. It was also held in *Sunderbhai Ambalal Desai's* case (supra) that-

” In our view, whatever be the situation, it is of no use to keep such-seized

vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.”

8. The petitions with prayer for zimma of the vehicle No. AS-01-GC-2434 are marked as Annexure 2 and Annexure-3 and appended along with the additional affidavit. These petitions were rejected by the learned CJM vide order dated 13.10.2022 with the observation that the release of vehicle will prejudicially affect the investigation.

9. At present investigation may have presumably progressed to a certain extent or investigation may have concluded. The vehicle is a Night Super Bus and is lying in the custody of the police. Upon considering the submissions at the Bar, I deem it proper to pass an order directing the learned Chief Judicial Magistrate, Cachar, Silchar to consider the petition for zimma of the afore-mentioned vehicle if submitted by the petitioner before the learned Chief Judicial Magistrate, Cachar, Silchar and pass an order for zimma of the vehicle to the custody of the registered owner in any manner the learned CJM deems fit and proper and under such terms & conditions which the learned CJM, Cachar, Silchar deems fit and proper.

10. The order dated 13.10.2022 relating only to the rejection of the prayer for zimma of the vehicle bearing Registration No. AS-01-GC-2434 is hereby set aside.

In terms of the above, this petition is disposed of.

JUDGE

Comparing Assistant