

GAHC010233952022



THE GAUHATI HIGH COURT AT GUWAHATI
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)

PRINCIPAL SEAT AT GUWAHATI

Criminal Petition No. of 1174 of 2022

Sajeed Islam Mondal,
Aged about 27 years,
Son of Sayeful Islam Mondal
Resident of Village B.O.C.
P.O.-Baladmari, P.S. & District- Goalpara,
Pin-783121.

.....Petitioner

-Versus-

1. The State of Assam,
Represented by the Public Prosecutor, Assam.
2. Sri S K Ayez,
SI of Police, Goalpara P.S.
C/o. O/C, Goalpara P.S.
Pin-783121.

.....Respondents

Advocates for the petitioner : Mr A Roshid
Advocate for the respondents : Mr B Sarma, APP

BEFORE
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Judgment : 19.01.2023

JUDGEMENT AND ORDER (ORAL)

Heard Mr A Roshid, learned counsel for the petitioner and Mr B Sarma, learned Additional Public Prosecutor for the State of Assam.

2. By filing this application under Section 482 of the CrPC, the petitioner is seeking quashment of the impugned order dated 04.11.2022, passed by the learned Special Judge, Goalpara, rejecting the prayer of custody of the motor cycle, bearing No. AS-18-D 2002, in Goalpara Special Case No. 197/2022.

3. The case of the petitioner is that one SI, Goalpara Police Station lodged a complaint against Asif Sheikh, Nayan Kumar Das and Rafiqul Islam, alleging possession of 240 bottles of cough syrup and on the basis of the said complaint, Goalpara PS Case No. 197/2022 under Section 22(c)/29 of the NDPS Act was registered. Accordingly, the accused persons were arrested.

4. Haru Sheikh who is the father of the accused Asif Sheikh has a garage at Goalpara town. Police seized the motor cycle of the present petitioner, bearing No. AS-18D-2002, while it was kept in service station of Haru Sheikh on 27.08.2022. Since then, the vehicle was in the custody of the Police.

5. It is submitted by the learned counsel for the petitioner that the petitioner is the registered owner of the motor cycle bearing No AS-18D-2002 and he is not the accused in connection with Goalpara PS Case No. 197/2022 and nothing was recovered from his vehicle. It was kept in the service station of the father of the accused Asif Sheikh for servicing.

6. It is also submitted by the learned counsel for the petitioner that the motor cycle is lying in an open space in the campus of Goalpara Police Station and it is getting damaged due to sun and rain. The petitioner filed an application under Section 457 CrPC before the Special Judge, Goalpara for custody of the vehicle, but prayer of the petitioner was rejected.

7. Being highly aggrieved and dissatisfied with the order dated 04.11.2022 of the learned Special Judge, Goalpara, the petitioner has preferred this criminal petition before this Court.

8. On the other hand, learned Additional Public Prosecutor has fairly submitted that the petitioner is not the accused in connection with the case under which the alleged vehicle was seized. It is reported by Investigating Officer also that the said motor cycle is not required for further investigation of the case and the charge sheet has already been submitted. So, the custody of the vehicle may be given to the petitioner.

9. In Paragraphs 16 and 17 of ***Sunderbhai Ambalal Desai Vs. State of Gujarat; (2002) 10 SCC 283***, the Hon'ble Supreme Court has observed as follows:-

“16. However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17. 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.”

10. I have perused the order of the learned Special Judge dated 04.11.2022, wherein it is reflected that the contraband was recovered from the vehicle of the petitioner, but the prosecution did not say anything regarding confiscation of the vehicle. It is reported by the Investigating Officer that the seized motorcycle AS-18D-2002 is not required for further investigation and the charge sheet has already been submitted. Petitioner has also filed R/C, which shows that he is the owner of the vehicle bearing Registration No. AS-18D-2002.

11. In view of the above, and under the facts and circumstances of the case and in view of guidelines given in ***Sunderbhai Ambalal Desai (supra)***, the prayer of the petitioner is allowed. Accordingly, the impugned order dated 04.11.2022, passed by the learned Special Judge, Goalpara, in Goalpara PS Case No. 197 of 2022, is hereby set aside with a direction to the Investigating Officer to release the vehicle bearing No. AS-18-D 2002, in favour of the petitioner on execution of a bond, which is equal to the cost of the vehicle bearing No. AS-18-D 2002, after due verification of the relevant documents.

12. The criminal petition stands disposed of.

JUDGE

Comparing Assistant