

GAHC010240642022



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

Case No. : Crl.Rev.P./559/2022

AFZAL HUSSAIN
S/O FARUK AHMED
R/O LAMAJUAR BADARPUR
P.S. AND P.O. KARIMGNAJ
PIN-788713
DIST. KARIMGANJ, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M RAHMAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 01.03.2023

Heard Mr. M. Rahman, learned counsel for the petitioner. Also heard Mr. Bhaskar Sarma, learned APP appearing for the State.

2. By filing this criminal petition under section 397/401 Cr.P.C. read with section 482 Cr.P.C., the petitioner has assailed the order dated 13.09.2022, passed by the learned Additional Sessions Judge No.2, Kamrup (Metropolitan), Guwahati in connection with NDPS Case No.97/2022, arising out of Khetri P.S. Case No. 31/2022, under section 20(b)/29 of the NDPS Act, thereby rejecting the zimma petition no.2158/2022 filed for zimma of two mobile phones.

3. Pursuant to order dated 28.11.2022, scanned copy of the LCR is received. On the next date, i.e. 01.02.2023, the learned APP sought for some time to go through it. Therefore, notwithstanding that no notice has been issued to the learned APP in the matter, the matter has been taken up for disposal.

4. The prayer for zimma is opposed by the learned APP.

5. On perusal of the scanned copy of the LCR, which includes the scanned copy of the case diary, it is seen that there is no prayer by the I/O for forensic analysis of the data in the said two mobile phones, being (1) Realme 6 handset, mobile number 9366951653, IMEI-868136045831198, IMEI-868136045831180, and (2) Realme Note 10 handset, mobile number 9402029845, IMEI- 865008052237200/09, IMEI- 86500805223718/09. It also does not appear from the case diary that the I/O suspects that any data relevant for the case is stored in the said two mobile phones.

6. In this case, on 15.02.2022, in course of checking, one motorcycle bearing registration number AS-02-T-6855 was stopped by the police and 1.856 kg of ganja was seized from the left side tool box of the motorcycle and both the driver and the pillion rider were arrested. The I/O suspects that the motorcycle was being used for transporting ganja from Meghalaya to Dimapur.

7. As the case diary does not disclose the requirement of the hereinbefore referred two mobile phones for investigation, the Court is inclined to hold that the order dated 13.09.2022, passed by the learned Additional Sessions Judge No.2, Kamrup (Metropolitan), Guwahati in connection with NDPS Case No. 97/2022 is not sustainable and therefore, the same is set aside.

8. Resultantly, the petition no.2158/2022, filed by the petitioner under section 451 Cr.P.C. is restored to file. Liberty is granted to the petitioner to argue on the said zimma petition afresh and it is provided that on certified copy of this order being produced, the learned Additional Sessions Judge No.2, Kamrup (Metropolitan), Guwahati shall hear the said petition afresh and pass orders thereon in accordance with law.

9. This revision petition stands allowed to the extent as indicated above.

10. Registry shall not issue copy (certified/un-certified) of any part of the scanned LCR.

11. Accordingly, this petition stands disposed of.

JUDGE

Comparing Assistant