

GAHC010242912023



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

Case No. : Crl.Pet./1193/2023

RINKU DAS
S/O ANKUL DAS
R/O VILL- DEOYANPASHA
P.S. DHARMANAGAR
DIST. NORTH TRIPURA, TRIPURA.

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. T CHUTIA
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 17-11-2023

Heard Mr. T. Chutia, learned counsel for the petitioner. Also heard Mr. K. K. Parasar, learned Addl. P.P. for the State respondent.

Order dated 21.8.2023, passed by the learned Sub-Divisional Judicial Magistrate, No. 2, Kamrup (M) Guwahati in Basistha P.S. Case No. 386/2023, is put to challenge, in this petition, u/s 482 read with Section 397 Cr.P.C.

It is to be noted herein that vide impugned order dated 21.8.2023, the Court below has allowed the petition, seeking custody of vehicle No.NL-01 AB-4928, filed by the petitioner imposing certain conditions.

Mr. Chutia, learned counsel for the petitioner submits that the vehicle of the petitioner, bearing registration No. NL-01 AB-4928 was seized by police in connection with Jorabat Out Post G.D.Entry No.104 dated 6.7.2023, on 6.7.2023. Thereafter, the petitioner, who is the registered owner of the vehicle, filed a petition before the learned Sub-Divisional Judicial Magistrate, No.2, Kamrup (M) seeking custody of the aforesaid vehicle and thereafter, hearing both the parties, learned Court below has allowed the petitioner to take custody of the vehicle imposing certain conditions, and one of the conditions, imposed by the learned Court below is that the petitioner shall furnish bank guarantee equal to the value of the vehicle, pending disposal of the criminal proceeding instituted in respect of the alleged offence.

Mr. Chutia, learned counsel for the petitioner, producing the Insurance Certificate of the vehicle bearing registration No. NL-01-AB-4928, submits that the value of the vehicle is 25,65,000/- as on 3.3.2022 and that the petitioner has purchased the vehicle on hire purchase and he has to pay Equated Monthly Installment (EMI), amounting to Rs 66,749/- and he is a poor person and not in a position to furnish bank guarantee of Rs. 25,65,000/- for which, he could not take custody of the vehicle from the learned Court below and therefore, Mr. Chutia contended to allow the petition and to modify the aforesaid condition.

Per contra, Mr. K.K.Parasar, learned Addl. P.P. submits that the learned Court below has passed the impugned order as per provision of Section 11(5) of the Cattle Preservation Act and the same suffers from no infirmity or illegality

requiring any interference of this Court.

Having heard the submission of learned Advocates of both sides, I have gone through the petition and the documents placed on record and also perused the impugned order dated 21.8.2023.

It appears that while allowing the petition filed by the petitioner, seeking custody of the seized vehicle, bearing registration No. NL-01-AB-4928, has imposed a condition to the effect that the vehicle shall be released, on furnishing bank guarantee, equal to the value of the vehicle, pending disposal of the criminal proceeding, instituted in respect of the alleged offence to the petitioner. But, it appears from the document placed on record that the petitioner had purchased the vehicle, on hire purchase and he has to pay equated monthly installment, amounting to Rs. 66,749/- and that the value of the vehicle as on 3.3.2022, was Rs. 25,65,000/- .

Since the petitioner is not in a position to furnish the bank guarantee of the aforesaid amount, on account of his poor financial condition, he could not take custody of the vehicle and same lying in the police campus, since 6.7.2023 and exposing to the sun and rain and the value of the same is diminishing day by day.

Having considered the above and also having considered the submission of learned Advocates of both sides, this Court is of the considered opinion that the condition, so imposed by the learned Court below is required to be modified, in the interest of justice, as the same becomes impossible to comply with. And accordingly, it is provided that instead of furnishing bank guarantee of Rs.25,65,000/-, the petitioner shall furnish indemnity bond of equal amount before the learned Court below and on furnishing such a bond, the learned Court below shall release the vehicle in the custody of the petitioner.

In terms of above, this petition stands disposed of.

JUDGE

Comparing Assistant