

GAHC010251032023



In the Gauhati High Court

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Crl. Rev.P. 479/2023

Chaktar Ali @ Sattar Ali

S/O Aksar Ali

R/O Vill- Batuatoli

P.S. Gauripur

Dist. Dhubri, Assam

Pin-783331

..... **Petitioner**

VERSUS

The State Of Assam

To be Rep. by The P.P., Assam

..... **Respondents**

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the Petitioner : Mr. A.Z. Ahmed, Advocate

Advocate for the Respondent : Mr. B. B. Gogoi, learned Addl. P.P.

Date of Hearing : **05.12.2023**

Date of Order : **05.12.2023**

JUDGMENT & ORDER (Oral)

1. Heard Mr. A.Z. Ahmed, learned counsel appearing for the petitioner. Also heard Mr. B. B. Gogoi, the learned Public Prosecutor representing the State of Assam.

2. The petitioner is the prime accused in this case and he has prayed for zimma of the vehicle bearing registration No. AS-17-M-0194, a motorcycle of TVS Apache RTR 1604 make. Earlier his prayer for zimma of the vehicle was rejected vide order dated 21.09.2023 passed by the learned Special Judge, Dhubri in connection with Special P.S. Case No. 209/2023 arising out of Golakganj P.S. Case No. 226/2023, registered under Section 22(b) of the NDPS Act.

3. The petitioner has challenged the legality and propriety of the order dated 21.09.2023 in Special Case No. 209/2023. The order is reproduced herein below:-

“Accused Chaktar Ali is absent without any step.

Summons issued to accused person is returned after proper service.

Issue B.W.A. of Rs.500/- against accused Chaktar Ali @ Sattar Ali, S/O. Askar Ali.

Seen the zimma petition no.1421, u/s 451 Cr.P.C., R/W Section 60 of NDPS Act, filed by

petitioner-accused Chaktar Ali, seeking zimma of the motor-cycle bearing Regd. No.AS17M-0194, Model TVS Apache RTR 1604v, Engine No. GE5DM2305887, Chassis No. MD637DE53M2D06300, stating therein that he is the registered owner of the said vehicle. In support of his claim, the petitioner has annexed a copy of the registration certificate of the vehicle.

Heard learned advocates of both sides.

Perused the entire case record, case diary including the report submitted by the I.O., carefully.

Upon perusal of the case record, it is seen that the zimma petitioner is the accused person in the instant case. The I.O. has already submitted charge- sheet being no. 283/2023, dated 27.07.2023, u/s 22(b) of NDPS Act against him.

The materials on record goes to show that on the day of occurrence, accused was driving the alleged motor-cycle from West Bengal towards Gauripur carrying one black bag containing 24 nos. bottle (100 ml per bottle) of Chlorpheniramine Maleate & Codeine Phosphate Syrup (Rukscof).

It is also seen that a similar petition was also rejected by this Court vide order dated 22.08.2023. So, I do not find it justified to allow the zimma petition at this stage, and hence, the same is rejected.

Fixing:- 07.11.2023 for appearance of accused.

Special Judge, Dhubri

4. It is submitted that no reasons were assigned by the learned trial Court while rejecting the petition vide order dated 21.09.2023. The petitioner has also relied on the decision of this Court in Union of India Vs. Tejinder Singh in connection with Crl. Pet. 1031/2022 vide order dated 02.03.2023, wherein, it is observed that:-

20. In cases of *Raghubir Singh alias Beera Vs. State of Punjab, 2006 (4) RCR (Criminal) 343*; *Rajesh Kumar Vs. State of Haryana, 2007(2) RCR (Criminal) 561* and *Iqbal Singh Vs. State of Punjab, 2013(2) RCR (Criminal) 612*, the vehicles seized under the NDPS Act case were ordered to be released. However contrary view was taken by the court in case of *Kirandeep Vs. State of Punjab* in connection with CRR No. 3231 of 2014 that in view of liability to confiscation, the vehicle seized under the NDPS Act case could not be released. In view of the conflict, reference was made to Division Bench in CRR No.1765 of 2015 titled as *Gurbinder Singh @ Shinder Vs. State of Punjab* and it was held that the vehicle used for transporting the narcotic drugs and psychotropic substances can also be released on invoking the provision under Section 451 of the Cr.P.C.

21. Now, the question that arises for determination of Section 451 Cr.P.C. can be applied while considering the plea for interim custody of the vehicle seized under the NDPS Act. Section 51 of the NDPS Act which has a bearing on this issue reads as follows:-

"51. Provisions of the code of Criminal Procedure, 1973 to apply to warrants, arrests, searches and Seizures.- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, in so far they are not inconsistent with the provisions of this Act, to all warrants issued and arrests, searches and seizures made under this Act."

30. The question to be decided in the instant case, whether the learned magistrate/ special court has the authority under the provisions of Sections 451 and 457 Cr.P.C., to consider the application for interim custody of the vehicle/conveyance. The same questions were decided by the Division Bench of the Karnataka High Court in Criminal Petition No.3571/2021

(Rathnamma Vs. State represented by PSI Channagiri Police Station Davanagere). As per decision of the High Court, the provisions of Section 451 of Cr.P.C. are not inconsistent with the provisions of NDPS Act, and the paragraphs- 47 and 50 of the judgment read as follows:-

"47. In the peculiar facts and circumstances of the present case, we are of the considered opinion, that we have no hesitation in holding that there is no provision under the NDPS Act debarring release of the vehicle for interim custody. The provisions of Section 451 of Cr.P.C., as already stated supra, is found not inconsistent with the provisions of the NDPS Act and is applicable to the vehicle seized under the NDPS Act as well. Thereby, the law laid down by the Hon'ble Supreme Court in Sunderbhai Ambalal Desai's(supra) will apply to the vehicles seized under the NDPS Act as well. Any contrary view taken by the Courts of law would be against the interest of the owner of the vehicles, the public at large and the State.

50. Since the provisions of the Code of Criminal Procedure including Section 451/457 have been expressly made applicable by virtue of Sections 36-C and 51 of the NDPS Act to the proceedings before the Special Court and there is no express bar contained in the NDPS Act for grant of interim custody as contained in Section 52C of the Indian Forest Act, 1927, therefore, merely on the ground that the vehicle is liable to confiscation under Section 60 of the NDPS Act, it cannot be held that once the vehicle is seized for commission of offence under the NDPS Act, interim custody cannot be granted, as jurisdiction of criminal court has to be construed strictly unless expressly excluded."

5. Reverting back to this case, it is held that the LCR reveals that no confiscation proceeding is ongoing.

6. I have considered the submissions at the Bar with circumspection. The petitioner is directed to produce the vehicle as and when required and not alienate the vehicle till disposal of the case.

7. In the wake of my foregoing discussions, the order dated 21.09.2009 is set aside. The petitioner is directed to appear before the learned trial Court and apply for zimma and the vehicle and the learned trial Court may impose conditions which the Court deems fit and proper to pass an order directing the interim zimma of the vehicle to the registered owner.

8. Accordingly, this petition stands disposed of.

Send back the LCR.

JUDGE

Comparing Assistant