

GAHC030001592023



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

Case No. : Crl.Pet./2/2023

Sh. Kamal Hossen
Bardowal Village, Tripura

VERSUS

State of Mizoram and Anr.
Aizawl: The Officer-in-charge
CID (Special Branch)

Advocate for the Petitioner : Mr. Samuel L Pachuau

Advocate for the Respondent : P.P./Addl.PP, Mizoram

B E F O R E
HON'BLE MRS. JUSTICE MARLI VANKUNG
ORDER

04.05.2023

(Thursday)

Heard Mr. Samuel L. Pachuau, learned counsel for the petitioner along with Ms. Mary L. Khiangte, learned Addl. Public Prosecutor.

2. This petition is filed under Section 482 Cr.P.C. for release of the vehicle Maruti-Suzuki Baleno Sigma, Color– Prime Celestial Blue, B/R No.TR-01 BS 0451, Chassis No.MBHHWB13SNC125281, Engine No.K12NP7025693 which was seized by the Excise &

Narcotics Personnel, on 14.09.2022 while the owner of the vehicle was travelling from Keifang to Aizawl for allegedly use of the vehicle for transporting the seized contraband substances of 1.292 kgs of suspected heroin. The above said vehicle was thus confiscated under Section 60(3) of the ND & PS Act, 1985.

3. Being aggrieved with the seizure of the motor vehicle the petitioner had earlier submitted Crl. Misc. Application No.12 of 2022 under Section 451 Cr.P.C before the learned Judge, Special Court, ND & PS Act, 1985, Aizawl for release of his vehicle on *zimanama*. The learned Special Court, ND & PS Act, 1985, however rejected the application vide its order dated 06.01.2023. The learned counsel for the petitioner submits that the rejection order dated 06.01.2023 passed by the learned Special Judge, ND & PS Act is liable to be set aside as the same was passed mechanically without any application of mind. The impugned order dated 06.01.2023 was passed merely on the ground that the accused as well as the brother-in-law being from Tripura, the Court was not inclined to allow the application.

4. The learned counsel for the petitioner further submits that a coordinate bench of this Court in its order dated 19.04.2023 in case Crl. Petition. No. 4/2023 had allowed the released of the vehicle seized under Section 60 (3) of the ND & PS Act, 1985, wherein a huge quantity of heroin weighing 1.99 kilograms was seized which were kept in special compartments made in the vehicle. The coordinate bench of this court had allowed the said vehicle to be released on *zimanama*, in view of the decision of the Apex Court in ***Sunderbhai Ambalal Desai Vs. State of Gujarat (2002) 10 SCC 283***. That a similar yardstick may be applied in this case since the seized vehicle has been kept in custody of the Excise & Narcotics Personnel and is kept in an open space without any roof. The seized vehicle is also subject to reasonable wear and tear being under constant pressure from heat and rain. The seized vehicle is also under

danger of malfunction and system failure if kept idle for such a long period without any maintenance.

5. The learned counsel also submits that if the vehicle is released on *zimanama* the said vehicle can be lawfully used by the family of the accused person, for earning the livelihood while the accused is detained in judicial custody.

6. Ms. Mary Lalruatkimi, learned Addl. Public Prosecutor on the other hand submits that if the vehicle is released at this stage there could be danger of the vehicle not being produced and when required by the prosecution during trial.

7. Having heard the submissions made by both the parties, this court has considered the fact that a coordinate bench in Crl. Petition No. 04/2023 has in similar circumstances allowed the release of a vehicle on *zimanama*, where the vehicle was seized under Section 60 (3) of the ND & PS Act, when huge quantity of suspected heroin was seized in compartments made within the vehicle in view of the Judgment & Order of the Apex Court ***Sunderbhai Ambalal Desai Vs. State of Gujarat (Supra)***.

It s seen that the Apex Court has discussed the purpose and import of Section 451 Cr.P.C and held that :

“17. 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. In view of the above discussions, this Court, thus, finds that there appear to be no reason to keep the seized vehicle under the custody of the Excise & Narcotics for a long

period which would only subject the vehicle to wear and tear and malfunction when it appears that there is no proper garage to keep the vehicle and there is no assurance that the vehicle are maintained properly.

9. This Court thus finds that the order passed by the learned Trial Court dated 06.01.2023 is liable to be set aside and the vehicle Maruti-Suzuki Baleno Sigma, Color–Prime Celestial Blue, B/R No.TR-01 BS 0451, Chassis No.MBHWWB13SNC125281, Engine No.K12NP7025693 shall be allowed to be released to the petitioner on *zimanama*, with such terms and conditions incorporating all the safeguards which have been stated in the case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat (Supra)***. The learned Trial Court shall pass the appropriate orders and allow the release of the mentioned vehicle or *zimanama* to the petitioner after due verification when the petitioner appears before the Trial Court with a certified copy of this Court's order.

10. Accordingly, Crl. Petn. No.2/2023 stand allowed and disposed.

JUDGE

Comparing Assistant