

GAHC030001702023



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

Case No. : Crl.Pet./4/2023

Smt. Ayasha Khatun
Sonapur, West Tripura

VERSUS

State of Mizoram and Anr.
Aizawl: The Officer-in-charge
Excise and Narcotics Station
Mamit District

Advocate for the Petitioner : Mr. C Lalfakzuala

Advocate for the Respondent : Ms. Mary Lalruatkimi Khiangte, Addl. P.P., Mizoram

ORDER

Date : 19-04-2023

BEFORE
HONOURABLE MR. JUSTICE NELSON SAIO

Heard Mr. C. Lalfakzuala, learned counsel for the petitioner and Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor, Mizoram for the State respondents.

2. Having regard to the nature of the case projected by the petitioner, the petition is taken up for disposal. It is also seen that the matter has been wrongly listed for motion today. It should have been either listed for orders or for admission, in view of the fact that notice was already issued on 06.04.2023.

Be that as it may, the matter is taken up for disposal at this stage.

3. By filing this petition under Section 482 of the Cr.PC, the petitioner prays for release of Hyundai Alcazar bearing registration No. TR-01 BT-0557, having Chassis No. MALPC815LNM825942 and Engine No. G4NLNW632573, which was seized by the Excise & Narcotics Personnel, Mamit on 01.10.2022. According to the petitioner, the said vehicle belongs to her and the same is registered in her name. Since the Excise & Narcotics Personnel had seized the vehicle documents, the petitioner has annexed the documents of the vehicle, which has been procured through Vahan app and they are annexed as Annexure-4 to the Criminal Petition.

4. The learned counsel for the petitioner submits that her car was borrowed by the 3 accused persons and that she is not aware about the carrying of drugs in the said vehicle. Out of the 3 accused persons, Mafij Miah and Mabarul Haque have been discharged as the Investigating Authority did not find any evidence against them about the involvement in the alleged crime. However, they have been cited as Prosecution Witnesses Nos. 9 & 10. As for the third person, i.e., Suman Debnath, he has confessed of having carried the drugs in the said vehicle.

5. The learned counsel submits that ever since the vehicle was seized on 01.10.2022, it is in the custody of Excise & Narcotics Department and that if the same is not released to the petitioner, the petitioner is bound to suffer irreparable loss as the vehicle is bound to be subjected to rust and decay as it is parked in the open. The learned counsel submits that the petitioner before approaching this Court had filed two Criminal Misc. Applications before the

learned Judge, Special Court ND&PS Act, Aizawl, namely Criminal Misc. Application No. 253/2022 and Criminal Misc. Application No. 12/2023. However, both the applications were rejected by the learned Trial Court. Hence, the petitioner having no alternative has filed the instant Criminal Petition.

6. The learned counsel submits that in order to get the vehicle release, the petitioner is ready to make any undertaking including production of the vehicle as and when required by the Court. He therefore submits that the vehicle pending conclusion of the trial may be released to the petitioner. In support of his submission, the learned counsel relies upon the case of *Sunderbhai Ambalal Desai Vs. State of Gujarat*, reported in (2002) 10 SCC 283 and *Basavva Kom Dyamangouda Patil Vs. State of Mysore*, reported in (1977) 4 SCC 358.

7. Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor on the other hand submits that the seized article was transported in the said vehicle and it cannot be said that the same was done without the knowledge of the petitioner, in view of the fact that there were special compartments in the vehicle for concealing the alleged drugs. She submits that a huge quantity of heroin weighing 1.99 kilograms was seized from the said vehicle and under the circumstance, the vehicle is liable to be confiscated in terms of the relevant provisions of the ND&PS Act. She further submits that since the vehicle appears to have been registered in the neighbouring State of Tripura, in case of the release of the vehicle to the petitioner, it will be difficult to secure the production of the same when required. It may also so happen that during the pendency of the trial, the petitioner may try to dispose/sell of the vehicle, which in turn would prejudice the case of the prosecution. She therefore submits that the vehicle may not be released as prayed for by the petitioner.

8. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

9. As submitted by the learned Addl. Public Prosecutor, it is indeed surprising to see that there were special compartments in the said vehicle for transporting the alleged drugs and that too without the knowledge of the petitioner, who claims to be the registered owner of the said vehicle. The petitioner has also claimed lack of knowledge about the transportation of the illegal drugs by saying that the vehicle was borrowed by the accused persons from her. However, upon perusing the materials available on record including the charge-sheet, there is hardly any explanation as to how the vehicle landed up in the hands of the accused persons. However, the fact remains that the vehicle, ever since it was seized by the Excise & Narcotics Personnel on 01.10.2022 has remained with the said authorities and admittedly, unattended which can be seen from the photographs produced by the petitioner and annexed as Annexure-14 to the Criminal Petition.

10. The Apex Court in *Sunderbhai Ambalal Desai (supra)* appreciated the purpose and import of Section 451 Cr.PC. In doing so, the Apex Court had also referred to its earlier decision in *Basavva Kom Dyamangouda Patil (supra)*. Paragraph Nos. 5, 7, 8, 15, 17 & 18 of *Sunderbhai Ambalal Desai (supra)* may be gainfully abstracted below:-

“5. Section 451 clearly empowers the court to pass appropriate orders with regard to such property, such as:

(1) for the proper custody pending conclusion of the inquiry or trial;

(2) to order it to be sold or otherwise disposed of, after recording such evidence as it thinks necessary;

(3) *if the property is subject to speedy and natural decay, to dispose of the same.*

7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. court or the police would not be required to keep the article in safe custody;

3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

8. The question of proper custody of the seized article is raised in a number of matters. In Basavva Kom Dyamangouda Patil v. State of Mysore this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under:

“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary

where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the court or should be in its custody. The object of the Code seems to be that any property which is in the control of the court either directly or indirectly should be disposed of by the court and a just and proper order should be passed by the court regarding its disposal. In a criminal case, the police always acts under the direct control of the court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

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15. Learned Senior Counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, a number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the court at any point of time.

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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.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

11. From the above abstract, it may be seen that according to the Apex Court, Section 451 Cr.PC empowers the Court to pass appropriate orders with regard to property including vehicles for the proper custody pending conclusion of the inquiry or trial. The Apex Court in the given facts of that case observed that whatever situation it may be, it would be of no use to keep a seized vehicles at the Police Station for a long period and it would be for the Magistrate concerned to pass appropriate orders immediately by taking appropriate bond, guarantee as well as security for return of the said vehicle, even when required by the Court at any point of time. In fact, before handing over the possession of such vehicles, appropriate photographs of the vehicle should be taken and detailed panchnama should be prepared.

12. Thus, upon having considered the projection made by the petitioner as well

as the State respondents and importantly the decision of the Apex Court, I am of the considered view that the learned Trial Court ought to have considered release of the said vehicle by following the safeguards as observed by the Apex Court in the aforesaid referred case. In view of above, pending conclusion of the trial, the vehicle is directed to be released to the petitioner, however, only after the safeguards as provided herein above has been secured. The petitioner shall appear before the learned Trial Court along with the certified copy of this order on 26.04.2023 and on her appearance, the learned Trial Court shall cause the preparation of all the safeguards as spelt out in the case of *Sunderbhai Ambalal Desai (supra)* and thereafter, release the vehicle to the petitioner.

13. With the above observation and direction, the Criminal Petition stands disposed of.

JUDGE

Comparing Assistant