

GAHC030004362023



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

Case No. : Crl.Rev.P./10/2023

Sh. Sundar Lal Sand r/b Dilip Kumar
Sonai Road, Silchar, Assam

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : Mr Lalchhanliana Khiantge

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

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

06.09.2023

(Wednesday)

Heard Mr. Lalchhanliana Khiantge, learned counsel for the petitioner along with Ms. Mary L. Khiantge, learned Addl. Public Prosecutor for the State respondent.

This petition is filed under Section 397 Cr.P.C. read with Section 401 Cr.P.C for setting aside the Order dated 09.06.2023 in Crl. Misc. Appln. No. 86/2023 arising out of Spl. Narcotic P.S. Case No. 30/2023 passed by the learned Judge, Special Court, ND & PS Act, Aizawl, whereby the petitioner's application for release of his vehicle *i.e.* Ashok Leyland 1618 bearing registration No.AS-11/DC-5863 was rejected.

The learned counsel for the petitioner submits that the said vehicle was seized on 02.05.2023 by the Special Narcotic Police personnel in connection with Spl. Narcotic P.S. case No. 30/2023 when 2.553 kgs of suspected heroin was seized, however, the petitioner who is the owner of the vehicle has not been made an accused since the person responsible for the seized suspected heroin is the driver of the vehicle and the driver of the vehicle has been accordingly arrested and charge under Section 42 of the ND & PS, Act, 1985.

The learned counsel submits that the vehicle is now no longer required to be kept in police custody and further since there is no proper garage where the vehicle can be kept, the seized vehicle is subject to speedy and natural decay and being kept in idle conditions for almost 4 (four) months now, damages and the smooth functioning of the engine vehicle would be caused being exposed to sun and rain.

The learned counsel further submits that if the vehicle is being allowed to be released to the rightful owner under zimmanama, the said vehicle will be produced as and when required before the court.

The learned counsel for the petitioner in support of his submissions has cited the decision of the Apex Court in **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **(2002) 10 SCC 283** and **General Insurance Council and others Vs. State of Andhra Pradesh & Ors.** reported in **2010 6 SCC 768**.

Ms. Mary L. Kiangte, learned Addl. Public Prosecutor submits that since the owner of the vehicle has not been made an accused in the instant case, if the vehicle is released to the owner of the vehicle, this court may pass stringent conditions so that the vehicle is not disposed of during the trial and that the vehicle may be made available, if required at any time during trial of the case.

Having heard the submissions made by both the parties and considering the decision of the Apex Court in **Sunderbhai Ambalal Desai Vs. State of Gujarat supra**) wherein the Apex court held that :

“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.”

This court finds it appropriate that the vehicle Ashok Leyland 1618 bearing registration No.AS-11/DC-5863 to be released on zimmanama to the rightful owner *i.e* the petitioner who has not been made an accused in the instant case by setting aside the order dated 09.06.2023 in Crl. Misc. Appln. No. 86/2023. It may however be noted that the said vehicle should not be disposed of any way before the disposal of the case Special Narcotic P.S. Case No.30/2023. Further on release of the vehicle zimmanama, the petitioner is to ensure the vehicle should be produced as and when required during investigation or during trial of the case.

Accordingly, Crl. Rev. Petn.10/2023 stand allowed and disposed of.

JUDGE

Comparing Assistant