

GAHC020001802023



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

Case No. : CrI. Pet./3/2023

SRI. DEVARAM
S/O RAVARAM, AGED ABOUT 46 YEARS,
R/O 7-453 453 - A 453 - B CUMBUM ROAD N S COMPLEX,
MARKAPUR(OTHER),
MARKAPUR, PRAKASAM, ANDHRA PRADESH, 523316

VERSUS

THE STATE OF NAGALAND
REPRESENTED BY THE LD. PP, NAGALAND

Advocate for the Petitioner : MUGHAKA

Advocate for the Respondent : P.P, NAGALAND

**BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG**

ORDER

Date : 06-11-2023

Heard Mr. M.K. Das, learned counsel for the petitioner. Also heard Mr. Veto V. Zhimomi, learned Public Prosecutor, Nagaland, for the State.

2. This is an application under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) read with Sections 401 & 397 of CrPC for setting aside/quashing of the Order dated 20.12.2022, passed in I.A.

Zimma No. 305/2022 in connection with Special Case No. 17/2022, arising out of Kohima Narcotic Cell P.S. Cell No. 08/2022, under Section 18(b)/60 of the NDPS Act, 1985.

3. The case of the petitioner is that he is the owner of the vehicle, Maruti Suzuki Swift VXi bearing Registration No. AP-39 LK 4717. The said vehicle was booked for transportation from Manipur to Hyderabad, Andhra Pradesh, through private transport, namely, Agarwala Packers and Movers on 24.07.2022. However, the petitioner later on came to learn that his vehicle was seized by Nagaland Police in connection with Narcotic Cell P.S. Case No. 08/2022 under Section 18(b)/60 of the NDPS Act, 1985, and the vehicle has been kept in the Narcotic Cell P.S. Complex at Kohima, Nagaland.

4. The learned counsel for the petitioner submits that the petitioner, who is the owner of the vehicle is innocent and he does not have any knowledge about the involvement of his vehicle in the above noted Narcotic Cell P.S. Case No. 08/2022. It is the case of the petitioner that he made an application before the learned Special Judge, NDPS, Kohima, under Section 451 of CrPC praying for release of his vehicle on *zimma*, however, by an Order dated 20.12.2022, the learned Special Judge, NDPS, Kohima, had rejected the said application with an observation that the manner in which the accused came in possession of the seized vehicle is dubious and suspicious.

5. The learned counsel for the petitioner further submits that as per the direction of this Court, now the statement of the petitioner has also been recorded by the Police in connection with the above case, and the said vehicle is no longer required by the Investigating Agency which is lying unattended since July, 2022 without any maintenance and repairment due to which the condition of the vehicle has deteriorated to the extent that it would get damaged if the custody of the same is not given to the petitioner at the earliest. The learned counsel for the petitioner while praying for release of his seized vehicle has taken a reliance upon the decision of the Hon'ble Supreme Court in **(2002) 10 SCC 283 (Sunderbhai Ambala Desai vs. State of Gujarat)** which

is reproduced herein below:-

"7. In our view, the powers under Section 451 Cr.P.C. 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 panchanama before handing over possession of 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 properly 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.*

17. In our view, 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.

21. However, these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under Section 451 Cr.P.C. are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly."

6. On the other hand, Mr. Veto V. Zhimomi, learned Public Prosecutor, produced the Case Diary of Narcotic Cell P.S. Case No. 08/2022 and submit that as per the record, there is every possibility that the present petitioner who claims to be the owner of the vehicle is also involved in the instant case. He further submits that the petitioner has failed to produce the Original Registration Certificate of the said seized vehicle till date, due to which the owner of the vehicle could not be ascertained. However, he submits that if the petitioner produces the original Certificate of Registration of the said seized vehicle, the same shall be released to him on the condition that he undertakes to produce the vehicle as and when required by the Police or Court.

7. In view of the above, and as agreed upon by the learned

counsels for the parties, the authority is directed to release the seized vehicle bearing Registration No. AP-39 LK 4717 to the petitioner on production of the Original Certificate of Registration with the further condition that the petitioner undertakes to produce the said vehicle as and when required by the Police or the Court.

The petitioner is also given liberty to produce the Original Registration Certificate of his vehicle to the Investigating Agency through his representative.

8. With the above observation and direction, this application stands allowed and disposed of.

Sd/-
JUDGE

Comparing Assistant