

GAHC020006752023



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

Case No. : Crl. Pet./35/2023

SHRI P. M KILINII,
S/O P.T MAIKHO,
R/O THINGBA KHUNOU VILLAGE,
SENAPATI, MANIPUR,
P.S TADUBI SENAPATI

VERSUS

THE STATE OF NAGALAND
NAGALAND

Advocate for the Petitioner : ALEZO KIRE

Advocate for the Respondent : GOVT ADV NL

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

15-12-2023

Heard Mr. Alezo Kire, learned counsel for the petitioner and Mr. V. Zhimomi, learned PP, Nagaland.

2. This is an application filed by the petitioner seeking for a direction for grant of Zimma of seized vehicle of the petitioner's vehicle bearing Registration No. NL07AA 1688 with Engine No.

B5.91553171B63579793 and Chassis no MAT395035H2B04484.

3. It appears from the perusal of the records that the said vehicle was seized in connection with Special case no. 52/2023 corresponding to Excise Case No. NEC/K/ND-05/23 registered under section 21 (c)/60 of the NDPS Act. From a perusal of the materials, it reveals that the vehicle in question bearing Registration No. NL07AA 1688 upon being checked, 500 grams of suspected heroin was recovered from the vehicle of the petitioner. Thereupon, the vehicle in question has been seized. This court has also perused the status report submitted by the Investigating Officer.

4. From a perusal of the Status Report, it does not prima facie show that the petitioner had any involvement in the commission of the offence. Be that as it may, the petitioner filed an application before the Special Judge, NDPS, Kohima, Nagaland for release of the said vehicle. However, by an order dated 11.10.2023, the said application was rejected. Pursuant thereto, the petitioner filed another application which was registered as No I.A No. 270/2023 before the Special Judge, NDPS Kohima and the same was rejected on 08.11.2023. It is under such circumstances that the petitioner has therefore approached this Court.

5. Mr. V. Zhimomi, learned PP, Nagaland submitted that the vehicle in question has been blacklisted and the authorities suspects that the petitioner may also be involved in the said accident, and as such, the vehicle is liable to be confiscated under Section 60(3) of the NDPS Act, 1985. He however submitted that no confiscating process has been initiated as no charge sheet has been submitted.

6. This Court finds it relevant to note that on 13.12.2023, when

the matter was listed, Mr. V. Zhimomi, learned PP, Nagaland has placed before this Court the status report submitted by the Investigating Officer which is kept on record and marked with the letter X. This court on the basis of the said status report, also sought instruction from the learned PP, Nagaland to apprise this Court on what basis the Investigating Agency had stated that the vehicle was blacklisted and apprise this Court as to whether there are any materials available before the Investigating Agency that the vehicle in question has been habitually used in commission of any offence.

7. Mr. V. Zhimomi, learned PP, Nagaland submits that the blacklisting of the petitioner's vehicle can be seen from Page-17 of the petition itself wherein it has been mentioned that on the basis of FIR dated 20.07.2022, there is a challan pending.

8. Be that as it may, the learned PP however submits that he has no instruction as to whether the petitioner's vehicle has been used in any other commission of offence.

9. I have heard the learned counsel for the parties and also perused the materials available on record.

10. It also appears from Section 60(3) of the Act of 1985 that any conveyance used in carrying any narcotic drugs or psychotropic substances and controlled substances is liable to be confiscated under Section 60(1)&(2) unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use. Section 63 of the

said Act of 1985 stipulates that in the trial of offences under the Act of 1985 whether the accused is convicted or acquitted or discharged the Court shall decide whether any article or thing seized under the Act of 1985 is liable to confiscation under Section 60 or Section 61 or Section 62 and, if it decides for the article seized is so liable, it may order confiscation accordingly.

11. In the instant case the charge-sheet is yet to be submitted and the confiscation proceedings would only be initiated pursuant to the trial of the offences. Under such circumstances, it is the opinion of this Court that the conditional release of the vehicle bearing Registration No. NL 07AA 1688 cannot be denied to the petitioner and interim custody of the vehicle can be granted to the petitioner on certain conditions which are laid herein under:-

(a) The petitioner would furnish a personal bond in the sum of Rs. 4,00,000/- (Rupees Four Lakhs) each with two (2) sureties of the same amount to the satisfaction of the Trial Court with an undertaking to produce the vehicle in the Court as and when the same is required to do so.

(b) The petitioner shall get the vehicle photographs showing the Registration number as well as the Chasis number and such photographs shall be taken in the presence of the Investigating Officer to be kept on the file of the case.

(c) The personal bonds of the petitioner and the bonds of sureties shall carry the photographs of the petitioner and the bond of sureties shall also carry the photographs for the purpose of identifying them before the Court with full residential address of the sureties and the persons identifying them.

(d) The petitioner shall not transfer ownership of the vehicle

as well as also not lease the vehicle to anyone and not to make or lay any changes in it so as to make it unidentifiable.

(e) The petitioner would not allow the vehicle to be used for any anti-social activities including for the purpose of carrying narcotic drugs and psychotropic substances or controlled substances which may constitute various offences under the Act of 1985.

12. Upon fulfilling the above conditions to the satisfaction of the learned Trial Court, i.e. the Court of the Special Judge, NDPS, Kohima, the said Court shall pass appropriate directions for release of the vehicle in question.

13. This Court further directs the learned Trial Court to intimate the concerned DTO under whom the vehicle in question has been registered about the undertaking given by the petitioner.

14. With the above observations and directions, the instant criminal petition stands disposed of.

Sd/-
JUDGE

Comparing Assistant