

GAHC020007012023



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

Case No. : Crl. Pet./36/2023

SHRI ASHIKUR ISLAM
S/O MD SOFIKUL ISLAM,
DALANI JURIA VILLAGE
PO/PS NAGAON ASSAM
P/ADDRESS MODEL COLONY PURANA BAZAR, DIMAPUR NAGALAND

VERSUS

THE STATE OF NAGALAND
KOHIMA MAGALAND

Advocate for the Petitioner : TONGPANG JAMIR

Advocate for the Respondent : P.P, NAGALAND

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

ORDER

Date : 12-12-2023

Heard Mr. Toshitemjen Pongener, learned counsel for the petitioner.

2. The instant application has been filed by the petitioner seeking a direction that his vehicle bearing Registration No. NL 07 AA 0321 bearing Engine No. VARICOR12NZXJ10604 and Chasis No. MAT464662LSN10426 should be released to the petitioner.

3. It appears from a perusal of the materials on record that on 05.04.2023, a Suo Moto FIR was lodged by one UBSI Dziesevino Yhoshu, before the Officer In-Charge of Khuzama Police Station, Kohima, Nagaland, which was registered and numbered as Khuzama P.S. Case No. 007/23 under Section 21(C) of the Narcotic Drugs & Psychotropic Substances Act, 1985 (the Act of 1985, in short). The petitioner herein was arrested on the basis of the said FIR on the allegation for possessing the seized items. It is the case of the petitioner that on 05.04.2023 while the petitioner was on his way to Manipur to deliver/supply vegetables from Dimapur, Nagaland, his friend, one Mr. Daniel, asked him to deliver some items at Manipur and in good faith he had agreed to deliver the items. During the checking conducted at Khuzama check gate it was found that the said items were illegal items for which the petitioner was arrested and his vehicle was seized. It is been the case of the petitioner that he was not aware that the items were illegal items but only at the time of seizure, the petitioner came to know that the items were illegal in nature and as such, he is totally innocent. It is also relevant to take note that by an Order dated 03.10.2023 the petitioner herein was granted default bail on the failure of the Investigating Officer to submit the charge-sheet in Khuzama P.S. Case No. 007/23 corresponding to Special Case No. 13/23. The record also reveals that the petitioner had also filed an application before the Special Judge, NDPS, Kohima, for seeking *zimma* of the said vehicle in question. However, the same was rejected by an Order dated 16.11.2023 on the ground that the petitioner being the driver and owner of the vehicle in question was possessing and transporting the contraband 'Codeine Syrup' for which the Court was not inclined to release the seized vehicle on *zimma* to the petitioner. It is under such circumstances that the instant application was filed on 04.12.2023. On 07.12.2023 this Court issued notice and also sought for an instruction from the learned Public Prosecutor (P.P.) as to whether the vehicle was further required for the purpose of investigation and accordingly, fixed the matter today.

4. Mr. K. Angami, learned P.P., Nagaland, submitted that the

petitioner herein is not co-operating with the investigation in as much as the petitioner had provided the names of his accomplices, but he has not aided in the investigation in giving further more details about those accomplices. He has also submitted that no confiscation proceedings have yet been initiated and as the petitioner is not co-operating with the Investigating Authority and they have not been able to submit the charge-sheet.

5. I have heard the learned counsels for the parties and have also perused the materials on record.

6. From the perusal of the materials on record and more particularly the FIR reveals that the vehicle in question upon being intercepted and checked 400 (four hundred) bottles of 'Chlorpheniramine Maleate' and 'Codeine Phosphate Syrup (CAP TAB)' and 597 (five hundred and ninety-seven) bottles of 'Chlorofeniranium Maleate' and 'Codeine Phosphate Syrup (CB Star)' were recovered from the petitioner. The record also reveals that even after 180 (one hundred and eighty) days no charge-sheet was submitted and there were also no steps taken pursuant thereto in terms with the provision to Section 36A(4) of the Act of 1985 and under such circumstances the petitioner was released on default bail. 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.

7. 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 07 AA 0321 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.

8. 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.

9. 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.

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

Sd/-
JUDGE

Comparing Assistant