

GAHC010003662024



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

Case No. : Crl.Pet./20/2024

LUIES AHMED
S/O MAKIBOR RAHMAN, R/O VILL-PIYALIKHATA, P.S.-BAIHATA
CHARIALI, DIST-KAMRUP, ASSAM, PIN CODE-781381

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. S MUNIR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 28.03.2024

Heard Mr. S. Munir, learned counsel for the petitioner. Also heard Ms. B. Bhuyan, learned Additional Public Prosecutor for the State.

2. This is an application filed under Section 482 Cr.P.C. against the

order dated 09.10.2023 passed by the learned JMFC, Rangia, Kamrup in Zimma Case No. 592/2023 (arising out of Baihata Chariali P.S. Case No. 277/2023) whereby the petition filed by the petitioner seeking zimma of a vehicle bearing Regd. No. AS-01-DJ-5543 was rejected.

3. The brief facts of the case is that on 13.09.2023, an FIR was lodged by one Pranjal Bharali alleging *inter alia* that on 27.08.2023 while he along with his three co-workers was coming in a Scorpio vehicle bearing Regd. No. AR-01-L-4770 and on 28.08.2023, in the midnight at about 1 a.m., a group of miscreants coming from Dumnichoki of Kamrup district in one unknown Brezza vehicle, rushed towards them with an intention to commit robbery. Somehow, they managed to escape from the place.

4. On the basis of the said FIR, a case was registered vide Baihata Chariali P.S. Case No. 277/2023 under Section 341/393/279 IPC.

5. It is submitted by the learned counsel for the petitioner that in connection with the aforesaid case, the investigating authority has seized one Maruti vita Brezza ZDI+ vehicle bearing registration No. AS-01-DJ-5543. It is also submitted that the petitioner being the registered owner of the said vehicle filed a petition before the court of JMFC, Rangia and the same was rejected with an observation which is reproduced as follows-

“Perused the case record, and I am deem it proper to follow the recent order passed by the Hon’ble Gauhati High Court in Crl. Petition No. 284/2022 vide judgment and order dated

02/03/2023 has held that at the investigation stage, seized article cannot be released by a court under section 451 Cr.P.C. However, under Section 457 Cr.P.C., the criminal court has the jurisdiction to give custody of seized property/article at the stage of investigation, when whose seized property are not produced before the Court.

It has been further held that the words "and such property is not produced before a criminal court during the inquiry or trial" appearing in Section 457(1) Cr.P.C. would have to be considered to be an reference to a stage of investigation and not the stage of inquiry or trial.

Now, the present case is pending at the stage of investigation and the seized vehicle has been produced before this court vide MR.132/2023 and therefore, considering the above referred decision of the Hon'ble Gauhati High Court, I am of the opinion that this court does not have the jurisdiction to allow the prayer for zimma of the seized vehicle under Section 451 or 457 of Cr.P.C."

6. It is further submitted by the learned counsel for the petitioner that in the case of Sundarbhai Ambala Desai v. State of Gujarat, reported in (2002) 10 SCC 283, the Hon'ble Apex Court held that it is of no use to keep the seized vehicle in the police custody for long time and it is for the Magistrate to pass appropriate order by taking bond, security and guarantee to return the vehicle. Therefore, considering the all above, it will be gross violation of the procedure, if the seized vehicle

is not handed over to its lawful owner as early as possible.

7. Ms. B. Bhuyan, learned Additional Public Prosecutor, submits that charge-sheet has already been submitted in connection with Baihata Chariali P.S. Case No. 277/2023 vide C.S. No. 251/23 dated 21.10.2023. Hence, the petitioner may approach before the trial Magistrate seeking custody of the vehicle as the circumstance of the case has been changed.

8. In the case of ***Sunderbhai Ambalal Desai v. State of Gujarat***, reported in ***(2002) v. 10 SCC 282***, the Hon'ble Apex Court has held that 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 panchnama 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 property in detail; and
4. The jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

9. Considering the above legal aspect and the material available on record and considering the fact that applicant is registered owner of

the seized vehicle, no prolific purpose would be served by letting the vehicle idle in the police station for such a long period.

10. In view of the above mandate, it is desirable that the claim of the petitioner for interim *zimma* of the seized vehicle is settled expeditiously and judiciously so as to prevent any damage to the vehicle and loss to the owners.

11. Therefore, it is provided that the learned Magistrate shall decide the matter regarding ownership of the vehicle and release the same to interim *zimma* as per procedure provided in Section 451 Cr.P.C. within a period of 2(two) weeks from the date of receipt of a copy of this order.

12. In order to enable the learned Magistrate to decide the claim of ownership of the vehicle afresh as per procedure, the petitioner shall file appropriate petition supported by relevant documents in original.

13. With the above directions, the criminal petition stands disposed of.

JUDGE

Comparing Assistant