

GAHC010006002024



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

Case No. : Crl.Rev.P./14/2024

ALI HOSEIN MOLLAH
S/O ABDUL HOSEIN MOLLAH
VILL- PECHARKANDI
P.O. MANULLAPARA
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR, ASSAM, PIN-783135

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. M R KHANDAKAR
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

23.02.2024

Heard the learned counsel for both the parties.

By this application under Section 397 and 401 Cr.P.C., the petitioner has prayed for quashing and setting aside the impugned order of dated 28.11.2023 passed by the learned Special Judge, South Salmara, Mankachar in connection with South Salmara (SSM) PS Case No. 274/2023 (Corresponding to G.R. No. 844/2023) under

Section 21(b)/29 of NDPS Act.

It is submitted by the learned counsel for the petitioner that the petitioner is the registered owner of Ape Auto DXCLSOBD2A (Three Wheeler) passenger vehicle bearing registration No. AS-34C-0738 which has been seized by the police in connection with South Salmara PS Case No. 274/2023 under Section 21(b)/29 of NDPS Act.

It is also submitted by the learned counsel for the petitioner that initially the petitioner has filed a petition praying zimma of the said vehicle before the learned Additional CJM, South Salmara but the same was rejected. Subsequently, another petition was also filed before the court of learned Sessions Judge praying zimma of his vehicle which has also been rejected.

According to the learned counsel for the petitioner the seized vehicle since its seizure is kept in the campus of Kharuabandha out post under the open sky. Learned counsel for the petitioner further submitted that though he is the owner of the vehicle but he had no knowledge about the alleged offence which was committed by the passenger and the driver of the vehicle. One passenger and driver of the vehicle had already been arrested in connection with the alleged offence. The petitioner being the owner of the vehicle is entitled to take zimma of the vehicle at any condition.

Learned counsel for the petitioner by referring the judgment of *Ambalal Desai vs State of Gujrat* reported in 2002 (10) SCC, 283 has submitted that the Hon'ble Supreme Court in the said case held that the "power under Section 451 and 457 Cr.P.C. should be exercised expeditiously and Judicially with the object that the owner of the articles should not suffer for it being remaining unused or by its misappropriation". The Hon'ble apex court also observed that whatever the situation may be, it is of no use to keep the materials more particularly seized

vehicles at police station for long period and a Magistrate is to pass appropriate order immediately by taking appropriate bond and guarantee as well as security for return of vehicles, if required at any point of time. Learned counsel for the petitioner submits that on the basis of the judgment of the Hon'ble Supreme Court, the vehicle be given in zimma to the present petitioner.

Learned Additional Public Prosecutor, on the other hand, submits that the petitioner may approach before the trial court to take zimma of his vehicle by giving relevant documents regarding ownership of his vehicle.

I have considered the submission of the learned counsel for both the parties. In view of the judgment of the Hon'ble Supreme Court vide *Ambalal Desai* (supra), the matter is disposed of with a direction to the petitioner to appear before the trial court and file appropriate petition along with the documents regarding ownership of his vehicle and the learned trial court will consider the prayer of zimma of the vehicle in question in the light of the order passed in this case.

This disposes of the revision petition.

JUDGE

Comparing Assistant