

GAHC010018952024



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

Case No. : Crl.Pet./106/2024

RAJUMONI HUSSAIN
S/O LATE SARIFUL HUSSAIN
R/O WARD NO. 7,
DERGAON, P.S. DERGAON,
DIST. GOLAGHAT, ASSAM

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR M GARODIA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 20.03.2024

Heard Mr. M. Garodia, learned counsel for the petitioner. Also heard Ms. N. Das, learned Additional Public Prosecutor for the State.

This application under Section 482 of the Code of Criminal Procedure, 1973 has been preferred by the petitioner, namely, *Rajumoni Hussain*, impugning the

order dated 17.05.2023 passed by learned Sub-Divisional Judicial Magistrate (S) in GR Case No. 402/2023 corresponding to Bihpuria P.S. Case No. 77/2023 whereby the prayer for zimma of the vehicle bearing Registration No. AS-09-AC-5645, seized in the said case, was rejected by the learned SDJM(S), North Lakhimpur.

Learned counsel for the petitioner has submitted that he is the owner of the aforesaid vehicle and in support of his submission, he has produced the registration certificate of the said vehicle. It is submitted by the learned counsel for the petitioner that on 01.05.2023 on the basis of an FIR which was lodged by one Prafulla Kathar alleging that the aforesaid vehicle was carrying stolen HPG (Hydrogenated Pyrolysis Gasoline), was registered as Bihpuria P.S. Case No. 77/2023 under Sections 379/511 of the Indian Penal Code.

It is also submitted by the learned counsel for the petitioner that during the pendency of the investigation, the Hydrogenated Pyrolysis Gasoline contained in the said aforesaid vehicle was sold and an amount of Rs.5,28,456/- was deposited in the government treasury. However, the seized tanker is lying in an unused condition at the police station under the open sky. When the petitioner approached the learned Sub-Divisional Judicial Magistrate, by the order dated 17.05.2023 which is impugned in the criminal petition rejected his prayer for custody of this aforementioned vehicle.

Learned counsel for the petitioner has submitted that the learned Sub-Divisional Judicial Magistrate, North Lakhimpur has misinterpreted the directions of this court given by a Division Bench of this Court in Criminal Petition No. 284/22, wherein it was observed that even during the stage of investigation when the seized property is not produced before the court, the court has the jurisdiction to give the custody of the said property under Section 457 of the

Code of Criminal Procedure, 1973. However, it is submitted that in this case the vehicle was never produced before the learned Sub-Divisional Judicial Magistrate and only the seizure list was produced and, therefore, the trial court misinterpreted the order of the Division Bench of this Court.

On the other hand, learned Additional Public Prosecutor has submitted that the Investigating Officer of Bihpuria P.S. Case No. 77/2023 has informed that the vehicle is no longer required for this purpose of investigation.

I have considered the submission made by the learned counsel for the parties and has perused the materials available on record.

The Supreme Court of India in the case of "***Sunderbhai Ambalal Desai v. State Of Gujarat***" reported in "***(2002) 10 SCC 283***" whereby it has observed that whatever be the situation if it is of no use to keep seized vehicle at the police station for 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. Moreover, the judgment of the Division Bench of this court in Criminal Petition No. 284/2023 also clearly states that it is only that when the seized articles are not produced before the court, the court is empowered to give *zimma* even during the investigation stage under Section 457 of Code of Criminal Procedure.

In the instant case there is nothing to show that the seized tanker was produced before the court rather only seizure list was produced before the learned Sub-Divisional Magistrate(S), North Lakhimpur and she was wrong in holding that due to the production of the seizure list, she was not empowered to grant *zimma*. Retaining the vehicle without giving the *zimma* of the same to its lawful owner without any requirement of the said vehicle for investigation would

be a blatant violation of the guidelines of the Apex Court of India in the case of "***Sunderbhai Ambalal Desai v. State Of Gujarat***" (supra).

For the aforesaid reasons, the impugned order dated 17.05.2023 passed by learned Sub-Divisional Judicial Magistrate (S) North Lakhimpur is hereby set aside.

The learned Sub-Divisional Magistrate, Lakhimpur is hereby directed to give the zimma of the aforesaid vehicle to the above named petitioner on such conditions as learned Magistrate may deem it proper to impose, the petitioner may be required to furnish a bond for production of the said vehicle before the court or before the police as and when so required in connection with G.R. Case No. 402/2023 corresponding to Bihpuria P.S. Case No. 77/2023.

Before handing over the position of the vehicle, the photographs of said vehicles should be taken and a detailed punchnama should also be prepared.

With above observation, this criminal petition is hereby disposed of.

JUDGE

Comparing Assistant