

GAHC010032752024



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

Case No. : Crl.Rev.P./225/2024

ABDUL JAMIR ALI
S/O FIRUJ ALI, A R/O SALMORAMUKH, GOSSAISATRA, P.O.-ADHARSATRA,
P.S.-GOLAGHAT, DIST- GOLAGHAT, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. M A I HUSSAIN, N ISLAM

Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

30/08/2024

Heard Mr. M A I Hussain, learned counsel for the petitioner and Mr. K Baishya, learned Additional Public Prosecutor, Assam for the State respondent.

2. Aggrieved with the order dated 17.11.2023 passed by the learned Special Judge (NDPS), Golaghat rejecting zimma of the white coloured Bolero vehicle of the petitioner bearing registration

No. AS-03-AA-1090 that was seized on 09.10.2023 in connection with Chungajan Police Station Case No. 16/2023, the petitioner has preferred this criminal revision petition under Section 397 of the Cr.P.C. read with Sections 401 and 482 of the Cr.P.C. praying to set aside the said order dated 17.11.2023 passed by the learned Special Judge (NDPS), Golaghat, noted above, and for giving zimma of the said vehicle to him.

3. Brief facts of the case is that the petitioner is the owner of a white coloured Mahendra Bolero Power SLX vehicle bearing registration No. AS-03-AA-1090 with Chassis No. MA1XL2WJXK5E41201 and Engine No. WJK6D37161, a private vehicle. Occasionally, he gave the said vehicle for hire trips and in most occasions his said vehicle was taken by one Marajul Hussain, a driver by profession. On 08.10.2023, said Marajul Hussain approached the petitioner for his said vehicle stating that he got a passenger and accordingly, the petitioner gave his said vehicle to Marajul Hussain. After taking the said vehicle from the petitioner when said Marajul Hussain along with one Nurshed Ali were travelling, police from Chungajan Police Station on 08.10.2023 afternoon intercepted the said vehicle after getting a tip off and recovered 155 gms. of heroine from their possession. Accordingly, Chungajan P.S. Case No. 16/2023 under Section 21(b)/27/29 of the NDPS Act was registered and his said Bolero vehicle was seized on the ground that his said vehicle was used for commission of offence under the NDPS Act.

4. Both Marajul Hussain and Nurshed Ali were arrested on 09.10.2023 in connection with Chungajan P.S. Case No. 16/2023 who were subsequently released on bail.

5. Petitioner is no way connected with the said Chungajan P.S. Case No. 16/2023 and police are also not implicated him in the said Chungajan P.S. Case.

6. Though, the petitioner approached the Court of learned Special Judge (NDPS), Golaghat by filing a petition on 20.10.2023 being Petition No. 1428/2023 for zimma of his said Bolero vehicle in Chungajan P.S. Case No. 16/2023, but the learned Special Judge (NDPS), Golaghat by its order dated 17.11.2023 rejected said zimma petition of the petitioner on the ground that his said vehicle was used by the accused persons for transportation of NDPS materials and that such NDPS materials were found from the tail light under ground cover of the said vehicle and that investigation was going on.

7. Petitioner submitted that his said vehicle since its seizure on 08.10.2023 has been kept outside the campus of Chungajan Police Station under the open sky for which it is getting damaged and losing its value.

8. As such, the petitioner has prayed for zimma of the said vehicle and setting aside the order dated 17.11.2023 passed by the learned Special Judge (NDPS), Golaghat.

9. Pursuant to the order of the Court dated 05.08.2024, the Officer-in-Charge of Chungajan Police Station submitted a written report dated 23.08.2024 through the Superintendent of Police, Golaghat that has been placed before the Court today by Mr. Baishya, learned Additional Public Prosecutor, Assam.

10. The said report dated 23.08.2024 of the O/C, Chungajan Police Station discloses that after completion of investigation of said Chungajan P.S. Case No. 16/2023, Charge-Sheet has been filed vide C.S. No. 02/2024 on 10.04.2024 and that the key of the vehicle involved in the case, i.e., said Mahendra Bolero vehicle bearing registration No. AS-03-AA-1090 has been submitted before the Court, whereas the vehicle has been kept in the Chungajan P.S. campus. The report also indicated that the said seized vehicle was used by the accused persons of the case and 155 gms. of heroine in 13 nos. of soap boxes were recovered from the said seized vehicle that were concealed in its tail light. FSL report also confirmed the presence of heroine and the recovered drugs were transported to sale locally in the Golaghat District and if the vehicle is given zimma, it will be again used for transportation of heroine and other NDPS materials. Police is of the apprehension that once the said Bolero vehicle is release for zimma it will be used for similar illegal activities.

11. Considering the fact that the charge-sheet in the case has already been submitted and the seized vehicle is under the open sky since 08.10.2023 and considering the law well settled in the case of *Sunderbhai Ambalal Desai Vs. State of Gujarat*, reported in *AIR 2003 SC 638*, the white coloured Mahendra Bolero Power SLX vehicle bearing registration No. AS-03-AA-1090 with Chassis No. MA1XL2WJXK5E41201, Engine No. WJK6D37161, shall be released to its registered owner, the petitioner on his proper identification and on verification of all the relevant documents relating to the said vehicle, in original and after taking photographs and videography of the said vehicle, its chassis no., engine no etc. and on furnishing a guarantee of Rs.20,00,000/- by him with further condition that the petitioner shall not alienate the said vehicle and shall produce it before the Court whenever it is required in the case during the trial of the case.

12. With the above observation and direction, this criminal revision petition is allowed to the extent above.

13. Copy of the communication dated 23.08.2024 of the Officer-in-Charge of Chungajan Police

Station placed through the Superintendent of Police, Golaghat and produced by Mr. K Baishya, learned Additional Public Prosecutor, Assam be kept as a part of the record.

JUDGE

Comparing Assistant