

GAHC010051332023



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

Case No. : Crl.Pet./291/2023

BANFUL DEKA
S/O JANI RAM DEKA
R/O GODHIA PARA,
P.O. CHAPAI CHOWKA
DIST. DARRANG, ASSAM
PIN-784148

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. B P BORAH

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

Date : 20.03.2024

- 1.** Heard Mr. B. P. Borah, learned counsel for the petitioner. Also heard Ms. N. Das, learned Additional Public Prosecutor for the State.
- 2.** This application under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Banful Deka* impugning the order dated

20.01.2023 passed by the learned Additional Sessions Judge, FTC No. 3, Kamrup(M) in Misc. Case No. 172/2022 whereby the prayer for zimma of a pistol which was seized along with ammunition in connection with Basistha P.S. Case No. 1035/2022 under Section 21(a)/29 of the NDPS Act, 1985.

3. The learned counsel for the petitioner has submitted that on the basis of an FIR lodged by one Mukunda Sarmah, SI of Police of Basistha Police Station before the Officer-in-charge of the Basistha Police Station, *inter alia*, alleging that on 3.12 grams of heroin was recovered from the possession of three persons, namely, Vikky Sonar, Sanjay Kumar Shah and Dipankar Bhuyan and Basistha P.S. Case No. 1035/2022 was registered and investigation was initiated. During the course of investigation, the petitioner was summoned by the Investigating Officer and he appeared before the Investigating Officer along with one 0.32 pistol Civil INGSF 2103058LL0.32 of Indian Ordinance Factory along with 6 bullet in one magazine, 4 bullet in another magazine and 28 bullet with bullet carrier and pistol holder and 2 blank cartridge. On production of the said arms and ammunition before the Investigating Officer of the Basistha P.S. Case No. 1035/2022, the Investigating Officer seized the said arms and ammunition from the custody of the present petitioner on 13th December, 2022.

4. It is submitted by learned counsel for the petitioner that the petitioner is the ex-service man. Earlier, he was serving in the Indian Army. After retiring from the Indian Army, he was engaged in as a PSO of the Director of the Nidhi Bank, where he came in acquaintance with accused Mintu Mishra, who is the driver of the vehicle of the Director of the Nidhi Bank.

5. It is submitted by the learned counsel for the petitioner that on the date of Kali Puja after offering traditional puja to the arms, the petitioner kept the pistol on the dashboard of the vehicle of the Director of the Nidhi Bank and during this

period, the driver i.e., Mintu Mishra took the said arms and took a selfie and post that selfie as display picture in his Facebook account and, therefore, this pistol got entangled with the case i.e., Basistha P.S. Case No. 1035/2022. The learned counsel for the petitioner has submitted that as the petitioner is the owner of the seized arms and ammunition and he is presently engaged as a PSO of the Director of the Nidhi Bank and as such unless he carries his arms, his livelihood would suffer.

6. It is also submitted by learned counsel for the petitioner that he is in no way involved in the offence which is alleged in the FIR on the basis of Basistha P.S. Case No. 1035/2022 was registered. It is also submitted that the petitioner has all the trainings to use and carry the said arms and to this effect he has also submitted an additional affidavit of this Court. Learned counsel for the petitioner has submitted that the petitioner would produce the said arms as and when so required for the purpose of the investigation.

7. I have considered the submissions made by the learned counsel for both the sides and have perused the materials on record.

8. Apparently, from the materials on record, it appears that the petitioner is in no way involved in the offence which has been alleged in the FIR on the basis of which Basistha P.S. Case No. 1035/2022 was registered. It also appears that only because of the display picture which has been posted in the Facebook account of the accused Mintu Mishra, the Investigating Officer is investigating the fact as to how Mintu Mishra got the said arms. As the materials available on record shows that the present petitioner is an ex-service man and presently working as a PSO at Nidhi Bank and is under contract to work as PSO there along with his arms and also carries valid license of the said arms, this Court is of the considered opinion that the impugned order is required to be interfered with.

- 9.** The learned Additional Sessions Judge, FTC, No. 3, Kamrup(M) is hereby directed to give the zimma of the seized arms and ammunition to the present petitioner on imposing conditions which the said court may deem fit and proper in the facts and circumstances of the case.
- 10.** The petitioner may also be directed to furnish a bond to produce the seized zimma of the seized arms and ammunition before the Investigating Officer or before the Court as and when so required.
- 11.** With the above observation, this criminal petition is hereby disposed of.
- 12.** Let a copy of this order be sent to learned Additional Sessions Judge, FTC, No. 3, Kanrup(M), Guwahati for compliance.

JUDGE

Comparing Assistant