

GAHC010052642024



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

Case No. : Crl.Pet./281/2024

NABAJYOTI TAMULI
S/O LATE ANANDARAM TAMULI, R/O VILL- GOHAIN GAON, WARD NO. 05,
P.S.-MORIGAON, DIST- MORIGAON, ASSAM, PIN-782105

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:MILTON SAIKIA
S/O SRI MOHAN SAIKIA
R/O KAMRUPA PATH
HOUSE NO. 1
HATIGAON
GUWAHATI
P.O.-HATIGAON CHARIALI
DIST-KAMRUP (M)
ASSAM
PIN-78103

Advocate for the Petitioner : MR. M DUTTA

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI
ORDER

Date : 13.05.2024

Heard Mr.K.M.Bora, learned counsel for the petitioner. Also heard Mr. R.R.Kaushik, learned Addl. Public Prosecutor for the State/respondent.

By filing this criminal petition under Section 482 of the CrPC, the petitioner has prayed for passing an appropriate order directing the investigating officer vide ACB PS Case No.107/2023 to give custody to the petitioner his mobile handset, SIM cards, identity card and one certificate of Sub-Registry officer and one General Power of attorney seized by police during investigation.

It is submitted by learned counsel for the petitioner that as per judgment dated 02.03.2023 passed in Criminal Petition Nos. 284/2022, 213/2022, 356/2022, 358/2022, 517/2022, 641/2022 and 642/2022 of this court, it was held that at the investigation stage, seized articles cannot be released under Section 451 CrPC. However, under Section 457 CrPC, criminal court has jurisdiction to give custody of the seized property at the stage of investigation when those seized property are not produced before the Court.

The learned counsel for the petitioner has further cited recent judgment of the Hon'ble Supreme Court in Criminal Appeal No. 1547/2024 wherein it was observed that as per Section 451 CrPC, for custody of articles, one has to first approach before the criminal court and directly approaching the High Court by filing special criminal application is not the proper course.

Having heard the learned counsel for the parties and averments made in the application as well as the citations rendered by this court as well as the Hon'ble Supreme Court, the criminal petition is disposed of with a direction to the petitioner to approach before the learned trial court seeking custody of the seized articles as aforesaid and accordingly, the

learned trial court shall consider the matter in accordance with law.

JUDGE

Comparing Assistant