

GAHC010065762024



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

Case No. : Crl.Pet./379/2024

PAPU DAS @ SANJOY DAS
S/O SRI PRASANJIT DAS, R/O VILL- BALIRAM GAON, P.O. AND P.S.-
JAMUNAMUKH, DIST- HOJAI (ASSAM), PIN-782428

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. D P BORAH
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

03.05.2024

Heard Mr. D. P. Borah, learned counsel appearing for the accused petitioners as well as Mr. D. P. Goswami, learned Additional Public Prosecutor, Assam.

By this application under Section 482 Cr.P.C., the petitioner has prayed for quashing of the order dated 07.03.2024 passed by learned Special Judge, Nagaon in connection with Kampur PS Case No. 170/2023.

The case of the petitioner is that the vehicle bearing No. AS 02 AN 0787 was seized in connection with Kampur PS Case No. 170/2023 along with other articles. On the date of incident, the petitioner was coming towards Hojai side and in the midst of his journey, the co-accused Mahabar Ali took lift from him and offered an amount of Rs.200/- only to drop him at Dhing Road Circle, Nagaon bypass. Accordingly, the petitioner gave lift to Mahabar Ali and dropped him there. While the petitioner after finishing his work, stopped at a dhaba namely, Ganesh Dhaba, Rangbang for refreshment, some police personnel with Mahabar Ali came there and told the petitioner that the said Mahabar Ali took lift in the vehicle of the petitioner and left a bag with full of contraband suspected heroin. Thereafter, the police searched the vehicle and suspected contraband was recovered inside the vehicle. Thereafter, the petitioner was also arrested along with other accused persons and released on bail. Subsequently, the petitioner approached before the Special Judge, Nagaon by filing a petition praying to take zimma of his vehicle and other articles but the prayer of the petitioner was rejected.

The learned counsel for the petitioner has submitted that the petitioner is the registered owner of the vehicle bearing No. AS 02 AN 0787 seized in connection with Kampur PS Case No.170/2023. Along with the contraband, the police also seized his mobile phone, ATM card etc. Though the petitioner first approached before the Investigating Officer to release such documents, who refused to return the same.

According to learned counsel for the petitioner, the Special Judge, Nagaon failed to appreciate the fact that the petitioner is no way connected with Kampur PS Case No. 170/2023. The vehicle of the petitioner has been kept in

open space which is still in the same condition and if the custody of the vehicle is not given to the petitioner, the vehicle would be damaged due to natural calamities.

Learned Additional Public Prosecutor on the other hand submits that though a report was called for from the Investigating Officer whether any confiscation proceeding has been initiated in connection with the seized vehicle but report is not received. Learned Additional Public Prosecutor also submitted no document is available in the record regarding ownership of the vehicle. However, the vehicle be released to its actual owner.

Though the petitioner has claimed that he is the registered owner of the alleged vehicle bearing No. AS 02 AN 0787 but the petitioner has failed to produce any document regarding ownership of his vehicle. According to the learned counsel for the petitioner, the RC was seized along with the vehicle.

Admittedly, no report is available from the concerned I/O regarding pending of any confiscation proceeding in connection with seized vehicle bearing No. AS-02 AN 0787.

In the case of ***Sunderbhai Ambalal Desai v. State of Gujarat***, reported in ***(2002) 10 SCC 282***, it was held that powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purpose, namely-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation:
2. Court or the police would not be required to keep the article in safe custody;
3. If the proper panchnama before handing over possession of article

is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. The jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

In view of the above mandate, it is desirable that the claim of the petitioner for interim *zimma* of the seized vehicle is settled expeditiously and judiciously so as to prevent any damage to the vehicles and loss to the owners.

Therefore, it is provided that the learned Special Judge shall decide the matter regarding ownership of the vehicle and release the same to interim *zimma* as per procedure provided in Section 451 Cr.P.C. In order to enable the learned Special Judge to decide the claim of ownership of the vehicle afresh as per procedure, the petitioner shall file appropriate petition supported by relevant documents in original.

With the above directions, the criminal petition stands disposed of.

JUDGE

Comparing Assistant