

GAHC010075562024



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

Case No. : Crl.Pet./428/2024

BADRUL ISLAM
S/O ABU BAKKAR, R/O 52 DOBOKA ROAD, RAWARPAR, KOROIGURI,
HOJAI, DIST-NAGAON, ASSAM

VERSUS

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

2:NITUL SAIKIA
SUB INSPECTOR OF POLICE
KHATKHATI POLICE STATION
S/O LATE RUHITESWAR SAIKIA
C/O KHATKHATI POLICE STATION
PIN-782480
DIST- KARBI ANGLONG
ASSA

Advocate for the Petitioner : MR. P K MUNIR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

18.04.2024

1. Heard Mr. P.K. Munir, learned counsel for the petitioner. Also heard Mr.

B.B. Gogoi, learned Additional Public Prosecutor, Assam.

2. This application under Section 482 of the Code of Criminal Procedure, 1973 read with Article 227 of the Constitution of India has been filed by the petitioner, namely, Badrul Islam, impugning the order dated 21.09.2022, passed by the learned Special Judge NDPS, Karbi Anglong, Diphu, against Zimma Petition No. 2328/2022 filed in NDPS Case No. 37/2022, whereby the prayer for zimma of the Ertiga Vehicle bearing Registration No. AS-02-Z-9532 was made by the present petitioner was rejected by the learned Special Judge.

3. Learned counsel for the petitioner has submitted that the petitioner is the registered owner of the seized vehicle and to substantiate his submission he has furnished the photocopy of the certificate of registration of the seized vehicle.

4. It is also submitted by the learned counsel for the petitioner that the learned Special Judge NDPS, Karbi Anglong had rejected the prayer for zimma of the present petitioner merely on the ground that the Officer-In-Charge of Khatkhathi Police Station had submitted a report wherein, it has been mentioned that a deed of agreement was entered into by the present petitioner with one Samsuddin Laskar for sale of the seized vehicle and the said agreement was executed on 31st December, 2019.

5. Learned counsel for the petitioner has submitted that the seized vehicle was purchased through bank finance and hypothecated to the financier Mahindra & Mahindra Finance and the petitioner did not transfer the vehicle to the said Samsuddin Laskar, though a deed of agreement being executed between him and Samsuddin Laskar.

6. I have also heard the learned Additional Public Prosecutor. For sake of convenience the impugned order dated 21.09.2022, passed by the learned

Special Judge NDPS, Karbi Anglong, Diphu, is quoted herein below:-

"21.09.2022

Accused Habiba Jannat is absent with step vide ptn. no. 3280/2022, showing cause of absence therein. The case is also fixed today for submission of relevant documents by the zimma petitioner in connection with zimma petition no. 2328/2022 dtd. 12/07/2022 which was filed by the zimma petitioner Badrul Islam praying for zimma of the alleged seized Maruti Suzuki India Ltd., Model Ertiga Smart Hybrid (white colour) bearing Reg. No. AS02Z9532, Chassis No. MA3BNC32SKD146027 and Engine No. K15BN1054639.

Accordingly, petitioner Tasminara Begum, wife of the zimma petitioner Badrul Islam, vide ptn. no. 3283/2022 dated 21/09/2022 submitted today some photocopies of documents viz. RC, Voter ID and Passport of Badrul Islam, Marriage Certificate, Special Power of Attorney, Voter ID of Tasminara Begum, Legal Notice of Mahindra & Mahindra Financial Services Ltd., Interim Order dated 31/03/2022 (Arbitration Proceedings dated 31/03/2022), Award (Arbitral Proceedings) dated 24/06/2022.

The Ld. P.P. and the Ld. Counsel for the zimma

petitioner are present.

Heard both sides.

The Ld. P.P. has tendered his objection on the ground that the zimma petitioner has not been able to prove that he is the actual owner of the alleged seized Maruti Vehicle.

Upon hearing both sides, I have gone through the case record and material available on record.

Also perused the report submitted by the O/C of Khatkhati P.S. and Deed of Agreement. From the report and the Deed of Agreement, it is found that the zimma petitioner Badrul Islam had sold the alleged seized vehicle to one Samsuddin Laskar, S/O Muhibur Rahman Laskar, vide Deed of Agreement dated 31st December, 2019.

Also, perused the documents submitted today by the petitioner Tasminara Begum. From the submitted documents, it is not proved that the zimma petitioner Badrul Islam is still holding ownership of the alleged seized vehicle.

Moreover, the alleged seized vehicle is not seized from the zimma petitioner Badrul Islam.

In view of this fact and circumstances, it cast a doubt on the ownership and possession of the

alleged seized vehicle. Apart from this, to decide the ownership and possession of the alleged, seized vehicle, this court is not a civil court. Although being a Criminal Court, it has jurisdiction to give interim zimma of the alleged seized vehicle to a fit person but taking note of the objection tendered by the Ld. P.P., the prayer made by the petitioner Badrul Islam for zimma of the alleged seized Maruti Suzuki India Ltd., Model Ertiga Smart Hybrid (white colour) is hereby rejected at this stage.

Accordingly, the zimma petition is disposed of. Further, the interlocutory petition no. 2397/2022 dtd. 16/07/2022 filed by the petitioner Badrul Islam wherein, he has prayed for zimma of the alleged seized Maruti vehicle, has become infructuous as the prayer for zimma for the alleged seized vehicle has been rejected. Hence, the said petition is hereby dismissed. Fixing 31/10/2022 for C.C."

7. From mere perusal of the impugned order, it appears that the prayer for zimma was rejected by the learned Special Judge NDPS, Karbi Anglong, Diphu, only because the learned Additional Public Prosecutor had tendered objection before the trial court as the owner of the seized vehicle could not be ascertained. However, from the documents annexed along with this criminal petition, more specifically the certificate of registration, it is apparent that the

present petitioner is the owner of the seized vehicle and the same is under hypothecation with Mahindra & Mahindra Finance Limited. Thus, apparently, it appears that the present petitioner is the owner of the seized vehicle.

8. It is also submitted by the learned counsel for the petitioner that the seized vehicle has been lying in the police station since 28.01.2022 and the same is not required either for the purpose of investigation or in the trial.

9. Under the aforesaid circumstances, no purpose would be served by detaining the seized vehicle under the open sky when *prima facie* it appears that the present petitioner is the registered owner of the seized vehicle. Hence, this criminal petition is hereby disposed of with a direction to the Officer-In-Charge of Khatkhati Police Station to give the zimma of the seized vehicle, i.e. Ertiga Smart Hybrid (white colour) bearing Registration No. AS-02-Z-9532 to the petitioner on furnishing an indemnity bond of Rs. 15 lakhs for production of the said vehicle in connection with the NDPS Case No. 37/2022 as and when so required. Before giving the zimma of the said vehicle the Officer-In-Charge of Khatkhati Police Station shall also prepare an inventory and take photographs of the seized vehicle, giving detailed description of the seized vehicle and thereafter, the bond along with the inventory and photographs, shall be submitted to the learned Special Judge NDPS, Karbi Anglong, Diphu for further reference in the NDPS Case No. 37/2022, which is pending before the said court.

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

JUDGE

Comparing Assistant