

GAHC010080942024



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

Case No. : Crl.Rev.P./160/2024

DILOWAR HUSSAIN
SON OF LATE JAMIR HUSSAIN
R/O VILL- HATIKHALI, P.S. MURAJHAR,
P.O. BORHAWAR, DIST. HOJAI, ASSAM
PIN-782439

VERSUS

THE STATE OF ASSAM AND ANR
TO BE REP. BY THE PP, ASSAM

2:GANESH BARMAN
HEAD CONSTABLE
HAMREN POLICE STATION
DIST. WEST KARBI ANGLONG
ASSAM
PIN-78248

Advocate for the Petitioner : ALHAJJ I UDDIN

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN

ORDER

25.04.2024

Heard Mr. A.I. Uddin, learned counsel for the petitioner and also heard Ms. A.

Begum, learned Additional Public Prosecutor, Assam, appearing for the respondents.

2. Correctness or otherwise of the order, dated 04.04.2024, passed by the learned Judicial Magistrate First Class, Hamren, in PRC Case No.35/2024, arising out of Hamren P.S. Case No.03/2024, registered under Section 428 IPC, read with Section 13 of the Assam Cattle Preservation Act, 2021, read with Section 11(1)(a)(d)(e)(h) of the Prevention of Cruelty to Animals Act, 1960, is challenged in this petition, under Section 397/401 of the Cr.P.C., read with Article 227 of the Constitution of India. It is to be noted here that vide impugned order dated 04.04.2024, the learned Court below while releasing two vehicles, bearing Registration Nos.AS-02DC-1999 and AS-02DC-4262, in the interim custody of the petitioner, directed that the petitioner shall furnish bank guarantee, equivalent to the market value of the vehicles to the satisfaction of that Court, in view of Section 11(5) of the Assam Cattle Preservation Act.

3. The background facts, leading to filing of this present criminal revision petition is briefly stated as under:-

"In connection with Hamren P.S. Case No.03/2024, under Section 428 IPC, read with Section 13 of the Assam Cattle Preservation Act, 2021, read with Section 11(1)(a)(d)(e)(h) of the Prevention of Cruelty to Animals Act, 1960, the informant Ganesh Barman, Head Constable of Hamren Police Station has intercepted two vehicles, bearing Registration Nos.AS-02DC-1999 and AS-02DC-4262 on 24.02.2024 with 10 and 9 nos. of bullock, respectively, being carried in the said vehicles, without any document. On the basis of the aforesaid FIR, the Officer-in-Charge, Hamren P.S. registered the above-noted case and endorsed S.I. Hari Chetry to investigate the same. And during the course of investigation, the I.O. had seized the aforementioned two vehicles and thereafter, on completion of investigation, the I.O. laid charge-sheet, being Charge-Sheet No.02/2024, dated 31.03.2024 against 10 accused persons. Thereafter, the petitioner, being the registered owner of both

the vehicles, had preferred a petition before the learned Judicial Magistrate First Class, Hamren, seeking custody of the aforementioned vehicles. Thereafter, hearing both the parties, the learned Court below had allowed the petition by imposing the condition mentioned herein above.”

4. Mr. Uddin, learned counsel for the petitioner submits that the petitioner is not in a position to furnish bank guarantee, as provided in the impugned order, but he has landed property, standing in his name, and he will be able to furnish surety of rupees, equivalent to the market value of the vehicles and therefore, Mr. Uddin submits that the condition imposed in the impugned order may be modified to the extent that the petitioner may be allowed to take custody of the vehicles on furnishing surety bond of rupees, equivalent to the market value of the vehicles instead of the bank guarantee. Mr. Uddin also referred one case law of Hon'ble Supreme Court in the case of **Ikram v. State of Rajasthan [Special Leave to Appeal (Crl.) Nos.4797-4799/2023]**, wherein Hon'ble Supreme Court has directed to release the seized vehicle in the custody of the petitioner on furnishing personal bond together with an undertaking that he will not transfer the vehicle till conclusion of the trial.

5. Ms. A. Begum, learned Additional Public Prosecutor, Assam, submits that she has no objection in the event of modification of the aforesaid condition of the impugned order.

6. Having heard the submission of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record and also perused the impugned order dated 04.04.2024. It appears that while releasing the seized vehicles, mentioned herein above, in the interim custody of the petitioner, the learned Court below, in view of the provision of Section 11(5) of the Assam Cattle Preservation Act, directed the petitioner to furnish bank guarantee equivalent to the market value of the vehicle to the satisfaction of that Court.

7. But, it appears from the submission of Mr. Uddin, learned counsel for the petitioner

and also from the contentions being made in the petition that the petitioner has landed property in his name and able to furnish surety of rupees equivalent to the market value, but he has no money in the bank so as to furnish the bank guarantee.

8. Having considered the submission of learned Advocates of both sides and also considering the facts and circumstances on the record and further considering the decision of the Hon'ble Supreme Court in the case of **Ikram** (supra), this Court is inclined to allow this petition.

9. It is provided that the seized vehicles, bearing Registration Nos.AS-02DC-1999 and AS-02DC-4262 shall be released in the interim custody of the petitioner on his furnishing of surety bond of rupees, equivalent to the market value of the said two vehicles, to the satisfaction of the learned Court below.

10. In terms of above, this criminal revision petition stands disposed of at this motion stage itself.

Sd/- Robin Phukan
JUDGE

Comparing Assistant