

GAHC010103992024



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

Case No. : Crl.Pet./607/2024

MD. ISLAOUR RAHAMAN
S/O LATE MD. SIRAJUDDIN, R/O LILONG TUREL AHANBI, MATHAK, P.S.-
LILONG, DIST- THOUBAI, MANIPUR, PIN-795130

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. Y S MANNAN, MS N DEKARAJA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 13.09.2024

Heard Mr. Y. S. Mannan, learned counsel for the accused petitioner. Also heard Mr. B. B. Gogoi, learned Addl. P.P., Assam.

2. This is an application under Section 482 Cr.P.C. against the order dated

06.05.2024 passed by the learned Special Judge, Karbi Anglong in NDPS Case No. 33/2023, rejecting the prayer for zimma of a truck bearing registration No. NL-01-AD-8728 along with its keys seized in connection with Khatkhathi PS Case No. 15/2023, under Section 21(C)/29 of NDPS Act.

3. The brief facts of the case is that an FIR has been lodged at Khatkhathi PS to the effect that on 19.02.2023 based on a source information that a large quantity of narcotic drugs were coming from Manipur to Bokajan in a truck bearing No. NL-01 AD-8728 and accordingly, the said truck was intercepted. On being searched, around 4.109 kgs of suspected heroin was recovered from a hidden chamber of the said truck. Thereafter, a case was registered vide Khatkhathi PS Case No. 15/2023 under Section 21(C)/29 of NDPS Act.

4. After completion of investigation, charge-sheet has been laid against three accused persons Shoaib Aktar, Md. Ikbali and Abdul Gani but not against the present petitioner and trial started in the Special Court, Karbi Anglong and charge was also framed against the aforesaid accused persons.

5. The learned counsel for the petitioner submits that the petitioner is the registered owner of the truck bearing No. NL-01 AD-8728. It was purchased from finance in the year 2019. The petitioner has no knowledge that the driver and the helper of his truck were involved in transporting of contrabands in his truck. It is further submitted that the said truck is the only source of income of the petitioner. Subsequently, the petitioner had approached the learned trial court praying for zimma of the said vehicle but the prayer for zimma was rejected.

6. According to learned counsel for the petitioner, the learned trial court without taking into consideration of the fact that charge-sheet has been laid and

charges have been framed against the arrested accused persons, rejected the zimma petition in a mechanical manner without application of judicial mind and thereby caused a serious miscarriage of justice. It is further submitted that the trial court miserably failed to consider Section 451 Cr.P.C. which provides power to the criminal Court to give zimma of the seized articles after submission of charge-sheet. The further contention of the learned counsel for the petitioner is that the seized vehicle has been kept in the open air and as such there is every possibility to cause damage to it. Learned counsel also referred to a judgment of the Hon'ble Supreme Court in *Sundarbhai Ambala vs State of Gujrat* reported in (2002) 10 SCC 283, wherein it was held that power under Section 451 Cr.P.C. should be exercised expeditiously, promptly and judicially. It is of no use to keep such seized vehicle at a police station for a long period.

7. Learned counsel further submits that there is no bar in the NDPS Act to release the vehicle in interim custody of its rightful owner till conclusion of the trial in confiscation proceeding because otherwise the vehicle would turn into scrap/junk if it is kept in the campus of the police station for a long time. And it would be neither in the interest of the owner nor of the State.

In support of his submission learned counsel for the petitioner has placed reliance on the following case law:

(i) Bholu Singh @ Ayush Singh vs State of Bihar reported in Criminal Miscellaneous No. 40912/2016.

8. Per contra, learned Additional Public Prosecutor for the state submits that the seized vehicle which is allegedly involved in commission of the offence under the NDPS Act which is liable for confiscation under Section 60 of the NDPS Act and hence, cannot be released even to the bonafide owner of the vehicle.

9. It is further submitted by learned Additional Public Prosecutor that the confiscation proceeding has been initiated against the seized vehicle. As such, question of release of the vehicle at this stage does not arise.

10. I have considered the submission of the learned counsel for the parties and perused the order of the trial court dated 05.08.2024 which reveals that the Investigating Officer has approached before the trial court seeking confiscation of the seized vehicle which was rejected by the trial court vide order dated 05.08.2024.

11. Apparently, no confiscation proceeding is pending in connection with the seized vehicle. Learned counsel for the petitioner has pointed out a case law vide *Tej Singh vs State of Hariyana* reported in (2020) SCC online P&H 4679 wherein it was held as follows:

“17. In the present case, if the car in question is retained on the ground of being case property liable to confiscation and kept idle in the police station, then the same is likely to be converted into junk. Any public auction of the car in question is not only likely to take long time but may also not fetch amount higher than the reserved price. In case the car in question is released on sapurdari on usual terms and conditions to be returned on confiscation, passing of final order for confiscation of the car in question may also take such long time that the car in question may become wholly unserviceable, complete junk and of no use for being taken over by the state on such confiscation. In these facts and circumstances it will be appropriate that the car is released on sapurdari to the registered owner on additional conditions, besides usual terms and conditions, that the registered owner will not use or allow any person to use the car in question for commission of any offence including offence under the [NDPS Act](#) and that he will deposit the market price of the car in question as determinable under the Income Tax Rules in case of passing of order for its confiscation under section of the [NDPS Act](#).....”

12. In another case *Gurbindar Singh vs State of Punjab* reported in (2017)

SCC online (P & H) 16026 held as follows:

“17. On a perusal of the above provisions under the [NDPS Act](#), we find that the trial Court has to take a decision as to whether a vehicle is liable to confiscation only on conclusion of the trial. A vehicle seized under the [NDPS Act](#) cannot be kept idle to the disadvantage of everyone concerned till the order of confiscation is passed on conclusion of trial.....”

13. Hon'ble High Court of Uttarakhand in [Abhijeet Kumar Vs. State of Uttarakhand](#) (2019 SCC OnLine Utt 265) held as follows:

“11. [Section 60](#) of the Act does not provide for confiscation of any vehicle, immediately after it's seizure. Confiscation is a separate procedure unconnected with conviction, acquittal or discharge of the accused. It is only the satisfaction of the court, trying an offence under the Act, to decide as to whether the vehicle is liable to be confiscated or not. In the instant case, trial is yet to begin. Whether the petitioner was, in fact, carrying Charas with him? Whether the petitioner has committed any offence under the Act, is yet to be established. Whether any proceeding for confiscation would at all be initiated? It has also to be decided at a later stage of the trial. Section 451 of the Code makes provision for interim custody of any article.

13. Even otherwise in the absence of any provision, which bars from release of any vehicle seized, there appears no reason to keep the vehicle in Police custody until the conclusion of the trial. There are various issues related with the upkeep of such articles specially a vehicle. This Court is of the view that the provision of [Section 60](#) of the Act at all does not debar from releasing a vehicle during pendency of the trial. The provision of [Section 60](#) of the Act and Section 451 of the Code act in different spheres. It is the matter of interim custody only. If vehicle is given to it's owner with certain conditions namely producing it whenever called to do so; not changing it's shape without prior permission of the Court; not to transfer it's ownership without prior permission of the Court, etc; the production of the vehicle may be ensured at any later stage of the trial or at the time of confiscation proceeding.

14. In view of the foregoing discussion, this Court is of the view that the learned court below ought to have released the vehicle with certain conditions. Accordingly, the impugned order dated 20.02.2019 deserves to

be set aside and the petition deserves to be allowed."

14. In the present case, admittedly, no confiscation proceeding is pending in connection with the vehicle in question. As in the NDPS Act, no procedure for the interim custody of the vehicle is prescribed, Section 451 and 457 of the Cr.P.C. specifically deal with the custody and disposal of the property pending trial and the procedure to be followed by the police upon seizure of property.

15. In view of the above, this Court is of the opinion that the law laid down by the Hon'ble Supreme Court in *Sundarbhai Ambalal Desai(Supra)* would apply to the vehicle seized under the NDPS Act as well. Thus, the Magistrate/Special Judge NDPS Act shall have the power to consider the application for interim custody of the seized vehicle.

16. Resultantly, there is no reason to reject the application of the petitioner for its release to interim custody to the petitioner claiming to be bonafide owner of the vehicle subject to certain conditions to be imposed by the trial court to ensure production of the vehicle to the court as and when required during pendency of the trial.

17. The trial court will consider the relevant documents regarding ownership of the vehicle before releasing it in favour of the petitioner.

18. Accordingly, the criminal petition stands disposed of.

JUDGE

Comparing Assistant