

GAHC010113112024



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

Case No. : Crl.Pet./656/2024

SAMED ALI @ SAMAD ALI
S/O SAYED ALI, R/O VILL- SANTIPUR, P.O. AND P.S.-DHALIGAON, DIST-
CHIRANG, ASSAM, PIN NO. 783385

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. A ALAM, MR. Z H BORA, MR F H LASKAR (2), MR B M DEKA, MR. M ALAM

Advocate for the Respondent : PP, ASSAM,

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

O R D E R

12.08.2024

Heard Mr. B.M. Deka, learned counsel appearing for the petitioner and Mr. B. Sharma, learned Additional Public Prosecutor, Assam appearing for the State, respondent No.1.

2. The petitioner herein is the owner of a Bolero Pick-up FB MS 1.3T vehicle bearing Registration No.AS-26-C-7583, which he had taken on finance from a finance company.

The petitioner's said Bolero Pick-up vehicle was seized in connection with Abhayapuri Police Station Case No.303/2023 under Section 379 IPC read with Sections 11(1)(a)(d) of the Prevention of Cruelty to Animals Act, 1960 and Section 13(1) of the Assam Cattle Preservation Act, 2021, corresponding to MGR No.537/2023. As petitioner's said vehicle was seized in the Abhayapuri P.S. Case No.303/2023, he filed Zimma Petition No. 418/2023 praying for zimma of his said Bolero Pick-up FB MS 1.3T vehicle bearing Registration No.AS-26-C-7583. The learned Sub-Divisional Judicial Magistrate (M), North Salmara, Abhayapuri by order dated 11.08.2023, passed in said Abhayapuri P.S. Case No.303/2023, ordered for release of petitioner's said seized Bolero Pick-up vehicle; however, in terms of Section 11(5) of the Assam Cattle Preservation Act, 2021, the learned Magistrate by the said order dated 11.08.2023, directed the petitioner to furnish a bank guarantee of ₹. 6,00,000/- (Rupees Six Lacs) before the said Court for release of his said seized vehicle involved in Abhayapuri P.S. Case No.303/2023, with further observation that failure on his part to furnish such bank guarantee, his said vehicle shall remain in police custody of Abhayapuri Police Station.

3. Later, the petitioner filed another application under Section 440 CrPC before the learned S.D.J.M.(M), North Salmara, Abhayapuri to reduce the surety value from Rs.6,00,000/- (rupees six lacs). But, the learned S.D.J.M.(M), North Salmara, Abhayapuri by order dated 19.09.2023, rejected the said prayer of the petitioner.

4. Aggrieved with those orders dated 11.08.2023 and 19.09.2023 of the learned S.D.J.M.(M), North Salmara, Abhayapuri, the petitioner preferred Criminal Revision Petition No.15(4)/2023 before the Court of learned Additional Sessions Judge, FTC, North Salmara, Abhayapuri.

5. After hearing the parties, the learned Additional Sessions Judge, FTC, North Salmara, Abhayapuri, by its judgment dated 19.03.2024, rejected the said Criminal Revision Petition No.15(4)/2023 of the petitioner, finding no merit on it.

6. Hence, this criminal petition by the petitioner for zimma of his said Bolero Pick-up FB MS 1.3T vehicle bearing Registration No.AS-26-C-7583, seized in said Abhayapuri Police

Station Case No.303/2023.

7. It is contended by the petitioner that he is the third owner of said Bolero Pick-up vehicle, seized in said Abhayapuri P.S. Case No.303/2023 and that it is his only source of his income. It is also stated by the petitioner that as the said vehicle is hypothecated to a finance company, where he is yet to liquidate the instalments and if the said vehicle is not released, he will not be able to pay its monthly instalments and thereby he will suffer irreparable loss.

8. It is also submitted by the petitioner that police after completion of the investigation, has already submitted the charge sheet in said Abhayapuri P.S. Case No.303/2023 on 30.08.2023 and if his said seized vehicle is now kept in police custody in the Abhayapuri Police Station that too under the open sky, it will be damaged and further its value will be diminished.

9. It is seen that the learned S.D.J.M.(M), North Salmara, Abhayapuri while passing the order dated 11.08.2023, found the petitioner to be the lawful owner of the said Bolero Pick-up FB MS 1.3T vehicle bearing Registration No.AS-26-C-7583 seized in said Abhayapuri P.S. Case No.303/2023. By the said order learned Magistrate was also of the opinion that if the said seized vehicle is kept unused in the police station it would not serve any useful purpose and rather it will lead to its damage and shall diminish its value and further, retaining the said seized vehicle in the police station would also result in constraints of space.

10. After hearing the parties and considering the materials of the case, this Court in exercise of the power conferred under Section 482 CrPC / 528 NBSS, 2023 so as to secure the ends of justice, hereby modifies the order dated 11.08.2023 passed by the learned S.D.J.M.(M), North Salmara, Abhayapuri in the Zimma Petition No. 418/2023 filed by the petitioner in Abhayapuri P.S. Case No.303/2023 to the extent that on furnishing a Bank Guarantee of ₹. 4,00,000/- (rupees four lacs) by the petitioner before the Court of learned Sub Divisional Judicial Magistrate (M), North Salmara, Abhayapuri to the satisfaction of the said Court, the authorities of Abhayapuri Police Station shall release the said Bolero

Pick-up FB MS 1.3T vehicle bearing Registration No.AS-26-C-7583 to the petitioner forthwith that was seized in Abhayapuri P.S. Case No.303/2023;but after capturing the videography of the said vehicle, its engine number, its chassis number, copy of its registration certificate and further on condition that the petitioner shall produce the said vehicle in proper condition as and when it is required during the trial of the case for necessary evidence and that the petitioner shall not alienate and/or transfer the said vehicle without the leave of the Court of learned S.D.J.M.(M), North Salmara, Abhayapuri.

11. With the above observation and directions, this criminal petition stands allowed to the extent above.

JUDGE

Comparing Assistant