

GAHC010113942024



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

Case No. : Crl.Rev.P./217/2024

ABHIJIT SAIKIA
S/O LATE DHRUBA KR. SAIKIA, R/O H. NO. 7, DEVDARU PATH, DISPUR,
P.S.-DISPUR, GUWAHATI-6, KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR A R BHUYAN

Advocate for the Respondent : PP, ASSAM

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. A. R. Bhuyan, Adv.

For the Respondents : Mr. P. Borthakur, Addl.PP.

Date of Hearing : 07.06.2024

Date of Judgement : 07.06.2024

JUDGMENT & ORDER (ORAL)

1. Heard Mr. A. R. Bhuyan, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State.

2. The present application is filed under Section 397 read with Section 401 and 482 of the Code of Criminal Procedure 1973 assailing an order dated 09.04.2024 passed by the learned SDJM (M), Gossaigaon in connection with Gossaigaon Police Station Case No. 381/2023 registered under Sections 420/406/468 of IPC read with Section 13(1) of the Assam Cattle Preservation Act, 2021, whereby and whereunder the learned Magistrate while allowing petition No. 1116 filed under Section 451 of the Code by the petitioner praying for custody of his Bike/Motor-cycle bearing Registration No. AS-01-EC-8381 imposed a condition to furnish bank guarantee equivalent to the market value of the vehicle.

The further challenge is an order dated 02.01.2024 passed by the learned SDJM (M), Gossaigaon in connection with above mentioned case whereby the learned Court below had rejected the prayer for custody of the vehicle bearing registration No. AS-01-BR-4071 (Hyundai i20) seized on the ground that no bank guarantee with regard to the vehicle has been furnished by the zimma petitioner. By the aforesaid order, zimma of two numbers of mobile phones being Samsung S23 Ultra and OPPO make having SIM Card No. 9435403735 and 9864028824 had also been rejected.

3. This Court under its Judgment and Order (CAV) dated 22.05.2024 passed in Crl.Rev.P./143/2024, laid down the following propositions of law:-
 - I. Sub Section 14 of Section 7 of the Act, 2021, Sub Sections 3, 4 and 5 of Section 11 of the Act, 2021 and Section 102 of the Code of Criminal Procedure, 1973, is enacted to facilitate investigation and to give the police officers the power to gather evidence to support the allegations made, which includes search, seizure and detain etc.
 - II. The release of seized material as envisaged under sub Section 5 of Section 11 of the Act, 2021 and envisaged under Section 102 of Cr.P.C., are

relatable only to the stage of seizure under Sub Section 3 of Section 11 of the Act, 2021 and under Chapter VII of the Cr.P.C., respectively. And, therefore, such prescription cannot be made relatable to a provision of disposal of property during enquiry and trial.

III. The Act, 2021 is silent as regards disposal of property during enquiry and trial and that being the position and in absence any specific prescription in the Act, 2021, the provision of Chapter XXXIV of the Code, 1973 shall be applicable so far the same relates to disposal of property, seized under the provision of Section 11 of the Act, 2021. Therefore, when application under Section 451 or Section 457 of Cr.P.C. is made, the principles laid down in **Sunderbhai Ambalal Desai –Vs- State of Gujrat** reported in **(2002) 10 SCC 283** shall be made applicable.

IV. The prescription made under sub section 5 of Section 11 of the Act, 2021 is relatable only to a situation/stage when the authorised officer(s) exercises its power under sub sections 3 of Section 11 of the Act, 2021 or under sub section 14 of Section 7 of the Act, 2021 and reports the same to the Judicial Magistrate First Class in terms of sub section 4 of Section 11 of the Act, 2021.

4. The Hon'ble Apex Court in the case of **Sunderbhai Ambalal** (supra) while dealing with disposal of seized materials irrespective of whether it is an application under Section 451 or an application under Section 457 of Cr.P.C. has laid down the following propositions of law:-

A. That the application for zimma of seized material shall be dealt expeditiously and judiciously with the object that the owner of the seized article should not suffer for it being remaining unused or by its misappropriation.

- B. Whatever the situation be, it is of no use to keep the seized materials at police station for a long period.
- C. If proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before Court during trial.
- D. To protect the interest of the investigation/trial, the seized article can be handed over to the applicant by preparing detail and proper panchnama of such article, taking photographs of such article and a bond that such article would be produced if required at the time of trial/investigation. The Court for this purpose, may take proper security also.

5. Now coming to the case in hand and as recorded hereinabove, the present application is filed assailing the order dated 09.04.2024 passed by the learned SDJM (M), Gossaigaon in connection with Gossaigaon Police Station Case No. 381/2023, whereby the zimma of the Bike/Motor-cycle bearing registration No. AS-01-EC-8381 was granted with a condition that the petitioner is to furnish a bank guarantee equivalent to the market value of the vehicle in terms of Section 11(5) of the Act, 2021. The order dated 02.01.2024 whereby, the learned Court below had rejected the custody of the vehicle bearing registration No. AS-01-BR-4071 (Hyundai i20) along with two numbers of mobile phones being Samsung S23 Ultra and OPPO make having SIM Card No. 9435403735 and 9864028824. It is not in dispute that the zimma was sought under the provision of Section 451/457 of the Code of Criminal Procedure, 1973.

6. Thus, in view of the determination made hereinabove, when the application for zimma is filed under Section 451/457 of the Cr.P.C., the consideration of grant of zimma cannot be said to be an exercise of power under sub section 5 of Section 11 of the Act, 2021 and therefore, the insistence of bank guarantee as prescribed

under Sub Section 5 of Section 11 of the Act, 2021 shall not be applicable. Accordingly, as determined hereinabove, this Court is of the view that the impugned orders dated 09.04.2024 and 02.01.2024 are sustainable under law.

7. In view of the aforesaid, the present petition stands allowed by setting aside the orders dated 02.01.2024 and 09.04.2024 passed by the learned SJDM, (M), Gossaigaon and it is directed that the zimma of both the seized vehicles bearing registration No. AS-01-EC-8381 (bike/motor-cycle) and AS-01-BR-4071 (Hyundai i20) along with two numbers of mobile phones being Samsung S23 Ultra and OPPO make having SIM Card No. 9435403735 and 9864028824, be granted to the registered owner/petitioner on the following terms and conditions:

- I. The investigating authority shall prepare proper panchnama of both the vehicles and take photograph of such vehicle and get the signature of the owner or representative of the owner and the owner shall give a bond of Rs.5,00,000/- for the vehicle bearing registration AS-01-BR-4071 (Hyundai i20) and bond of Rs. 50,000/- for the vehicle bearing registration No. No. AS-01-EC-8381 (bike/motor-cycle).
- II. The petitioner/owner shall not change the colour or structure of both the vehicles and shall not also dispose of both the vehicles till disposal of the case.
- III. The petitioner/owner shall produce both the vehicle before the I/O or concerned authority as and when called for the purpose of investigation or trial.

8. So far relating to zimma of the mobile phones as detailed hereinabove, same be granted after extracting the material and/or after any forensic report that may be required as regards aforesaid phones, if desired by the investigating authority and thereafter hand over the zimma of the same to the registered

owner/petitioner with the following terms and conditions:-

- I. The investigating authority shall prepare proper panchnama of both the mobile phones and take photograph of such mobile phones and get the signature of the owner or representative of the owner and the owner shall give a bond of Rs.**20,000/-**.each.
- II. The petitioner/owner shall not change the colour or structure of both the mobile phones and shall not also dispose of both the mobile phones along with the SIM cards till disposal of the case.
- III. The petitioner/owner shall produce both the mobile phones along with the SIM Cards before the I/O or concerned authority as and when called for the purpose of investigation or trial.

9. This criminal Revision petition stands disposed of.

JUDGE

Comparing Assistant