

GAHC010125282024



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

Case No. : Crl.Rev.P./242/2024

NUHU DAIMARI
S/O MOTHU DAIMARI, VILL- MAZBAT BORGORIBARI, P.O.-MAZBAT, P.S.-
MAZBAT, DIST- UDALGURI, ASSAM-784507

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : RAJU DEURI, MR. S K DEORI

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 17.09.2024

Heard Mr. R. Deuri, learned counsel for the petitioner. Also heard Mr. B. Sharma, Additional Public Prosecutor for the State.

2. By filing this petition u/s 397/401/482 Cr.P.C. praying for setting and quashing the impugned order dated 31/05/2024, passed by the learned Special

Judge, NDPS, Bishwanath, in Special NDPS Case No. 01/2023, u/s 20(b)(ii)(c)/27A/29 NDPS Act, 1985, whereby the custody of the vehicle bearing No. AS-12-X-0498 was rejected.

3. The learned counsel for the petitioner has submitted that the petitioner is the registered owner of the vehicle bearing No. AS12-X-0498, which was seized in connection with Gingia P.S. case no. 84/2022 u/s 20 (b)(ii)(c)/27 A/29 NDPS Act. Though it has been alleged that commercial quantity of ganja weighing 75 kgs were recovered from the vehicle of the petitioner but which is totally false.

4. It is further submitted that the petitioner purchased the said vehicle being financed by Mahindra & Mahindra Company and he is regularly paying the monthly installment. The vehicle has been lying in the open sky in the campus of Gingia Police Station and damaged day by day. Thus, the petitioner has been suffering great financial loss.

5. According to the learned counsel for the petitioner, the I/O has completed the investigation of the case and the charge sheet has been laid before the trial court. It is further stated that two nos. of vehicles were seized in connection with Gingia P.S. Case No. 84/2022. The zimma of one vehicle bearing No. AS-07-U-5226 was given in zimma to the registered owner by the trial court. But the zimma petition filed by the petitioner praying to take zimma of his vehicle bearing No. AS-12-X-0498, was not considered on the ground that the said vehicle was in process of confiscation. According to the learned counsel for the petitioner, the order passed by the learned trial court dated 31/05/2024 is unjustified and prays to give zimma of the said vehicle to the present petitioner.

In support of his submission, learned counsel for the petitioner has referred the following case laws –

- a. Criminal Petition No. 384/2020 (Angomjambam Nabakumar Singh vs. Union of India).
- b. Criminal Miscellaneous No. 40912/2016 (Bhola Singh @ Ayush Singh vs. State of Bihar).
- c. Criminal Revision Petition 89/2024 (Sumez Ali vs. State of Assam).

6. Per contra, learned Additional Public Prosecutor has submitted that the vehicle in question bearing No. AS-12-X-0498, has already been confiscated in connection with Gingia PS case No. 84/2022. Therefore, the pending confiscation proceeding, the seized vehicle cannot be released in the interim custody of the owner. The jurisdiction u/s 451 of the Code of Criminal Procedure is not available to the courts when the confiscation proceeding is initiated.

In support of his submission, learned Additional P.P. has referred a case law –

- a. (2022) SCC Online (Gau) 1002 (Offijiol Haque vs. State of Assam)

7. Having heard the learned counsel for the parties, the limited question arose in this case is that pending confiscation proceeding, whether the seized vehicle can be released in the interim custody of the owner.

8. In **B.S. Rawant vs. Shaikh Abdul Karim**, reported in **(1989) 0 Supreme (Bom) 32**, the Bombay High Court passed order relating to interim custody of property seized in NDPS Act and observed that operation of sections 451 and/or 457(1) of the Code is not excluded by any provision of the NDPS Act. The Bombay High Court held that, the provisions of section 41/42/43/51/53/55/60/63 of the NDPS Act do not exclude the operation of section 451 or section 457(1) of the Code. The High Court observed that, "Under sections 60 and 63 such an article or vehicle used for the purpose of commission of an offence under this Act, is liable for confiscation. In other words, the article or the vehicle must be available at the time of trial or at the end of the trial for the purpose of confiscation. It does not mean that the vehicle shall always remain at the concerned police station pending the trial. Under section 457(1) of the Code of Criminal Procedure, the learned Magistrate has a discretion to pass an order granting interim custody or to decline. But, in either case, the discretion has to be exercised judicially, and not in a cavalier fashion."

9. In the aforesaid case, it was also held that-

".....The object of the Act is to see that the vehicle which is used for such an offence is not made available to the persons who have indulged in these activities. They shall not have the benefit of such a vehicle. By and large if an accused person is himself the owner of the vehicle and he uses such a vehicle for the purpose of conveying the drugs, then of course, it is possible for the prosecution to contend that it is against the interest of justice that such a vehicle be given to the accused pending the trial. But

in a given case, it might be that a vehicle belonging to an innocent owner is stolen by the accused, and in that event, later on, if the vehicle is intercepted and seized by the officer, it does not mean that such an owner has to wait till the trial is completed, for the purpose of getting an order of return of the vehicle from the Magistrate. In such cases, subject to a guarantee that the vehicle becomes available for the purpose of confiscation, if any, the Court has necessarily the jurisdiction to pass an order for interim custody either under section 451 or 457(1) of the Cr. P. Code, as the case may be. An order under section 451 or 457(1) of the Cr. P. Code guarantees return of the vehicle at time of the final hearing of the matter, or as and when called upon by the Court. It secures, subject to certain terms and conditions, the interim custody of the vehicle, pending the trial. In fact, the operation of section 451 or 457(1) of the Cr. P. Code comes into existence only after the vehicle is seized and brought into safe custody, as provided under section 55 of the Act. If that is so, it cannot be said that section 451 or 457(1) of the Cr. P. Code is not any way inconsistent with the scheme of the Act.....”

10. The decision of the Supreme Court in ***Sunderbhai Ambalal Desai vs. State of Gujarat***, reported in **(2002) 10 SCC 283**, and decision of the Bombay High Court mentioned above clearly reveal that, provisions of sections 41, 42, 43, 51, 53, 55, 60 and 63 of the NDPS Act do not exclude operation of sections 451 and 457(1) of the Code.

11. The decision of the Court in ***Asis Bose vs. State of West Bengal***, reported in **(2005) 2 CriLR 216** and ***Jiban Aich vs. State of West Bengal***, reported in **2003 SCC Online Cal 290**, concerning Forest Act reveal

that "vehicle used in transporting forest produce should not be released normally but can be released imposing certain conditions which will have deterrent effect on the owner and putting different conditions including condition that the said vehicle henceforth shall not be used in indulging similar type of offence in future. Besides that, the general provision laid down by the Supreme Court in *Sunderbhai Ambalal Desai* (supra) cannot be ignored as it was observed that the vehicles should not be kept in Court compound or thana compound for indefinite period till the conclusion of trial to allow the vehicle to lose its value open to sky, sun and rain. The Supreme Court and this Court clearly laid down the consideration of the Court is production of the vehicle at the time of trial and also during confiscation proceeding if any confiscation proceeding is started at all and for securing that the said vehicle is not used in similar type of offence in future. If Government fiscal policy of fetching money by auction of vehicles after confiscation proceeding is considered then also it is desirable that the vehicles should be in good condition. A vehicle if kept at thana or Court compound open to sky for indefinite period would become scrap material within a year or two for want of maintenance. A scrap material cannot fetch such money which a good conditioned vehicle would fetch."

12. It is obvious that the considerations would be the production of the seized vehicle during the trial and also during the confiscation proceeding if any such proceeding is initiated and for securing that the vehicle in question is not used for commission of any such offence in future. For the reasons foretasted and in view of the decisions hereinabove referred, this Court is of the opinion that the interim custody of the vehicle bearing No. AS12-X-0498 may be given to its registered owner/petitioner on proper verification and identification subject to

the following conditions:

- (i) The petitioner shall furnish bank guarantee of Rupees twenty five lacs before the trial court.
- (ii) The petitioner shall produce the seized vehicle before the trial Court as and when called for during the trial and also during the confiscation proceeding.
- (iii) To facilitate production of the seized vehicle before the trial Court as and when called for, the seized vehicle shall not leave the district of Biswanath till the conclusion of trial and the confiscation proceeding, without prior permission of the trial court.
- (iv) The petitioner shall not alienate the seized vehicle or change its nature and character during the pendency of the case.
- (v) The seized vehicle shall not be used for the commission of any offence.

13. The impugned order dated 31/05/2024, passed by the learned Special Judge, NDPS, Bishwanath, in Special NDPS case No. 01/2023, u/s 20 (b)(ii) (c)/27A/29 NDPS Act, 1985, is accordingly set aside.

14. The Criminal Revision Petition is disposed of accordingly.

JUDGE

Comparing Assistant