

GAHC010145442024



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

**Case No. : Crl.Pet./844/2024**

ROUSAN ALI AND ANR  
S/O JALIL ALI, R/O VILL- SARPARA, P.O.-SARPARA, P.S.-PALASBARI, DIST-  
KAMRUP, ASSAM, PIN-781122

2: SAHARUL ALI  
S/O MAKBUL ALI  
R/O VILL- TENGAGAON  
P.O.-AMGURI  
P.S.-SARBHOG  
DIST- BARPETA  
ASSAM  
PIN CODE-78131

VERSUS

THE STATE OF ASSAM  
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

**Advocate for the Petitioner** : MS. T SOM, MS. U HAZARIKA, MR H DAS

**Advocate for the Respondent** : PP, ASSAM,

**BEFORE**  
**HONOURABLE MRS. JUSTICE MALASRI NANDI**

**ORDER**

**Date : 06.08.2024**

Heard Ms. P. Som, learned counsel for the petitioners and Mr. R.J. Baruah,  
learned Additional Public Prosecutor for the State respondent.

2. The petitioners have preferred this application u/ss 482/397/401 CrPC for quashing the impugned order dated 14/06/2024, passed by the learned JMFC Rangia, Kamrup in connection with Baihata Chariali PS case No. 120/2024 u/ss 379/411 IPC read with section 41 of Assam Forest Regulation Act.
3. The background of the case is that 03/05/2024, an FIR has been lodged before the officer-in-charge of Baihata Police Station stating *inter alia* that on the strength of secret information, two vehicles bearing No. AS-26AC-1409 and AS-01QC-4622 have been intercepted at Bhomlahati and apprehended the FIR name accused persons. During search, illegal sawed woods suspected to be stolen from forest reserve, have been recovered from the aforesaid trucks. Accordingly, the recovered woods and trucks were seized as per seizure list.
4. Learned counsel for the petitioners has submitted that the petitioner No. 1 is the driver cum owner of the vehicle AS-26AC-1409 and the petitioner No. 2 is the driver cum owner of the other vehicle AS-01QC-4622. It is also submitted that on the date of incident, the present petitioners were also arrested. Subsequently, they were released on bail.
5. It is also the submission of the learned counsel for the petitioners that earlier they approached before the trial court seeking Zimma of their respective vehicles, but the prayer of the petitioners was rejected by the trial court vide order dated 14/06/2024.
6. Further submission of learned counsel for the petitioner is that while rejecting the prayer of Zimma of the aforesaid vehicles, the learned trial court has misinterpreted the order passed by this court in Criminal Petition No. 284/2022 dated 02/03/2022. In the said Judgment, this court has clearly stated in para 45 as follows –

*“In view of the reason stated above, we answer the reference by holding that at the investigation stage, seized articles cannot be released by a court u/s 451/Cr.PC. However, u/s 457 Cr.PC the criminal court has jurisdiction to give custody of seized property/articles at the stage of investigation, when those seized property are not produced before the court.”*

According to learned counsel for the petitioner, in the case in hand, the seized vehicles were produced before the court vide MR No. 132/2023. In view of the aforesaid observation it is clear that u/s 457 Cr.PC, the criminal court has jurisdiction to give zimma of the seized articles.

7. The learned counsel for the petitioners has further contended that the petitioners are the absolute owners of the aforesaid two vehicles which were seized in connection with Baihati Chariali PS Case No. 120/2024 and therefore, keeping the vehicle in the custody of the investigating authority may not be necessary for the purpose of investigation of the case.

8. Learned counsel has referred the Judgment of Hon'ble Apex Court in ***Sundarbhai Ambalal Desai vs. State of Gujarat***, reported in (2002) 10 SCC 283. In the said case, it has been held that the seized article should not be kept for long time in the police station and the Magistrate would take immediate action for considering the powers u/s 451 and 457 Cr.PC.

9. In response, learned Additional PP has produced the case diary along with the report of the investigating officer. It is submitted that as per police report both the petitioners did not produce any relevant documents regarding ownership of the seized trucks before the I.O. However, the seized trucks are no

more required for the purpose of further investigation of the case.

10. Having heard the learned counsel for the parties and on perusal of the case diary, it reveals that as per seizure list, respective vehicles were seized from the possession of the present petitioners. As per report of the I.O, as the relevant documents of the vehicles are not available with the I.O, it cannot be ascertained as to the actual owners of the seized trucks. As it is reported by the I.O that the seized trucks are no more required for further investigation of the case, this court does not find any reasonable ground to detain the seized vehicles in the Police Station.

11. In view of the Judgment of the Hon'ble Supreme Court vide Sundarbhai Ambalal Desai (Supra), it is desirable that the claim of the petitioners for interim zimma of seized vehicles is to be settled expeditiously and judiciously so as to prevent any damage to the vehicles and loss to the owners. Therefore, it is provided that the learned Magistrate shall decide the matter regarding ownership of the vehicles and release the same to interim zimma as per provision of law within a period of three weeks from the date of receipt of certified copy of the order.

12. In order to enable the learned Magistrate to decide the claim of ownership of the vehicles afresh, as per procedure, the petitioners shall file appropriate petition supported by relevant documents in original.

With the above observations, the criminal petition stands disposed of.

**JUDGE**

## **Comparing Assistant**