

GAHC010164212024



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

Case No. : Crl.Pet./987/2024

KABATULLA KHAN
S/O NURASHA KHAN, VILL- RAJGRAM, P.S.-MURARI, DIST- BIRBHUM
(WEST BENGAL)

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR F HAQUE, MR A ISLAM, MR. S K M ALOMGIR

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA

ORDER

Date : 27.08.2024

Heard Mr. F. Haque, learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Additional Public prosecutor for the State of Assam.

2. This is an application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 challenging the Order dated 27.02.2024 passed by the learned Judicial Magistrate First Class, Rangia, Kamrup in Baihata Chariali P.S. Case No.347/2023, that was registered under Sections 379/411/353/307/109 of the Indian Penal Code read with Section 13(1) of the Assam Cattle Preservation Act, and read with Section 11(1)(a)(b) of Prevention of Cruelty to Animals Act, corresponding to GR Case No.1191/2023.

- 3.** In connection with the aforesaid Case, a Truck bearing registration No.WB-45-5858 (Ashok Leyland 3718BS-IV) was seized. An application seeking custody of the seized vehicle was filed by the petitioner, who is the registered owner of the seized vehicle.
- 4.** The Court below held that, the Trial Court held that under Section 451 of the Cr.PC, at the stage of investigation the custody of the vehicle cannot be given to its registered owner.
- 5.** The Trial Court further held that the custody can be given under Section 457 of the Cr.PC. Even then the Court below rejected the prayer of the petitioner only on the ground that the Case was pending investigation.
- 6.** The Court below gave the liberty to the Investigating Officer to give the custody of the seized vehicle, if the said truck was not required for further investigation.
- 7.** I have considered the submissions made by the learned counsel of both the sides. A report from the Investigating Officer was called for but the same has not been received yet. This Court is of the opinion that the said report is not required for consideration of this prayer.
- 8.** Considering the settled principal of law regarding giving custody of the seized vehicle, this Court is of the opinion that the seized vehicle should be given in custody of its registered owner.
- 9.** Accordingly, the impugned Order dated 27.02.2024 passed by the learned Judicial Magistrate First Class Rangia, Kamrup in Baihata Chariali P.S. Case No.347/2023 is set aside.
- 10.** The custody of the vehicle bearing registration No.WB-45-5858 (Ashok Leyland 3718BS-IV) shall be given in custody of its registered owner on taking a bond of Rs.50,000/-.
- 11.** The Criminal Petition stands disposed of.
- 12.** The Investigating Officer of the Case is directed to comply with the aforesaid direction of this Court.

JUDGE

Comparing Assistant