

GAHC010197752024



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

Case No. : WP(C)/4837/2024

YAHHO MOTORS
REPRESENTED BY ITS PROPRIETOR NAMELY ABBASH SAHAR ISLAM, S/O
ISLAM ALI,
RESIDENT OF HOUSE NO. 41, PRAGATI NAGAR PATH, M.T ROAD, 2 NO.
MATHGHARIA, PS NOONMATI, GUWAHATI 781020

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE MINISTRY OF HOME AFFAIRS GOVT. OF ASSAM, DISPUR
SECRETARIATE, GUWAHATI, DISPUR GUWAHATI 781006

2:COMMISSIONER OF POLICE
GUWAHATI
GUWAHATI POLICE COMMISSIONERATE
MG ROAD
PAN BAZAAR
GUWAHATI 781001

3:THE OFFICER IN CHARGE
NOONMATI POLICE STATION
NOONMATI GUWAHATI 781020 ASSAM

4:THE OFFICER IN CHARGE
KARIMGANJ POLICE STATION
KARIMGANJ
ASSAM

5:MD. SHAKIR
S/O HAFIZ MD. HARUNUR RASHID RESIDENT OF 288
SILCHAR ROAD
JABAINPUR PART I

JOBAINPUR
DIST KARIMGANJ
ASSAM 78871

Advocate for the petitioner(s): Mr. BD Konwar, Senior Advocate
Mr. P Doley

Advocate for the respondent(s): Mr. D Nath
Senior Government Advocate, Assam

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

25.09.2024

Heard Mr. BD Konwar, the learned senior counsel, assisted by Mr. P Doley, the learned counsel appearing on behalf of the petitioner. Mr. D Nath, the learned Senior Government Advocate, Assam appears on behalf of the State respondents.

2. The petitioner herein has approached this Court under Article 226 of the Constitution challenging the actions of the respondent authorities, more particularly, the Officer-in-Charge of the Noonmati Police Station in directing the petitioner verbally to hand over the vehicle to the Police Station.

3. It is the specific case of the petitioner, as could be seen from the materials

on record that the petitioner is a proprietorship firm carrying on his business at No.2, Mathgharia, P.S Noonmati, Guwahati. The petitioner is in the business of purchasing of used cars and reselling the same. In that process, the petitioner had purchased a vehicle, i.e. Jeep Wrangler, Rubicon (2.0L) bearing registration No.AS-10H0001 from one Md. Shakir, who is the respondent No.5 in the instant proceedings. It is the claim of the petitioner that the purchase was made through a valid and lawful sale transaction conducted on 07.08.2024 and the total sale consideration which the petitioner paid to the respondent No.5 is an amount of Rs.52,50,000/-.

4. It is the further case of the petitioner that at the time of purchase, the petitioner had also entered into a deed of sale with the respondent No.5 for transfer of the said vehicle at Rs.54,00,000/-. It is the specific case of the petitioner that no action can be taken by the State respondent authorities without following the due process of law.

5. Mr. D Nath, the learned Senior Government Advocate, Assam pursuant to the notice issued on 20.09.2024 has submitted an instruction(s) before this Court in connection with the vehicle i.e. registered as AS-10H0001 and submits that an FIR was filed on 06.09.2024 against the respondent No.5 and his agents on the ground that the said respondent No.5 and his agents have been involved in financial schemes. It has been further stated that the respondent No.5 and his accomplices were involved in collection of unregulated deposits from the public in huge quantity and gave them false promises to invest in stock market and guaranteed impractically heavy returns which never materialized. On the basis of the said allegations, a police case was registered being Karimganj Police Station Case No. 543/2024 under Sections 120-B/420/406/409 of the Indian Penal Code read with Sections 21(1)/21(2)/21(3) of the Banning of Unregulated

Deposit Schemes Act, 2019.

6. It has also been mentioned that during investigation, it came to light that the respondent No.5 had fraudulently looted a huge amount of money from the innocent public by promising high returns and have acquired various properties including the vehicle, in question, i.e. registered as AS-10H0001 by paying an amount of Rs. 80,00,000/-. It has also been mentioned that during the course of the investigation, it came to light that the same vehicle was kept in the campus of the petitioner which is under Noonmati Police Station and as such, for the interest of further investigation of the case, an email was sent to the DCP, Central Guwahati with copies to the Commissioner of Police, Guwahati and O/C of Noonmati Police vide an email dated 12.09.2024 for assisting the Investigating Officer of the case and to seize the vehicle accordingly.

7. It was further mentioned that when the officials of the Noonmati Police Station had visited the petitioner's campus, they informed the detailed Police team that they would hand over the vehicle within 2/3 days after consulting the records of the vehicle. But they have not cooperated.

It is under such circumstances that steps were being taken under Section 107 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'BNSS'), through the Superintendent of Police, Karimganj for attachment and forfeiture of the property of the respondent No.5, who is still absconding to evade police arrest. It is also stated that on 24.09.2024, the Office of the Superintendent of Police Karimganj has also made a prayer for attachment of the vehicle under Section 107 of the BNSS.

8. I have heard the learned counsels appearing on behalf of the parties.

9. This Court would not like to go into the merits in so far as the transactions

carried out between the petitioner and the respondent No.5 is concerned. The question which arises before this Court is as to whether the respondent Nos.3 and 4 can be permitted to take steps by verbally directing the petitioner to hand over the vehicle, in question, which is registered as AS-10H0001. The answer has to be negative, *inasmuch as*, the provisions of Section 107 of the BNSS provides a particular procedure in the manner, in which any property could be attached or forfeited, and the same would be depend upon orders to be passed by the Court or the Magistrate after having taken into consideration the provisions of Sub-Sections (2), (3) and (4) of Section 107 of the BNSS.

10. Under such circumstances, this Court, therefore, disposes of the instant writ petition, thereby directing the respondent authorities, more particularly, the respondent Nos.3 and 4 not to take any steps for recovery of the vehicle from the petitioner, unless and until due steps are taken in terms with Section 107 of the BNSS.

11. Taking into account that there is no transfer of the vehicle in question, in favour of the petitioner in accordance with the provisions of the Motor Vehicles Act, 1988, this Court further directs the petitioner not to put to use the vehicle, or alienate or transfer the same to third parties.

12. With the above, the writ petition stands disposed of.

13. The instruction(s) so produced by Mr. D Nath, the learned Senior Government Advocate Assam is kept as part of the record and marked with the letter 'X'.

14. The petitioner would be at liberty to take the certified copy of the documents kept on record and marked with the letter 'X'.

JUDGE

Comparing Assistant