

GAHC010211682024



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

Case No. : W.P.(Crl.)/32/2024

SAHID AHMED
S/O FAISOL AHMED, R/O VILL- MACHLI, P.O.-BHANGA BAZAR, P.S.-
BADARPUR, DIST- CACHAR, ASSAM. POWER OF ATTORNEY
HOLDER/AUTHORIZED REPRESENTATIVE OF BAHARUL ISLAM, S/O
SAMSUL HOQUE, R/O VILL- BADEUTTAR, P.O.-BHANGA BAZAR,
MIRJAPUR PT I, BHANGA BAZAR, KARIMGANJ, ASSAM, 788701

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:THE OFFICE IN CHARGE
SILCHAR
P.O. AND P.S.-SILCHAR
DIST- CACHAR
ASSAM-78800

Advocate for the Petitioner : MR. R P SARMAH, MS. J GHOSH, MRS. R RONGMEI

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

**BEFORE
HONOURABLE MR. JUSTICE PARTHIVJYOTI SAIKIA**

ORDER

23.10.2024

Heard Mr. R P Sarmah, learned senior counsel for the petitioner, assisted by Mrs. R Rongmei, Advocate. Also heard Ms. U Sarmah, learned Junior Government Advocate, Assam for the respondent no. 1 and Mr. R R Kaushik, learned Additional Public Prosecutor, Assam for the respondent no. 2.

This is an application filed under Article 226 of the Constitution of India challenging the order dated 13.09.2024 passed by the learned Chief Judicial Magistrate, Cachar, Silchar in Silchar P.S. Case No. 548/2024.

In the aforesaid police case, approximate 11,500 kg. of areca nuts (betel nuts) were seized. Petitioner filed an application seeking custody of those items.

A Report from the Food Safety Officer was called for. From the said Report, it was found that the seized areca nuts were not fit for human consumption. Therefore, the court of the learned Chief Judicial Magistrate refused the prayer for custody.

Thereafter, in view of the judgment of the Hon'ble Apex Court, passed in ***Sundarlal Ambala Deshai v. State of Gujrat***, reported in ***(2002) 10 SCC 283***, the learned Chief Judicial Magistrate directed the Investigating Officer to expedite the investigation and, thereafter, directed the Investigating Officer to give custody of the seized areca nuts to its owner on certain conditions.

Mr. Sarmah, learned senior counsel for the petitioner has submitted that the seized areca nuts might not be suitable for human consumption but the same can be used in perfume industry.

Per contra, Ms. Sarmah, learned Junior Government Advocate, Assam has submitted that, this court in Criminal Petition 504/2022 rejected an order passed by the learned Chief Judicial Magistrate allowing custody of seized areca nuts.

I have gone through the said order. That order was passed because the learned Chief Judicial Magistrate did not procure any Report from the Investigating Officer.

I have considered the submissions made by the learned counsel of both sides.

This court is of the opinion that the impugned order suffers from infirmities. In one part, the court rejected the prayer and in other part, allowed the Investigating Officer to give custody of the seized areca nuts after completion of the investigation.

The learned trial court should have followed the guidelines prescribed in ***Sundarlal Ambala Deshai v. State of Gujrat***, reported in ***(2002) 10 SCC 283***.

Keeping areca nuts in Police custody will not serve any purpose in investigation of the case. Therefore, the order dated 13.09.2024 passed by the learned Chief Judicial Magistrate, Cachar, Silchar in Silchar P.S. Case No. 548/2024 is set aside. The seized areca nuts shall be given to its owner, after verification of documents and on taking a bond of Rs.1,00,000/- [Rupees One Lakh). The other conditions, as laid down in ***Sundarlal Ambala Deshai*** [supra] shall be complied by the Investigating Officer.

With the above, the present WP (CrI.) is disposed of.

JUDGE

Comparing Assistant