

GAHC010219032024



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

Case No. : Crl.Rev.P./418/2024

MD. AMIR UDDIN AND ANR
S/O ABDUL MAMIN
VILL- BHAGAMUR
P.S. SAMAGURI
DIST. NAGAON, ASSAM

2: MD. SIRAJ UDDIN
S/O NUR UDDIN
R/O VILL- SONARIBALI
P.S. SAMAGURI
DIST. NAGAON
ASSA

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR. T CHUTIA, MS S NASRAT

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 06.11.2024

Heard Mr. T. Chutia, learned counsel for the petitioners. Also heard Mr. B.

Sharma, learned Additional Public Prosecutor representing the State of Assam.

2. The petitioners namely, Md. Amir Uddin and Md. Siraj Uddin have filed this application u/s 438/442 read with section 528 of BNSS, 2023, against the impugned order dated 19/09/2024 passed by the learned Sessions Judge, Morigaon in connection with Jagiroad P.S. Case No. 139/2024, whereby the prayer of the petitioners were rejected for giving zimma of the vehicle bearing No. AS-01-HC-9583 to the petitioner No. 1 and the vehicle bearing No. AS-02-CC-2289 to the petitioner No. 2, seized in connection with the Jagiroad P.S. Case No. 139/2024.

3. The brief facts of the case is that an FIR has been lodged on 19/07/2024 before the In-charge, Nellie outpost under Jagiroad Police station stating *inter alia* that the informant along with some other police personnel intercepted a vehicle bearing No. AS-01-PC-0114 at Silsang truck terminal but the driver of the said vehicle fled away from the spot. On being searched of the vehicle, 23 Nos. of bulls were found loaded in the said truck which were carried in very congested and cruel manner without any valid documents. Further, during inquiry on the same day, another information was received that 37 nos. of cattle were found at jungle near Nellie Eidgarh field. Accordingly, the informant seized the recovered cattle in presence of the witnesses. Subsequently, a case was registered vide Jagiroad P.S. Case No. 139/2024 u/s 61(2)/303(2) of BNS, 2023 read with section 13 (1) of Assam cattle preservation Act., 2021 and section 11(1)(a)(b) of the Prevention of Cruelty to Animals Act, 1960.

4. Learned counsel for the petitioners has submitted that neither the petitioners are FIR named accused nor involved in the alleged offence. The petitioner No. 1 is the owner of the vehicle bearing No. AS-01-HC-9583 and

petitioner No. 2 is the owner of the vehicle bearing No. AS-02-CC-2289 and the drivers of both the vehicles transported cattle in the said vehicles for agricultural purposes without the knowledge of the petitioners and both the vehicles have been seized in connection with Jagiroad P.S. Case No. 139/2024.

5. It is further submitted that both the vehicles were seized on wrong information received from unknown source. The drivers failed to produce the relevant documents as the same were lying with the owners of the cattle. The petitioners being the owner of the seized vehicles have preferred an application before the jurisdictional Magistrate seeking custody of the said vehicles but the prayer of the petitioners were rejected on the ground that the investigating officer reported that the petitioners did not co-operate with the investigation.

6. According to learned counsel for the petitioners, the seized vehicles owned by the petitioners are lying under the open sky at the police station and are exposed to various natural vagaries. Under such circumstances, there is every likelihood of the vehicles being damaged by such exposure to sun, rain etc. In absence of proper care and handling, which may cause irreparable loss to the petitioners. As the petitioners are the registered owners of the vehicles, the petitioners may be allowed to take zimma of such vehicles.

In support of his submissions, learned counsel has referred the following case laws –

a. AIR 2003 SC 638 (Sundarbhai Ambalal Desai vs. State of Gujarat)

7. Learned counsel has pointed out that in the said case, Hon'ble Supreme court has observed that the concerned Magistrate should take immediate

action to release the vehicle on zimma in favour of the registered owner. It is also observed in the said case that the articles are not kept for a long time at the police station or elsewhere in any case for not more than 15 days to one month.

8. In response, learned Additional Public Prosecutor has opposed in releasing the seized vehicles in favour of the petitioners by stating that as per report of the investigating officer, it has come to light that the vehicles of the petitioners are involved in carrying the cattle from Assam to Meghalaya and Bangladesh through Nellie area under Jagiroad police station. It is also submitted that the petitioners did not disclose the names of the drivers of their vehicles from which 117 nos. of cattle were recovered and seized. It transpires that the petitioners are also involved in interstate cow smuggling.

9. Having heard the learned counsel for the parties and on perusal of the report of the investigating officer, it reveals that from the seized vehicles 36 nos. of bulls were recovered and no any valid documents of the seized bulls which were found inside the vehicle and livestock carrying permit from competent authority was submitted. It is also reported that though the petitioners appeared before the I/O but they did not disclose the names and address of their drivers. The owners of the vehicles stated that the drivers of their vehicles are involved in transporting cattle from Assam to Meghalaya without their knowledge.

10. It appears that the case is under investigation. As the owners of the vehicles did not disclose the names of their drivers who are alleged to be involved in smuggling of cows from one State to another and the fact is not denied by the petitioners, it transpires that the petitioners did not co-operate

with the investigation. Hence, prayer for zimma of the vehicles is rejected. However, the custody of the vehicle can be considered at any stage either during investigation or trial but in the instant case as it appears that the vehicles are required for further investigation of the case, this court is hesitant to pass any order relating to zimma of the seized vehicles.

11. The Criminal Petition is disposed of accordingly.

JUDGE

Comparing Assistant