

GAHC010233022023



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

Case No. : Crl.Pet./1113/2023

IRSHAD KHAN
S/O BABU KHAN
R/O MOHALLA BANJARI KUA, NARAULI
SAMBHAL, P.O. AND P.S. BANIATHER, DIST. SAMBHA, UTTAR PRADESH.

VERSUS

THE STATE OF ASSAM, TO BE REP. BY THE LEARNED PP, ASSAM

Advocate for the Petitioner : MR S DEWRI
Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 22-02-2024

Heard Mr. S. Nawaz, learned counsel for the petitioner and also heard Mr. P. S. Lahkar, learned Addl. P.P. for the State respondent.

In this petition u/s 482 Cr. P. C, the petitioner has prayed for modification of the order dated 29.4.2023 passed by learned Sessions Judge, Sivasagar.

It is to be noted herein that vide impugned order dated 29.4.2023, the learned Sessions Judge, Sivasagar has allowed the petitioner, who is the registered owner of the vehicle bearing registration No.UP-21/CT-1540 to take custody of the same on his furnishing bank guarantee of Rs.8,00,000/- .

The background facts leading to filing of present petition is briefly, stated as

under:

“The petitioner, Md. Irshad Khan is the registered owner of a vehicle being registration No.UP-21/CT-1540 and he purchased the same by obtaining loan from Mannapuram Finance Ltd and used to pay monthly equated installment @ Rs. 23,445/- per month and thereafter, the petitioner has sold the vehicle to one Mokbul Hussain by executing an agreement on 14.2.2022. Thereafter, the said vehicle was seized by the Sivasagar Police Station in connection with Sivasagar P.S. Case No. 18/2022. Thereafter, Mokbul Hussain filed an application before the learned Chief Judicial Magistrate, Sivasagar and the said petition was assigned to learned Addl. C.J.M. Sivasagar and the learned Addl. CJM , Sivasagar vide order dated 4.3.2022, has directed the I.O. to hand over the seized Truck to the petitioner, on obtaining zimma nama for an amount which is equivalent to the current market price of the vehicle, to the satisfaction of the I.O. After passing of the aforesaid order for almost a month, Mokbul Hussain has failed to take zimma of the vehicle, as he could not appear before the police, on account of pending of several cases against him. Thereafter, the original owner Md. Irshad Khan has filed a petition before the Addl. C.J.M., Sivasagar seeking custody of the aforesaid vehicle being the registered owner. But, the learned Court below has dismissed the said petition vide order dated 27.4.2022. Then against the said order, the present petitioner has preferred an appeal before the learned Sessions Judge, Sivasagar which has been registered as Crl. Appl. No. 21(3)/2022, and in the said criminal appeal, the learned Sessions Judge, after hearing both the parties directed that the seized Truck be released in the custody of the petitioner on his furnishing bank guarantee of Rs. 40,00,000/-.”

The petitioner being unable to furnish the aforementioned bank guarantee has

filed another application before the learned Sessions Judge, Sivasagar for reducing the bank guarantee amount and thereafter, the learned Sessions Judge vide order dated 29.4.2023 reduced the bank guarantee amount to 8,00,000/- from Rs. 40,00,000/-.

Being unable to furnish the aforementioned bank guarantee to the learned Court below, the petitioner approached this Court to modify the order dated 29.4.2023 to the extent that instead of directing the petitioner to furnish bank guarantee of Rs. 8,00,000/-, the same may be modified to indemnity bond of Rs. 8,00,000/-, as the petitioner is not in a position to furnish the aforementioned bank guarantee, on account of his poor financial condition.

Having heard the learned Advocates of both sides and also considering the fact that petitioner is unable to furnish bank guarantee of Rs. 8,00,000/- and further considering the fact that the vehicle was seized on 9.1.2022 and since then the same is lying unattended and exposing to the sun and rain, in the P. S.

Campus, this Court inclined to allow this petition.

It is provided that on furnishing indemnity bond of Rs. 8,00,000/-, the seized vehicle be released in the interim custody of the petitioner, the other terms and conditions so imposed by learned Court below, shall remain same.

In terms of above, this Criminal petition stands disposed of.

JUDGE

Comparing Assistant