

GAHC010254272023



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

Case No. : Crl.Rev.P./483/2023

BISHWAJIT DEY
S/O NISHI DEY
21, AMAR NATH PATH,
NEAR AMAR NATH SHIV MANDIR
P.O. BELTOLA, P.S. DISPUR,
DIST. KAMRUP (METRO), ASSAM

VERSUS

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

Advocate for the Petitioner : S AHMED

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE ROBIN PHUKAN
ORDER

23.01.2024

Heard Mr. S. Ahmed, learned counsel for the petitioner and also heard Ms.

A. Begum, learned Addl. P.P. for the state respondent.

2. In this petition, under section 397/401 Cr.P.C. the petitioner, namely, Shri Biswajit Dey, has put to challenge the correctness or otherwise of the order dated 09.10.2023, passed by the learned Addl. Sessions Judge Karbi Anglong, Diphu, in Dillai Police Station Case No. 32/2023, corresponding to G.R. Case No. 150/2023, under section 21(b) of NDPS Case.

3. It is to be noted here that vide impugned order dated 09.10.2023, the learned Court below has dismissed the petition filed by the petitioner seeking custody of the vehicle, bearing registration No.AS-01-NC-4355, which was seized in connection with the aforementioned case.

4. The background fact leading to seizure of the aforementioned vehicle in Dillai Police Station Case No. 32/2023, corresponding to G.R. Case No. 150/2023, under section 21(b) of NDPS Case, is that on 10.04.2023, at about 06.20 hrs, acting on a tip off, S.I. Rajib Borah of Dillai P.S. had intercepted one Truck, bearing registration No. AS-01-NC- 4355, at N.H. 36, in front of Laharijan P.P. and found one Joherul Ali in the driving seat and another person, namely, Dimpul Ali, in the vehicle and having been checked the vehicle he had recovered 24.8 grams of suspected Heroin and seized the same along with the vehicle, preparing seizure list. And during interrogation the driver stated that the seized contraband article belongs to Dimpul Ali, who had boarded in the vehicle from Dimapur.

5. Mr. Ahmed, learned counsel for the petitioner submits that the petitioner is the registered owner of the vehicle and that he had purchased the same from Financial Company on hire purchase and that he has to pay monthly installment of the vehicle to the company and that since the date of seizure the vehicle is

lying unattended in the P.S. Campus and exposing to the sun and rain and unless given in the custody of the petitioner, the same will be rendered useless and the learned Court below, and while passing the impugned order, has ignored this fact completely. Mr. Ahmed also submits that the petitioner will produce the vehicle before the learned court below as and when directed. Therefore, it is contended to allow this petition. Mr. Ahmed also referred a decision of a co-ordinate Bench of this court in CrI. Pet. No.1031/2022, wherein custody of vehicle has been allowed.

6. Per contra, Ms. A. Begum, learned Addl. P.P., has vehemently opposed the petition. Ms. Begum submits that there are sufficient materials to show the involvement of the vehicle in carrying contraband substances and that after investigation, charge sheet has already been submitted before the learned court below and at the end of trial the vehicle will be required for confiscation in the event of the charge being proved and therefore, Ms. Begum has contended to dismiss the petition.

7. Having heard the submission of learned Advocates of both sides, I have gone through the petition and the documents placed on record. Also perused the scanned copy of the record of learned court below.

8. It is not in dispute that 24.8 grams of suspected Heroin was recovered and seized from the Truck, bearing registration No. AS-01-NC- 4355, at N.H. 36, in front of Laharijan P.P. and one Joherul Ali was found in the driving seat. It is also not in dispute that the petitioner is the registered owner of the vehicle. Also it appears from the record of the learned court below that after completion of investigation, the I.O. has already laid charge sheet and the learned court below had also framed charge against the accused Dimpul Ali on 29.11.2023 and now

the case is pending for evidence.

9. Also it appears that in the case in hand, the learned court below had dismissed the petition on the ground that the vehicle was involved in commission of the offence and that the case has been charge sheeted and the trial is pending.

10. It is to be noted here that in the case of **Union of India vs. Dinesh Kumar Verma** reported in **(2005) 9 SCC 330**, Hon'ble Supreme Court has set aside the order of High Court releasing the vehicle seized in connection with violation of the provision of the NDPS Act, to the respondent of the said case, considering the facts and circumstances of the said case, and directed to surrender the same.

11. I have also gone through the order of the co-ordinate bench of this court in Crl. Pet. No.1031/2022, dated 02.03.2023. There is no bar as such in the NDPS Act in releasing the seized vehicle in the interim custody of the registered owner. Section 41/42/43/51/53/55/60 and 63 of NDPS Act do not exclude operation of section 451/457 Cr.P.C.

12. But, herein this case the trial has already started after framing of charge. And as such requirement of the vehicle during trial cannot be ruled out at this stage. Thus, having examined the impugned order in the light of given factual situation, this court is of the view that the learned court below has rightly dismissed the petition filed by the present petitioner. The impugned order, as such suffers from no infirmity or illegality requiring any interference of this court. Accordingly, the same stands dismissed. However, the learned court below is directed to make an endeavor to dispose of the case as expeditiously as possible.

13. In terms of above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant