

GAHC010254802024



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

Case No. : Crl.Pet./1468/2024

RAJAN SIDANA
S/O SURESH SIDANA
R/O HOUSE NO. 1674
PHASE-1, PDUGRI
P.S. DUGRI
DIST. LUDHIANA, PANJAB

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR. S MUNIR, MR K HUSSAIN, MR P KALITA

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 17-12-2024

Heard Mr. S. Munir, the learned counsel for the petitioner. Also heard Ms. S.H. Bora, the learned Additional Public Prosecutor appearing on behalf of State

respondent.

2. This is an application u/s 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 for setting aside/quashing of the impugned order dated 13.06.2024 passed by the learned SDJM(S) No. 1, Kamrup (M) in connection with Cyber P.S. (Guwahati) Case No. 08/2023, u/s 120(B)/ 419/ 420/ 385/ 467/471/468/507 IPC, R/W Sections 65/66/66B/66C/66D IT Act, rejecting the prayer for Zimma of seized Golden articles and Case amount of the petitioner.

3. Report is received from the Investigating Officer and perused the same.

4. It is submitted by Mr. Munir that during the search and seizure the following articles were seized from the possession of the petitioner:-

- i. One Golden Colour Metallic neck chain – weight - 72 grams approx.
- ii. One Golden Colour Metallic neck chain – weight - 11 grams approx.
- iii. One Golden Colour Metallic male bangle of 70 grams approx.
- iv. Two nos. of Golden Colour Metallic bangle - weight 17 grams approx., and
- v. Cash amount of Rs. 1,32,000/- was seized from the present accused-petitioner along with other articles like I-phones, SIM Cards etc.

5. The petitioner earlier filed the petition seeking zimma of the gold articles and a cash amount of Rs. 1,32,500/- which was seized from his possession but the learned Court below vide order dated 13.06.2024 had rejected the prayer of

Zimma considering the report of the Investigating Officer wherein it is stated that the petitioner could not produce any receipt etc. of those articles and also it is observed that the articles may be required for further investigation. After rejection order passed by the learned Court below the present criminal petition has been filed seeking zimma of gold articles and a cash amount of Rs. 1,32,500/-.

6. Mr. Munir further submitted that this is a case of cyber crime and hence he is not seeking the zimma of other articles like I-phones, SIM Cards etc. but only the gold articles and the cash amount is sought for zimma by the petitioner. Mr. Munir further submitted that he could not produce any money receipt etc. before the Investigating Officer as these are not available with them and those articles were received by him only at the time of his marriage as a gift and hence it is a fact that there is no receipt of gold articles with the petitioner. Accordingly, he submitted that those articles may not be required for further investigation of the case as the articles is not the subject matter of further investigation of the case where the allegation against the petitioner is of cyber crime.

7. Ms. S.H. Bora, the learned Additional Public Prosecutor submitted in this regard that from the report of the Investigating Officer it is seen that the articles may be required for further investigation of the case. At the same time the zimma could not be given to the present petitioner as he failed to produce any receipt etc. before the Investigating Officer. However, the learned Court below while rejecting the prayer for zimma dated 06.03.2024, the petitioner and others were directed to approach the Investigating Officer with a prayer for

zimma. Further she submitted that cash amount is already deposited in the Government Treasury.

8. In this context, Mr. Munir submitted that after earlier rejection order dated 06.03.2024, the petitioner and others again approached the Investigating Officer seeking zimma of those articles but the Investigating Officer refused to handover the same as the petitioner could not produce any money receipts etc. and thereafter only the petitioner again approached the learned Trial Court below with a fresh petition for zimma of the gold articles and the cash amount which was also rejected vide order dated 13.06.2024 and hence the present petition has been filed.

9. Hearing the submissions made by learned counsel for both sides, I have also perused the Case Diary and the reports submitted by the Investigating Officer and also the annexure. It is an admitted fact that those gold articles and cash amount of Rs. 1,32,000/- were seized from the exclusive possession of the present petitioner along with some other articles. In the report of the Investigating Officer it is mentioned that the ownership of those articles are yet to be verified and in the same time it may be required for further investigation of the case. Further it is reported that the petitioner could not produce any receipts etc. for the said articles. Further the cash amount of Rs. 1,32,500/- has already been deposited in government treasury during the investigation of the case.

10. But, it is seen that as there is no mention as to how or in what manner the articles may be required for further investigation of this case and at the same time it is also not mentioned as to whether the articles were required to be sent for FSL for examination purpose. It is also admitted fact that there is no other claim from any other person for those gold articles which were seized from the

person of the present petitioner nor there is any allegation of theft against the present petitioner of those articles.

11. In view of above, the present petition is allowed by setting aside the order passed by the learned Trial Court below dated 13.06.2024 in respect of the order of zimma prayer made by the present petitioner. He is hereby directed to file a fresh petition before the learned Trial Court below seeking zimma of the gold articles and the cash amount and the learned Trial Court below will dispose of the petition in accordance with law and an order of furnishing of indemnity bond may also be passed, if required.

12. With the above observations, the criminal petition stands disposed of.

JUDGE

Comparing Assistant