

GAHC010270552023



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

Case No. : Crl.Rev.P./528/2023

KABATULLA KHAN
S/O NURASHA KHAN
VILL- RAJGRAM
P.S. MURARAI
DIST. BIRBHUM (WEST BENGAL)

VERSUS

THE STATE OF ASSAM
REP. BY THE PP, ASSAM

Advocate for the Petitioner : MR F HAQUE

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA

ORDER

04.01.2024

Heard Mr. F. Haque, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned Additional Public Prosecutor, Assam.

This application under Section 397/401 read with Section 482 of the Code

of Criminal Procedure, 1973 has been filed by the petitioner, namely, Kabatulla Khan, impugning the order dated 22.11.2023, passed by the learned Judicial Magistrate First Class, Rangia, Kamrup in Baihata Chariali P.S. Case No. 347/2023, whereby, the prayer for Zimma of a vehicle seized in connection with the aforementioned case was rejected by the learned Judicial Magistrate First Class, Rangia, Kamrup on the ground that under Section 457 of the Code of Criminal Procedure, 1973, a criminal Court does not have jurisdiction to give the custody of seized property/article at this stage of investigation and those seized property are not produced before the Court.

Learned counsel for the petitioner has submitted that the vehicle bearing Registration No. WB-45-5858 (Ashok Leyland 3718BS-iv) owned by the present petitioner was seized in connection with the Baihata Chariali P.S. Case No. 347/2023 on 08.11.2023 and since the date of seizure it has been lying at the Baihata Chariali Police Station under the open sky.

Learned counsel for the petitioner has also furnished the registration certificate of the said vehicle to show his ownership over the said vehicle.

Learned counsel for the petitioner has also submitted that the learned Judicial Magistrate First Class, Rangia, Kamrup had erred in observing in the impugned order that under Section 457 of the Code of Criminal Procedure, 1973, the Criminal Court does not have the jurisdiction to give the custody of a vehicle if it is not produced before the Court and in support of his submission, learned counsel for the petitioner has cited a ruling of Division Bench of this Court in Criminal Petition No.284/2022 (***State of Assam and Another Vs. Ram Sankar Maurya***) wherein, the Division Bench dealing with similar other petitions had disposed of a number of criminal petitions by order dated 02.03.2023 and had held as follows:-

"In view of the reasons stated above, we answer the reference by holding that at the investigation stage, seized articles cannot be released by a Court under Section 451 Cr.P.C. However, under Section 457 Cr.P.C., the Criminal Court has the jurisdiction to give custody of seized property/articles at the stage of investigation, when those seized property are not produced before the Court."

On the other hand, learned Additional Public Prosecutor has submitted that there is no report from the Investigating Officer as to whether the seized vehicle is required for further investigation or not.

I have considered the submissions made by the learned counsel for both the sides. The Apex Court in the case of "***Sunderbhai Ambalal Desai Vs. State of Gujarat***" reported in (2022) 10 SCC 283 has observed as follows:-

"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."

In view of the observations made by the Apex Court in ***Sunderbhai Ambalal Desai*** (supra), there is no use of keeping the seized vehicle in Police Station for a long period and it is for the Magistrate to pass appropriate order for granting Zimma of the said vehicle.

Further, in view of the judgment of the Division Bench in ***State of Assam and Another Vs. Ram Sankar Maurya*** (supra), it also appears that under Section 457 of the Code of Criminal Procedure, 1973, the Criminal Court has the jurisdiction to give the seized property/article at the stage of investigation even

when those articles are not produced before the Court.

In view of the above discussion, the observations made by the learned Judicial Magistrate First Class, Rangia, Kamrup in impugned order needs interference by this Court. Accordingly, the impugned order dated 22.11.2023 is hereby set aside and the learned Judicial Magistrate First Class, Rangia is directed to consider the prayer of grant of Zimma of the seized vehicle to the present petitioner in the light of the judgment passed by the Division Bench of this Court in the State ***of Assam and Another Vs. Ram Sankar Maurya*** (supra).

With the above observations, the instant Criminal Revision Petition is hereby disposed of.

JUDGE

Comparing Assistant