

GAHC010272452023



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

Case No. : Crl.Pet./1276/2023

DP LIYAQUAT ALI
S/O LATE MD. JAHUR ALI, R/O NEAR KHONG NANG MAKHONG, LILING
HAORE, IBI MAKHA LEIJAI, THOUBAL, P.O.-LILONG, P.S.-LILONG, DIST-
THOUBAL, MANIPUR, PIN-795130

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. S MUNIR

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

28.02.2024

Heard Mr. S Munir, learned counsel for the petitioner. Also heard Mr. MP Goswami, learned Additional Public Prosecutor, Assam for the respondent State.

2. This is an application under Section 482/401 of the Cr.P.C against the impugned order dated 06.11.2023 passed by the learned Special Judge, Karbi Anglong under Sections 451/457 Cr.P.C. in connection with Khatkhati P.S. Case No.105/2022 whereby the prayer of the petitioner for seeking zimma of the TATA Truck bearing registration No.MN019912 was rejected.

3. The prosecution case in brief is that a TATA Truck bearing registration No.MN019912 was seized in connection with Khatkhati P.S. Case No.105/2022 as large quantity of narcotic substances were recovered from the said vehicle. The present petitioner is the owner of the vehicle, in question. The petitioner had prayed before the learned Special Judge, Karbi Anglong Diphu praying to give zimma of the said vehicle on the ground that the vehicle was lying in the police station for about one year. The learned trial court after hearing the parties and considering the nature of offence rejected the prayer to give temporary zimma of the vehicle to the petitioner, who is the registered owner.

4. It is submitted by the learned counsel for the petitioner that though the petitioner is the registered owner of the vehicle in question, but he is no way connected with the alleged offence. He had no knowledge regarding carrying of the narcotic substances in his vehicle. The driver and the handyman of the vehicle have already been arrested in connection with the alleged offence. As the petitioner is the registered owner of the offending vehicle, he may be allowed to take the zimma of the said vehicle.

5. The learned counsel for the petitioner contends that while dealing with the

seized vehicles from time to time by the police either in commission of various offences or abandoned vehicles or vehicles which are recovered during investigation of complaint of theft etc., the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai Vs. State Of Gujarat* reported in (2002) 10 SCC 283 has held as under:

“In our view, whatever be the situation, it is of no use to keep such used vehicles in the police stations for a long period of time. 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 case where a vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured by the Insurance Company then the Insurance Company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If the Insurance Company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.”

6. On the other hand, the learned Additional Public Prosecutor, Assam has submitted that the present petitioner is one of the accused in the alleged offence and he was not available during investigation. The petitioner took active part in the alleged offence of carrying the narcotics substances in his vehicle from Dimapur to Guwahati. Under such backdrop, zimma of the vehicle may not be granted to the petitioner at this stage.

7. As regards the seizure of any article or thing the provisions of Cr.P.C shall apply

if it is not inconsistent with the provisions of the NDPS Act. On a bare perusal of the various provisions of the NDPS Act, it appears that there is no specific provision debarring the release of the vehicle seized under the Act. When the provision under Section 451 Cr.P.C is not inconsistent with any specific provision under the NDPS Act, the same will have to be applied as mandated under Section 51 of the said Act.

8. The learned Special Judge, Karbi Anglong has rejected the zimma prayer of the petitioner in respect of the vehicle bearing No. NMO1 9912 on the ground which reads as follows:

“In the case at hand, the prosecution case is that this vehicle was used for transportation of drugs. The drugs seized were of commercial quantity and the seizure took place in presence of the District SP.

Having considered the nature of the offence and the power conferred to the authority to confiscate such vehicle, I am not inclined to grant temporary custody/zimma of the vehicle to the registered owner.”

9. It reveals that a vehicle used for committing a murder was being released in the garb of Section 451 of the Cr.P.C as interpreted by the Hon’ble Supreme Court in *Sunderbhai Ambalal Desai* (supra). When a vehicle seized in such heinous crime are released for interim custody, there is no logic in denying interim custody of the vehicle seized under the NDPS Act. Neither the State nor the owner of the vehicle is going to be benefited if the vehicle in the premises of the police station occupies a larger space posing inconvenience to the police department. Further, it is an open secret that when a vehicle is parked unattended the valuable parts of the vehicle are casually taken away or stolen. Finally when the court comes to a conclusion that the vehicle was used for committing a crime, the vehicle which was kept in the open would have substantially deteriorated. Likewise, if the court takes a final decision that the vehicle

was not at all used for commission of the crime or the vehicle was used without the knowledge of the owner thereof, the owner will have to collect only the scrap of the vehicle. In other words, nobody is going to be benefited out of idle parking of vehicle totally unattended in the premises of the police station.

10. A conveyance seized under the NDPS Act are liable for confiscation only when the owner of the conveyance who was given an opportunity by the Court could not prove that the conveyance was used without his knowledge or connivance. The Court will have to decide whether a vehicle seized under the NDPS Act is liable to confiscation only on conclusion of trial. The trial court has to take independent decision on the question of confiscation irrespective of the conviction or acquittal or discharge recorded by it. But at any rate, the trial court is not supposed to pass any order of confiscation before expiry of one month from the date of seizure or without affording opportunity to the claimant.

11. In the case at hand, there is no dispute that the petitioner is the owner of the vehicle, in question, having all the documents with regard to his vehicle. It is claimed by the petitioner that his vehicle be released as per provisions of the Cr.P.C. in the light of the decision in *Sunderbhai Ambalal Desai* (supra). If we go through the general provision in this regard in the Cr.P.C, the seized vehicle can be released as per Section 451/457 of the Cr.P.C, but in the instant case, the vehicle has been seized under the provisions of the NDPS Act, and NDPS Act admittedly is a special Act which prescribes a procedure for dealing in specified case and NDPS Act being a special statute, the provisions of special statute has to be followed by the Court.

12. In the case of *Union of India Vs. Mohal Lal and Another* reported in (2016) 3 SCC 379, the Apex Court held that when any narcotic drug, psychotropic controlled

substances and conveyances are seized, shall be forwarded to the Officer-in-Charge of the police station, who shall approach the Magistrate concerned and with his permission, the sampling shall be done under the supervision of the Magistrate. Further it is directed by the Apex Court that the Central Government and its agencies and so also the State Governments shall within six months take appropriate steps to set up storage facilities for the exclusive storage of seized narcotic drugs and psychotropic controlled substances and conveyances.

13. In the present case, the learned Additional Public Prosecutor has admitted that no confiscation proceeding is pending in connection with the vehicle, in question. As in the NDPS Act, no procedure for interim custody of the vehicle is prescribed, Section 451 and 457 of the Cr.P.C specifically deal with the custody and disposal of the property pending trial and the procedure to be followed by the police upon seizure of property.

14. In view of the above, this Court is of the opinion that the law laid down by the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai* (supra) will apply to the vehicle seized under the NDPS Act as well. Thus the Magistrate/Special Judge NDPS Act shall have the power to consider the application for interim custody of the seized vehicle.

15. Accordingly, this criminal petition is disposed of with a direction to the petitioner to approach before the trial court with an appropriate application seeking zimma of the alleged vehicle and upon considering the relevant documents regarding ownership of the vehicle, the learned trial court shall consider the zimma application of the petitioner in accordance with law.

16. In terms of the above, this criminal petition stands disposed of.

JUDGE

Comparing Assistant