

GAHC020005702024

2024:GAU-NL:561



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

Case No. : CRL.REVN/9/2024

SHRI BHIM PRASAD VETWAL
S/O RODRA PRASAD VETWAL,
R/O SHANTIPUR KANGLATONGBI, IMPHAL, WEST MANIPUR-795136

VERSUS

THE STATE OF NAGALAND
KOHIMA

Advocate for the Petitioner : NISUKA CHISHI, KIM PIENYU, REBECCA, LUCY WEO

Advocate for the Respondent : ,

BEFORE
HON'BLE MR. JUSTICE BUDI HABUNG

ORDER

Date : 25-10-2024

Heard Mr. Nisuka Chishi, learned counsel for the petitioner. I have also heard Mr. V. Zhimomi, learned PP for the State of Nagaland.

2. The present application has been filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 praying for release of

the seized vehicle Maruti Celerio VXI bearing registration No. MN01AG6387.

3. The case of the petitioner leading to the filing of this application is that on 25.09.2023, the petitioner was arrested along with his vehicle Maruti Celerio VXI in connection with SBN PS case no. 50/2023 under section 21 C NDPS Act read with section 34 IPC. The allegation against the accused/petitioner is that he used the said vehicle to escort the pickup truck from which 100 soap cases of contraband heroin were recovered. The vehicle was seized and since then, it has been kept under police custody for more than 349 days till the filing of this petition.

4. Thereafter, the accused/petitioner was released on bail. The petitioner then made an application before the Special Judge, NDPS, Dimapur, Nagaland being I.A. (Crl)/442/2024 for release of the seized vehicle on Zimma. However, the learned Special Judge, NDPS, Dimapur, Nagaland vide its order dated 06.08.2024, has dismissed the said application amongst others on the ground that the seized vehicle was used by the accused/petitioner to escort the pickup truck from which 100 soap cases of contraband heroin were recovered and that the accused has used his vehicle to check the route if any police checking/Nakas were set up and acted as advanced race to evade law enforcing agencies and help in smuggling the drugs from Manipur to Nagaland.

5. Being highly aggrieved by the said impugned order dated 06.08.2024, the petitioner has approached this Court by preferring this present appeal amongst others on the following grounds:

- (i) That the petitioner is the registered owner of the said vehicle Maruti Celerio VXI, bearing registration No. MN01AG6387 and as such, the petitioner is entitled to get the custody of the said vehicle.
- (ii) That there is no provision under the NDPS Act to restrict the power of the Trial Court to release the vehicle in interim custody.
- (iii) That it is held in the case of ***Pandurang Kadam Vs. State of M.P.***, notwithstanding the fact that the vehicle is liable to be confiscated under section 60 of the NDPS Act, it may be released in interim custody in appropriate cases. Thus, interim custody should not be denied to the owner of the vehicle, simply because it is liable to be confiscated under section 60 of the NDPS Act.
- (iv) That it is a settled law that whenever any articles which have been seized and if they are not required absolutely for the purpose of investigation, then under such circumstances, the same should be disposed of by the Court by taking proper security and the court has to exercise the said power immediately after seizure of then said articles. The trial Court by ignoring the aforesaid aspects has rejected the application of the petitioner.
- (v) That if the petitioner's vehicle is kept unattended at the police station, the value of the vehicle would be

diminished, the parts of the vehicle would be destroyed and the petitioner will be put to great financial loss.

- (vi) That the petitioner is ready to execute Zimma bond and is ready to produce before investigation agencies or trial court as and when called for; and for the same, he is ready to furnish adequate surety to the satisfaction of the concerned court.
- (vii) That the Hon'ble Supreme Court in ***Sunderbhai Ambalal Desai Vs. State of Gujarat*** reported in ***(2002) 10 SCC 283*** has held that;

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

6. The learned counsel for the petitioner submits that no prejudice would be cause to the investigating agencies if the said vehicle is released on zimma and that the petitioner is ready to abide by any terms and conditions to be imposed for the release of his vehicle on zimma.

7. For the reasons stated above, the petitioner prays for release of his vehicle on zimma along with the ignition key.

8. By an order dated 19.09.2024, the learned PP was given time to

obtain necessary instruction in this regard. However, on the next, the learned PP submitted that no instruction has been received. By an order dated 26.09.2024, the learned PP was directed to obtain instruction on the next date and made it clear that if no instruction is placed by the learned PP on the next date fixed, the application would be heard on the basis of the material available on record. Today, the learned PP has submitted that he had sought for an instruction and upto date report from the IO of the case, however, despite of seeking such instruction and reminder, he has not received any instruction regarding the case from the IO of the case.

9. Under the circumstances, the learned PP further submits that necessary order may be passed based on the available record.

10. Heard both the learned counsel for the parties. I have also gone through the petition and the documents placed on record.

11. There is no dispute that the petitioner is the registered owner of the vehicle bearing registration No. MN01AG6387. There is also no dispute that on 25.09.2023, the said vehicle was seized by the police in connection with the above P.S. case, and since then, the vehicle is lying unattended inside the police station campus. It is also not disputed that the other seized materials in I.A./513/2024 which was seized along with the petitioner has already been released on executing a zimma bond. In the instant case, since the learned PP could not obtain any instruction from the I.O. of the case, the exact status of the case is not known. However, the learned PP submits that the accused/petitioner has already been enlarged on bail. Under the circumstances now what is left to be

decided in the instant petition is whether the vehicle can be released in the interim custody of the petitioner.

12. While dealing with the issue of releasing the seized article in the case of ***Sunderbhai Ambalal Desai Verses State of Gujarat, Special Leave Petition (Crl.) 2745/2002***, the Hon'ble Supreme Court had observed as under:

"In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

- 1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.*
- 2. Court or the police would not be required to keep the article in safe custody;*
- 3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the properly in details; and*
- 4. This jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the article."*

It is also observed that:-

"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."

13. Again, in the case of ***Ashok Kumar Vs. State of Bihar, reported in (2001) 9SCC 718***, the Hon'ble Supreme Court has observed as under: -

"We do not think it necessary to keep the vehicle in the compound of the court indefinitely for a very long time till the disposal of this case. It is more advisable to entrust it to the registered owner on behalf of the court under certain conditions."

14. As the status of the case, as to whether the case has already been submitted into chargesheet or not, is not known, under the circumstances,

there is no certainty as to how long the further investigation of the case would take time and even if the case is/has been submitted into chargesheet, when the trial will begin and complete is not clear as it has not yet been started. Besides, it is not the ground to reject the prayer of the petitioner and section 60 of the NDPS Act never stands on the way of releasing a vehicle in the interim custody, by exercising the power conferred under section 451 Cr.PC.

15. In the case of ***Abhijit Kumar Vs. State of Uttarakhand, (2019)*** reported in ***SSC Online UTT 265***, the Allahabad High Court has dealt with the issue as under:-

"Even otherwise in the absence of any provision, which bars the release of any vehicle seized, there appears no reason to keep the vehicle in police custody until the conclusion of the trial. There are various issues related with the upkeep of such articles especially a vehicle. This court is of the view that the provision of Section 60 of the Act at all does not debar from releasing the vehicle during pendency of a trial. The provision of Section 60 of the Act and Section 451 of the Code, act in different spheres. It is the matter of interim custody only. If the vehicle is given to its owner with certain conditions namely – producing it whenever called for to do so, not changing its shape without prior permission of the court, not to transfer its ownership without prior permission of the Court etc; the production of the vehicle may be ensured at any later stage of the trial or at the time of confiscation proceeding".

16. Taking into consideration of all the facts and circumstances, as well as the submission so advanced by both the learned counsel for the parties and especially the ratios laid down in the case of ***Sunderbhai Ambalal Desai*** (Supra) and in the case of ***Abhijit Kumar*** (Supra), this Court is inclined to allow the present petition, however, with certain conditions.

17. Accordingly, it is provided that the learned Special Judge, NDPS, Dimapur, Nagaland shall release the seized vehicle bearing registration No. MN01AG6387 in the interim custody of the petitioner along with the

ignition key on the following terms and conditions:

- (i) That the petitioner shall execute a zimma bond of Rs. 2,00,000/-(Rupees Two Lakhs) subject to the satisfaction of the learned Special Judge, NDPS, Dimapur, Nagaland.
- (ii) That the petitioner shall produce the said vehicle before the learned Trial Court as and when directed.
- (iii) That the petitioner shall not transfer/sell the vehicle to any party, pending disposal of the case.
- (iv) And that the petitioner shall ensure that the vehicle shall not be used for commission of the similar nature offence as alleged for, or for commission of any offence.

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

JUDGE

Comparing Assistant