GAHC010120592026

2026:GAU-AS:15073

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

Case No. : Crl.Pet./881/2026

SOFIQUL ALOM CHOUDHURY
S/O LT. ABDUL MOTIN CHOUDHURY R/O VILL-KERAKUCHI, BALIJAN PATH, P.S.- HATIGAON DIST- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE P.P, ASSAM

Advocate for the Petitioner : MR. T CHUTIA, MS S NASRAT

Advocate for the Respondent : PP, ASSAM,

BEFORE
HON'BLE MRS. JUSTICE SHAMIMA JAHAN
ORDER

07.10.2026

Heard Mr T Chutia, learned counsel for the petitioner. Also heard Mr D P Goswami, learned Additional Public Prosecutor for the State of Assam.

2. By this application filed under Section 528, read with Sections 438/442 of the BNS, 2023, the petitioner has prayed for setting aside the order dated 16.05.2026, passed in connection with Sivasagar PS Case No. 53/2026, by the CJM, Sivasagar, by which the custody of the vehicle bearing Registration No. AS-25 EC-0383 was not given to the

petitioner.

3. Before delving into the issue at hand, this Court had asked for a report from the Investigating Officer with regard to the issue as to whether they require the vehicle for further investigation. A report was submitted by the learned Additional Public Prosecutor, wherein it is stated that the Police had completed the investigation and had submitted the charge sheet and that no further investigation is pending in respect of the said vehicle and that they do not require the vehicle for any other purpose.

4. The case of the petitioner is that an FIR was lodged on 03.04.2026, by the informant, stating, *inter alia,* that a vehicle bearing the registration number as aforesaid was carrying 39 numbers of cows without any document and in a very highly cruel manner and the Police, on receipt of the information, registered the FIR as PS Case No. 53/2026. The Police had seized the vehicle along with the cows on the date when the FIR was lodged, i.e., on 03.04.2026.

5. The learned counsel for the petitioner submits that since the day of seizure, the vehicle was lying in the Police Station and was getting damaged with time. The learned counsel for the petitioner submits that the petitioner had moved an application before the Court of CJM, Sivasagar for custody of the said vehicle and the said Court vide order dated 16.05.2026, had held on the report submitted by the Investigating Officer that the said vehicle is also involved in another case, similar to the instant case, and the custody was rejected. The learned counsel further submits that the said custody was rejected on mechanical grounds. He also submits that the cattles were also given in zimma to the owner of the same, but the

vehicle was not given to the petitioner. He further submits that the petitioner is the owner of the vehicle and to substantiate the said fact, he had annexed the registration certificate, which shows that the petitioner is the owner of the same.

6. Mr D P Goswami, learned Additional Public Prosecutor, by placing the report of the Police Officer, submits, in his usual fairness that the vehicle can be given in custody to the owner of the same.

7. I have heard the learned counsels and I have gone through the records.

8. It is a settled position of law that any articles seized in connection with any criminal case should be given in custody to the owner of the same or to the person from whom it is seized at the earliest by the Magistrate, since keeping the said articles in the Police Station or any other place for long, would result in damage of the said articles with time. It has been held by the Supreme Court in the case of ***Sunderbhai Ambalal Desai –Vs- State of Gujarat;*** reported in **(2002) 10 SCC 283,** that it is of no use to keep the seized vehicles at the Police Station for a long period. It has been directed by the Apex Court that the Magistrate should pass appropriate orders immediately after taking necessary bond and guarantee as well as the security for return of the said vehicle, if required at any point of time. It is also held that in case, the vehicle is not claimed by the owner or the Insurance Company or by any third person, then such vehicle be ordered to be auctioned by the Court, but at no point of time, it was directed to keep the said vehicles in the Police Stations for a long time. It is also directed that the Court should pass such orders within a period of 6 (six) months from the date of production of the said vehicle before the

Court. The Apex Court had also directed that before handing over the possession of such vehicles, appropriate photographs of the said vehicles should be taken and detailed Panchnama should be prepared.

9. As such, this Court has to see as to whether the petitioner is the owner of the said vehicle or whether he is the person from whom, the vehicle was seized. It is seen from the registration certificate annexed that the petitioner is the owner of the vehicle, which is a commercial vehicle described as goods carrier. As such, there appears to be no impediment in giving the custody of the vehicle during pendency of the trial to the petitioner. However, the Investigating Officer, before releasing the vehicle to the petitioner should take appropriate photographs and should prepare detailed Panchnama and should also take an undertaking from the petitioner to present the vehicle as and when required before the Trial Court. The IO is also given the liberty to apply any other condition as required under the law and as held by the Supreme Court.

10. The criminal petition is disposed of.

11. The instructions given by the IO is kept as a part of the record.

JUDGE

Comparing Assistant