GAHC010193602026

2026:GAU-AS:14975

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

Case No. : Crl.Pet./1243/2026

ANETWLLA SIKDAR
SON OF LATFULLA SIKDAR, RESIDENT OF CHAMATA PATHAR, POLICE STATION- SONAPUR, DISTRICT- KAMRUPM, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR

2:S.I. APURBA KALITA
OFFICER IN CHARGE
CHANGSARI POLICE STATION
DISTRICT- KAMRUP
ASSAM PIN-78110

Advocate for the Petitioner : MR. U K BARMAN, MR. R KONWAR,MR H ALI,MR. J PATOWARY

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

06.10.2026

Heard Mr. R. Konwar, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondent

No. 1.

2. This petition, under Section 528 of the BNSS, is preferred by the petitioner challenging the legality, propriety and correctness of the order dated 19.08.2026, passed by the learned Additional Chief Judicial Magistrate, Kamrup at Amingaon (trial Court hereinafter), in petition No. 1926/2026.

3. It is to be noted here that vide impugned order dated 19.08.2026, the learned trial Court had rejected the petition filed by the petitioner, seeking custody of 13 seized cattle in connection with Changsari P.S. Case No. 188/2026, under Sections 11(1)(a)/11(1)(d) of the Prevention of Cruelty to Animals Act, 1960.

4. Mr. Konwar, learned counsel for the petitioner, drawing attention of this Court, to the impugned order dated 19.08.2026, pointed it out that the learned trial court had made an observation that as per police report, the seized cattle are no longer required for police investigation and therefore, the same can be given to the owner, and despite, such report of the I.O., the learned trial Court had dismissed the petition. Under such circumstances, Mr. Konwar has contended to allow this petition by setting aside the impugned order dated 19.08.2026.

5. Per contra, Mr. Borthakur, learned Additional Public Prosecutor has produced one report from the I.O., dated 05.10.2026, and submits that the I.O. has already completed investigation and submitted charge-sheet and forwarded the case diary to the learned trial Court, and that 13 numbers of seized cattle are still being kept at Surabhi Gaushala, Rangia for custody, care and supervision. Mr. Borthakur also submits that the petitioner has

subjected the cattle to cruelty and the case has been registered under Sections 11(1)(a)/11(1)(d) of the Prevention of Cruelty to Animals Act, 1960, and therefore, he has contended to dismiss the petition.

6. Having heard the submissions of learned counsel for the both the parties, this Court has carefully gone through the petition and the documents placed on record, and also perused the impugned order dated 19.08.2026. Also gone through the relevant provision of law.

7. It appears that the learned trial Court in the impugned order, dated 19.08.2026, has recorded a finding that 13 numbers of cattle were transported in a vehicle, bearing registration No. AS-25-FC-5844, in a cruel manner, violating the provisions of the Prevention of Cruelty to Animals Act, 1960. It has also been recorded that the injury certificate issued by the Veterinary Officer, IDCPAI Centre, Rangia indicates that 10 numbers of cattle suffered injuries due to overloading in a single truck for a long distance, and this violates the Transport of Animals Rules, 1978, and that the prima facie offence under Section 11(1)(a) of the Prevention of Cruelty to Animals Act, 1960, has been made out, and therefore, dismissed the petition.

8. Further, a perusal of the FIR indicates that the vehicle, bearing registration No. AS-25-FC-5844 was intercepted by the informant SI Apurba Kalita on 03.08.2026, on the information furnished by one Dipankar Deka, a member of Bajrang Dal, and the cattle were being carried in a cruel manner without transit permit, veterinary health certificate, trade licence, or legal purchase documents.

9. It also appears that the learned trial Court has arrived at the aforesaid

finding having discussed three decisions of this Court in **Bijit Chutia vs. State of Assam, in Criminal Revision Petition No. 68/2021; Dhyan Foundation vs. State of Assam, in Criminal Petition No. 452/2020 and Surat Jamal vs. State of Assam and Anr.**

10. However, it is well settled that Section 35(2) of the Prevention of Cruelty to Animals Act, 1960 gives the Magistrate discretion to hand over interim custody of the animal to a pinjrapole (or similar institution such as a gaushala), but it does not mandate this. There is no requirement that custody must go to a pinjrapole/gaushala. In the case of **Manager, Pinjrapole, Deudar v. Chakram Moraji Nat,** reported in **(1998) 6 SCC 520**, Hon'ble Supreme Court has held that:

> **"In view of the above discussion and provisions of Section 451 Cr.P.C., it appears to us that unless the owner of the animal in respect of which he is facing prosecution, is deprived of the custody (which can be done only on his conviction under the Act for the second time), no bar can be inferred against him to claim interim custody of the animal."**

10.1. It has also been held that pinjrapoles/gaushalas have no preferential right over the owner.

11. The relevant factors, to be considered by the Court at the time of releasing the seized cattle in interim custody of the owner, include:

(i) Nature and gravity of the alleged offence.

(ii) Whether it is a first offence or the owner has prior convictions

under the Act.

(iii) Condition of the animals at the time of seizure.

(iv) Possibility of the animals being subjected to further cruelty.

(v) Ownership documents and the purpose for which the cattle are kept.

12. In view of the aforementioned legal provision and also in view of the decision of Hon'ble Supreme Court in **Manager, Pinjrapole, Deudar (supra),** this Court is of the view that the seized cattle can be released in the interim custody of the present petitioner as the prosecution side could not demonstrate that the petitioner was earlier convicted under the Act of 1960. Moreover, the petitioner has produced all the relevant documents in support of his ownership.

13. Accordingly, taking note of the submissions of learned counsel for both the parties, and also considering the facts and circumstances on the record, this Court is inclined to allow this petition.

14. It is provided that on furnishing an indemnity bond of Rs. 3,00,000/-, the seized 13 numbers of seized cattle shall be released in the interim custody of the petitioner, subject however, to the condition that he shall produce the same before the learned trial Court as and when directed and shall not subject them to cruelty and shall not dispose of without leave of the learned Trial Court.

15. In terms of above, this petition stands disposed of.

JUDGE

Comparing Assistant