GAHC010198122026

2026:GAU-AS:14960

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

Case No. : Crl.Pet./1312/2026

ASHIM DAS
S/O BIREN DAS, R/O KHOKHA PARA, P.O.- BATARHAT, P.S.- PALASHBARI, DISTRICT- KAMRUP, ASSAM.

VERSUS

STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MS. R KALITA, MS. C BARMAN

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

06.10.2026

1. Heard Ms. R. Kalita, learned counsel appearing for the petitioner. Also heard Mr. R.J. Baruah, learned APP appearing for the State of Assam.

2. By this application filed under Section 528 of the BNSS, 2023, the petitioner has prayed for setting aside and quashing the order dated 03.08.2026 passed

by the learned Additional Chief Judicial Magistrate, Kamrup in PRC Case No. 980/2026 whereby the articles seized in connection with Palashbari P.S. Case No. 109/2026 were not released in zimma in favour of the petitioner.

3. Before delving into the issue, this Court would like to observe that by order dated 22.09.2026 a report was called for from the Investigating Officer regarding the ownership of the seized articles. However, the said report has not been submitted by the learned APP till date. It is however noticed that the charge-sheet has already been submitted in the instant case which indicates that the investigation has been completed and the matter is now pending before the learned trial Court.

4. The case of the petitioner is that an FIR was lodged before Palashbari Police Station by the informant stating *inter alia* that his sister had applied for birth certificates for her two daughters through a store namely, Ashim Store and that the owner of the said store, i.e. the petitioner had issued two birth certificates in the names of her two daughters. However, when his sister went to apply for Aadhaar cards it was revealed that the said birth certificates were fake. It was further alleged that thereafter when his sister again went to the said store she was provided with two different copies of the birth certificates which were also found to be fake.

5. Upon receipt of the FIR, the police registered the case and seized four articles from the shop of the petitioner which are now being claimed by the petitioner for custody. Following the seizure, the petitioner filed an application seeking custody of the seized articles before the learned Additional Chief Judicial Magistrate, Kamrup, Amingaon. However, by order dated 03.08.2026 the learned Court rejected the said application on the ground that the petitioner had failed to produce any document to prima facie establish his ownership over the

claimed articles.

6. The learned counsel appearing for the petitioner submits that the petitioner runs his shop using the said articles and that the same are his source of livelihood. She therefore submits that the seized articles may be released in favour of the petitioner. She further submits that the petitioner had purchased the said articles as used items and therefore the relevant cash memos or certificates are not presently available with him. However, she submits that the said articles belong to the petitioner and as they were seized from his shop and the same may be released in his custody during the pendency of the trial.

7. Mr. R.J. Baruah, learned APP on the other hand submits that the learned Court had rightly rejected the application for zimma, since the petitioner could not establish his ownership over the said articles. He further submits that the seized articles may be released in zimma only in favour of the person who establishes ownership thereof.

8. I have heard the learned counsel for the parties and have perused the records. The Hon'ble Apex Court, in *Sunderbhai Ambalal Desai vs. State of Gujarat* reported in *(2010) 10 SCC 283*, has categorically held that articles seized in connection with a criminal case should as far as possible be released in favour of the owner, the person from whom such articles were seized or any other person claiming to be entitled to their custody at the earliest instead of allowing such articles to remain in the police station or any other place for a prolonged period as they may deteriorate or get damaged with the passage of time.

9. The Hon'ble Supreme Court has further held that before releasing the seized articles in custody the Investigating Officer or the Court may obtain an

appropriate bond and an undertaking from the person, to whom the articles are released ensuring their production before the Court as and when required. It has also been directed that proper photographs of the seized articles be taken and a detailed panchnama be prepared.

10. In the instant case, it is seen that the articles were seized from the shop of the petitioner and are being used by him for various purposes. The seizure list also reflects that the seized articles were recovered from "Uparhali Ashim Store" which is admittedly owned and run by the petitioner. Thus, the fact that the articles were seized from the petitioner's shop and were in his possession is not in dispute.

11. As such, this Court directs the Investigating Officer or the concerned authority to hand over the following seized articles to the petitioner that is (i) one Monitor bearing Serial No. MON007124120311 (Frontech) (ii) one CPU (Sony) (iii) one Printer bearing Registration No. VJ5K009260 and (iv) one Monitor (Frontech) bearing Serial No. 1978171000427 after complying with the conditions laid down by the Hon'ble Supreme Court including taking proper photographs of the seized articles preparation of a detailed panchnama and obtaining an appropriate bond, guarantee and undertaking from the petitioner to produce the said articles before the Court as and when required.

12. With the aforesaid directions, the petition stands disposed of.

JUDGE

Comparing Assistant