GAHC010208152026

2026:GAU-AS:14976

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

Case No. : Crl.Pet./1323/2026

AJIDUL ALI
S/O TAIJUDDIN ALI, VILLAGE KUKARPAR, KATHALBURI, P.S. TARABARI, DISTRICT BARPETA, ASSAM, PIN 781328.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PP, ASSAM

2:DHANJIT DEKA
S.I. (P)
CHANGSARI POLICE STATION
CHANGSARI
DISTRICT KAMRUP RURAL
ASSAM
PIN 78110

Advocate for the Petitioner : MR. M KHAN, MR. S ISLAM,MS J AKTAR

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

06.10.2026

Heard Mr. M. Khan, learned counsel for the petitioner. Also heard Mr. P. Borthakur, learned Additional Public Prosecutor for the State respondents.

2. In this petition, under Section 528 of the BNSS, 2023, the petitioner has challenged the order, dated 16.09.2026, passed by the learned Additional Chief Judicial Magistrate, Kamrup, Amingaon, in Changsari P.S. Case No. 231/2026.

3. It is to be noted here that vide impugned order dated 16.09.2026, the learned Additional Chief Judicial Magistrate, Kamrup, Amingaon ('trial Court', for short) had dismissed the petition filed by the petitioner seeking custody of 26 numbers of cattle, which were seized in connection with Changsari P.S. Case No. 231/2026.

4. Mr. Khan, learned counsel for the petitioner submits that the petitioner is the owner of 26 numbers of cattle, which were seized that in connection with Changsari P.S. Case No. 231/2026, and that the petitioner has all relevant documents of purchasing the said cattle. Mr. Khan also submits that the petitioner had preferred one petition, being petition No. 2235/26, before the learned trial Court, seeking custody of the 26 numbers of cattle. But, vide impugned order, dated 16.09.2026, the learned trial Court had rejected the petition on the ground that a prima facie offence of cruelty had been made out against the owner/zimma petitioner of the cattle, and that the learned trial Court had considered three decisions of this Court in the cases of **Md. Ashadul Islam vs. State of Assam and Ors., in Criminal Revision Petition No. 319/2026; Ajidul Ali vs. State of Assam and Anr., in Criminal Petition No. 1174/2026; and Bijit Chutia vs. State of Assam, Criminal Revision Petition No. 68/2021.**

4.1. Mr. Khan has also referred to a decision of a Co-ordinate Bench of this Court in **Mujibur Rahman vs. The State of Assam, in Crl.Rev.P.**

No. 143/2024, and he submits that there is no bar in releasing the seized cattle in the interim custody of the petitioner, and that he will produce the same as and when directed and will also never subject the cattle to cruelty. Therefore, he has contended to allow this petition.

5. Per cortra, Mr. Borthakur, learned Additional Public Prosecutor has produced the case diary before this Court and submits that prima facie cruelty is established in this case, and as such, the seized cattle may not be released in the custody of the petitioner till disposal of the case.

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 16.09.2026, and the case diary produced by Mr. gone Borthakur, learned Additional Public Prosecutor. And further through the provisions of the Prevention of Cruelty to Animals Act, 1960.

7. 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."

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

8. 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.

9. 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.

10. 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.

11. It is provided that on furnishing an indemnity bond of Rs. 5,00,000/-,

the seized 22 numbers of 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 the same.

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

13. Case diary be returned.

JUDGE

Comparing Assistant