

GAHC010042492020



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

Case No. : Crl.Pet. 184/2020

1:NARESH KUMAR
S/O BELI RAM, R/O VILL-JAVALYANA, P.O.-NANAWAN, P.S.-GHUMARWIN,
DIST-BILASPUR, HIMACHAL PRADESH, PIN-174013

VERSUS

1:THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:BIJOY DOIMARY
SUB INSPECTOR
LAODANGURI P.P.
UNDER GOBARDHANA POLICE STATION
DIST-BAKSA
ASSA

Advocate for the Petitioner : MR. B PATHAK

Advocate for the Respondent : PP, ASSAM

WITH Crl.Pet. 166/2020

BEFORE

HONOURABLE MRS. JUSTICE RUMI KUMARI PHUKAN

ORDER

Date : 30-07-2020

Heard the learned counsel for the petitioner and Mr. M.K. Kalita, learned Additional Public Prosecutor for the State respondent.

Learned Additional Public Prosecutor has submitted that he has already communicated to the Officer-in-Charge to submit the report as called for by this Court regarding the claim of the petitioner about the release of the seized vehicle in connection with Gobardhana P.S. Case No. 257/2019 registered under Sections 379/411/420/468 IPC read with Section 7 of the Essential Commodities Act, 1955.

But the Officer-in-Charge has not responded to the same nor furnished any report.

As the matter is pending for several months for report by the Officer-in-Charge which is not furnished, so both the petitions are taken together for hearing and disposal at the motion stage itself.

So far as the contents in the FIR, it reveals that on 01.10.2019 one S.I.(P) Bijoy Doimary lodged an FIR before the Gobardhana P.S. alleging that the vehicle of the petitioners was found loaded with fertilizer (UREA) which was carried illegally without proper documents on the basis of which the aforesaid Go P.S. Case was registered.

The petitioners was arrested and was subsequently released. The petitioners thereafter filed a petition under Section 451 seeking release of the seized vehicle pending trial. The learned trial Court, by its order dated 16.12.2019, rejected the prayer with a cryptic order that since Section 7 of the Essential Commodities Act has been added to this case, the prayer for zimma of the seized vehicle carrying essential commodities can't be considered as matter of confiscation may involved in the case.

Two petitioners have preferred these petitions against the aforesaid orders.

The FIR itself reveals that the articles carried in the vehicles were suspected to be stolen and the I.O. had seized the vehicles and subsequently Section 7 of the Essential Commodities Act was also added but the things remain that there was no such report that any confiscation proceedings was contemplated in the case and in that view of the matter, the order of the learned Magistrate is devoid of merit as it was merely on assumptions.

Till date there is no such report from the I.O. which was repeatedly called for as to whether any confiscation proceeding had been initiated or the vehicle seized in connection with the case is required for the purpose of investigation but same was not provided.

Now it is to be noted that the vehicles was seized on 0.10.2019 but by this time several months have elapsed and the vehicles was the source of livelihood for the petitioners.

Both the petitioners although has not annexed any documents regarding their ownership of the vehicles but has categorically stated that they have relevant documents in respect of the vehicles seized.

The Hon'ble Supreme Court in Catena decision has reiterated that by virtue of Section 451 Cr.P.C. the criminal court has the power to decide the interim custody of the seized articles during the pendency of the trial where the articles were valuable and subject to damage/decay.

In *State of Madhya Pradesh And Others Vs. Rameshwar Rathod* (1990) 4 SCC 21 it has been held that normally under the Criminal Procedure Code, the criminal courts of the country have the jurisdiction under Sections 451/457 Cr.P.C. to pass appropriate order regarding disposal of seized articles.

Further it has been held that Sections 6(A) and 7 of Essential Commodities Act, 1955 do not exclude criminal court's jurisdiction under Sections 451/457 Cr.P.C.

Similarly, in *Sunderbhai Ambalal Desai Vs. State of Gujarat* (2002) 10 SCC 283, it has been held that valuable articles need not be kept in police custody for years till trial is over. The Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C. at the earliest. For this purpose, the Court may take necessary bond and security to prevent the evidence being altered or destroyed. It has further been held that the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously.

Relevant Paras 13 and 17 is reproduced below:-

"13. For this purpose, the court may follow the procedure of recording such evidence, as it thinks necessary, as provided under Section 451 Cr.P.C. The bond and security should be taken so as to prevent the evidence being lost, altered or destroyed. The court should see that photographs of such articles are attested or countersigned by the complainant, accused as well as by the person to whom the custody is handed over. Still however, it would be the function of the court under Section 451 CrPC to impose any other appropriate condition."

"17. 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."

In the present case as it appears that except causal approach by the I.O. no such effective investigation has been carried out. The I.O. is also unable to provide report to this Court as called for, on repeated occasion.

The learned Additional Public Prosecutor has also conceded that lying the seize vehicles unattended may cause excessive damage to the vehicle.

In view of the above discussion and in the light of the legal pronouncements, this Court is of the opinion that vehicles should be released to the petitioners during pendency of the proceedings in the trial Court.

Resultantly, both the petitions are allowed.

The impugned order dated 16.12.2019 in connection with Gobardhana P.S. Case No. 257/2019 is hereby quashed and set aside. The I.O. is accordingly directed to release the seized vehicle in favour of the petitioners subject to production and verification of the relevant documents pertaining to the vehicle in questions on execution of a bond of Rs. 5 (five) lacks each, with direction not to dispose the vehicle during the proceeding before trial Court.

Both the petitions are allowed and disposed of.

JUDGE

Comparing Assistant