

GAHC010290932019



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

Case No. : Crl.Rev.P./507/2019

MICHAEL PALMER
S/O E.J PALMER, R/O RYNJAH LUMSHNGAIN (SHILLONG), MYLIUM EAST
KHASHI HILLS, P.O.-RYNDAH, MEGHALAYA, INDIA, PIN-793006.

VERSUS

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

2:ARUP KUMAR KALITA
AFS
RANGE FOREST OFFICER
SOUTH GUWAHATI RANGE
LOKHRA
GUWAHAT

Advocate for the Petitioner : MR. T DEURI

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN

ORDER

30.04.2021

Heard the learned counsel for the petitioner, Mr N J Das and Mr D Bora, learned counsel appearing on behalf of Mr B K Mahajan, Learned Special Public Prosecutor, Wildlife Forest.

On 20.06.2019, the forest officials of South Guwahati Forest Range and Wildlife Control Bureau, Guwahati, conducted a joint operation at NH-37, near ISBT, Guwahati and seized one car

along with one Chinese Pangolin, which was carried by the accused persons. The vehicle as well as the animal were seized and the animal was handed over to the Assam State Zoo for safe custody and the vehicles were lying in the office of Forest Officer. Thereafter, the offence report was submitted and the accused persons were facing the trial. One of the accused, Mr Michael Palmer (present petitioner) sought for zimma of the vehicle, claiming that he is the registered owner of the said vehicle and the learned trial Court after obtaining the report from the Divisional Forest Officer, South Guwahati Division, Guwahati, rejected the prayer, considering the gravity of the offence and other circumstances, vide order dated 13.09.2019, passed in Sessions Case No. 750/2019. The learned Court was of the view that there is likelihood of conducting such illegal business again on the part of the petitioner, in case, if he is released on bail.

Assailing the aforesaid order, the petitioner is before this Court.

Learned counsel for the petitioner submitted that the vehicle is lying in the forest office for around 2 years without any genuine ground and no any confiscation proceeding has been initiated till now and the trial has not yet concluded. It is submitted that extensive damage would be caused to the vehicle, if it is kept unattended in the forest office.

Learned counsel for the respondent has also submitted that confiscation proceeding has not yet been drawn and the case is amidst the trial.

I have gone through the relevant documents, including the complaint, seizure list and the impugned order.

The subject matter of the offence is of carrying the animal, which was seized and kept in the State Zoo. On the other hand, no confiscation proceeding has been initiated by the forest department and the Court will be in a position for giving a direction for confiscation only at the end of the trial. The learned trial Court has also mentioned in its order that no clear report has been sent regarding the confiscation proceeding.

In the circumstances, in the opinion of this Court, keeping the vehicle unattended for all the time is unwarranted. The damage that may be caused to the vehicle cannot be denied and nobody will bear the cost of damage.

So far as regards the disposal of the seized articles, the Hon'ble Supreme Court in the case of *Sunderbhai Ambalal Desai –Vs- State of Gujarat*; AIR 2003 SC 638, has observed that the matter of custody and disposal of seized property, pending trial can be dealt under Section 451 of the CrPC. The Hon'ble Supreme Court is of the view that the power under Section 451 of the CrPC should be exercised expeditiously and judiciously, which would serve various purposes, namely:-

1. *Owner of the article would not suffer because of its remaining unused or by its*

misappropriation.

2. *Court or the police would not be required to keep the article in safe custody;*
3. *If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and*
4. *This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.*

Further, it has been categorically held that the seized articles should be disposed of at the earliest by the Court by obtaining adequate bond etc. from the respective owners and other authorized person(s).

Considering all aspects and particularly that the Department has also not initiated any sort of confiscation proceeding, and in the light of the decision of *Sunderbhai Ambalal (supra)*, it is directed that the vehicle, along with the document and key etc. be released in favour of the petitioner, on proper verification of all the documents, on execution of bond of Rs. 3,00,000/- (Rupees three lacs only), forthwith

The criminal petition stands disposed of, in terms of above.

JUDGE

Comparing Assistant