

GAHC010258952023



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

Case No. : Crl.Rev.P./496/2023

MD. ILYAS KHAN @ ILIYASH KHAN
S/O M. ABDUL MANAN
R/O YAIRIPOK, BAMON LEIKAI
P.O. AND P.S. YAIRIPOK
DIST. THOUBAL, MANIPUR.

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:NABAJIT NATH
SI
S/O SRI DHARMESWAR NATH
C/O SONAPUR POLICE STATION

P.S. SONAPUR
DIST. KAMRUP (M)
ASSAM
PIN NO. 78240

Advocate for the Petitioner : MR. A M KHAN

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MRIDUL KUMAR KALITA**

ORDER

Date : 30.11.2023

Heard Mr. A. M. Khan, learned counsel for the petitioner. Also heard Ms. S. Jahan, learned Additional Public Prosecutor for the State.

This application under Sections 401/397 of the Code of Criminal Procedure, 1973 read with Section 482 of the said Code has been filed by the petitioner, namely, *Md. Iliyas Khan @ Iliyash Khan* whereby the order dated 27.09.2023 passed by the learned Additional Sessions Judge (FTC) No. 3, Kamrup(M), Guwahati in NDPS Case No. 150/2022, whereby the zimma prayer of the present petitioner seeking zimma of the seized vehicle i.e., a truck bearing Registration No. MN-01-9937, was rejected. The impugned order dated 27.09.2023 is quoted herein below:-

“27.09.2023

Case record is put up before me as P.O. has been transferred.

Perused the report of zimma dated 26.09.2023 with respect to truck bearing Regd. No. MN-01-9937 from Sonapur PS whereby I.O. has submitted his objection to granting of zimma along with reason thereof.

Heard learned Addl. P.P. as well as learned Advocate for the zimma petitioner.

Learned Addl. P.P. has also objected to granting of zimma of the seized vehicle.

Considering the gravity of the matter and the objections submitted by I.O. and learned Addl. P.P., prayer for zimma is rejected.

Fixing 04.10.2023 (as before) for production.”

It is submitted that the truck is lying in the campus of Sonapur Police Station since 16.03.2022. Learned counsel for the petitioner has also submitted

that the seized truck was the source of livelihood of the present petitioner and he was not aware of the fact that seized truck has been used in commission of the offence by the person to whom he had rented it out.

Learned counsel for the petitioner has also submitted that no purpose would be served by keeping the seized truck under the open sky in the Police Station when he is ready to produce the seized truck during trial as and when so required by the learned Trial Court.

On the other hand, learned Additional Public Prosecutor, who was requested to obtain instructions from the Investigating Officer as to whether the seized truck is further required for any other purpose or not, has submitted a report from the Officer-in-Charge of Sonapur Police Station, where it is submitted that the seized truck was used for carrying the commercial quantity of contraband which were seized in this case and the contraband was hidden by making separate chambers in the seized truck. It is further submitted by learned Additional Public Prosecutor that though the seized truck is no longer required for the purpose of investigation, however, it may have to be produced before the learned Trial Court during the trial as it is one of the main evidence in the trial pending before the Court of Additional Sessions Judge (FTC) No. 3, Kamrup(M), Guwahati.

I have considered the submissions made by learned counsel for both sides and also gone through the materials on record including the report furnished by the Officer-in-Charge of Sonapur Police Station.

In “***Sunderbhai Ambalal Desai –Vs- State Of Gujarat***” reported in “***(2002) 10 SCC 283***” the Hon’ble Apex Court has observed as follows:-

“7. In our view, the powers under Section 451 CrPC should be

exercised expeditiously and judiciously. It 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 panchnama before handing over possession of the 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.*

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."*

It is pertinent to note that the seized truck has been lying in the campus of Sonapur Police Station under the open sky for last one year eight months and it also appears that the prayer for zimma was rejected by the learned Trial Court mainly on the basis of objections submitted by the Investigating Officer. However, it appears that if the seized truck is kept under open sky during the entire period of trial, it may get damaged or it may become useless. Moreover, the requirement of the production of the seized truck, may be achieved by imposing conditions on the petitioner at the time of allowing zimma petition.

In view of the above, this criminal revision petition is hereby allowed and

the impugned order is hereby set aside and the learned Trial Court is directed to give the zimma of the seized to the present petitioner on his executing a bond of Rs.10,00,000/- (Rupees Ten Lakhs) with an undertaking to produce the said truck before the learned Trial Court if and when so required by the learned Trial Court. Such a bond may be furnished by the petitioner to the Officer-in-Charge of Sonapur Police Station who shall forward the same to the learned Trial Court.

At the time of accepting the bond, the Officer-in-Charge of Sonapur Police Station would take the photographs of the said truck from various angles and he also make a detailed panchnama of the said truck and send the same to the learned Trial Court along with the bond. If necessary, said panchnama can be used in evidence in the pending trial. The learned Trial Court may add additional conditions while giving zimma of the said truck to the present petitioner.

With the above observation, this criminal revision petition is hereby disposed of.

JUDGE

Comparing Assistant