

GAHC010021172024



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

Case No. : Crl.Rev.P./38/2024

SAMAR ALI LASKAR
S/O KUDRAT ALI
VILL- BORJANI MAJGAON
P.S. JAMUNAMUKH
DIST. HOJAI, ASSAM
PIN-782435

VERSUS

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

2:OFFICER-IN -CHARGE

JAMUNAMUKH POLICE STATION

DIST. HOJAI
ASSAM
PIN-78242

Advocate for the Petitioner : MR K BHUYAN

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER

29.02.2024

Heard Mr. K. Bhuyan, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public for the State of Assam.

2. This is an application filed under Section 397/401 of the Code of Criminal Procedure, 1973, praying for releasing the seized articles of 49 bags of areca nuts which has been seized by the police in connection with Jamunamukh P.S. Case No. 44/2023, registered under Sections 379/411 of the Indian Penal Code arising out of Jamunamukh P.S. GDE No. 348 dated 24.08.2023.

3. In this regard, Mr. Das, learned Additional Public Prosecutor has produced the Status Report along with the FSL Report issued by the Food Analyst to Government of Assam, Guwahati, which revealed that the areca nuts which were seized in connection with this case are not suitable for use for human consumption and apart from that the case has already been charge-sheeted vide CS No.60/2023 dated 31.12.2023 against the accused/petitioner.

4. On the other hand, Mr. Bhuyan, learned counsel for the petitioner has submitted that the seized articles are perishable goods and since last 6 (six) months the goods are under police custody, and hence, there is a probability of damage of those seized goods, if, further kept under the police custody. He also submits that the accused/petitioner is the owner of the seized areca nuts and no one other then the petitioner claimed for the seized goods which he had purchased and collected for his business purposes.

5. In support of his submission, Mr. Bhuyan, learned counsel for the petitioner

relies on the decision passed by the Hon'ble Apex Court reported in **(2002) 10 SCC 283 [Sunderhai Ambalal Desai vs. State of Gujarat]**, wherein, he emphasized mainly in paragraph Nos. 7 and 8 of the said judgment which read as under;

“7. In our view, the powers under Section 451 Cr.P.C. 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 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.

8. The question of proper custody of the seized article is raised in number of matters. In Smt. Basawa Kom Dyanmangouda Patil v. State of Mysore and Anr., [1977] 4 SCC 358, this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under-

“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the

disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

6. Per contra, Mr. Das, learned Additional Public Prosecutor has submitted that the case has already been charge-sheeted and the FSL Report has already been received by the I.O. He further raised a point in regards to the SOP of the Government for disposal of the seized areca nuts/betel nuts, where as per the said SOP in clause 15, it is stated that "*It may happen that even if the seizures are unfit for human consumption there may be a owner or a claimant who may submit a plea before the Court that they would use such betel nuts as a raw material for manufacturing of some non-edible products and that the same will not be used for human consumption. In that case the Superintendent of Police would get the claim verified and report to the Court. If the claim is genuine, then the Court should be requested to impose strict conditions to ensure that the betel nuts are used as per claim and not for human consumption.*"

7. Accordingly, the learned Additional Public Prosecutor has submitted that the petitioner can file a proper application before the Superintendent of Police to verify the claim which may be place before the learned Trial Court, and if the Trial Court finds the claim as genuine one, then, the order may be passed accordingly with some strict conditions. Further, if the accused/petitioner is given the zimma of the seized beetle nuts without any verification or report from the Superintendent of Police, and the same is sold in the open market then in

that case, there may be health hazard which may be endanger of life and may also affect the general public at large.

8. He further, submits that as per the SOP in clause-15 for disposal of the sized betel nuts issued by the Additional Director General of Police, CID, Assam, where verification is to be done by SP, whether, the seized areca nuts would be used for raw material for manufacturing non-edible products and that the same will not be used for human consumption.

9. So considering the entire facts and circumstances of the case as well as considering that the case has already been charge-sheeted, I find it appropriate to direct the accused/petitioner to file a proper application before the learned Trial Court for seeking report from the SP regarding seized areca nuts as well as to verify the genuineness of the claim of the petitioner. Further, on receipt of the said report from the concerned S.P, if the learned Trial Court finds the report satisfactory one, then, the Court may dispose of the zimma petition in accordance with law.

10. With above observations, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant