

GAHC010051052024



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

Case No. : Crl.Rev.P./89/2024

MD SHUMEJ ALI
S/O NAUSAD ALI, R/O VILL- RANGESWARI PAM, P.S.-NAGARBERA, P.O.-
TUPAMARI, DIST- KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. B CHOWDHURY

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA
ORDER**

28.03.2024

Heard Mr. B. Chowdhury, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor for the State respondent.

2. This is an application filed under Sections 397/401/482 of the Code of Criminal Procedure, 1973 *read with* Sections 451/457 of Cr. P. C., praying for setting aside and quashing of the impugned order dated 25.01.2024 passed by the learned Special Judge, NDPS, Karbi Anglong, Diphu in Dillai P.S. Case No.65/2023 corresponding to G.R. Case No. 340/2023 registered under Sections 21(b)/29 of NDPS Act, 1985.

3. I have received the Status Report along with the Case Diary and I have perused the same.

4. It is submitted by the learned counsel for the petitioner, Mr. Chowdhury that the present petitioner is the registered owner of the vehicle which was seized in connection with Dillai P.S. Case No.65/2023, wherein, it has been alleged that 233.03 grams of heroin was recovered from 20 (twenty) Nos. of soap boxes from the said vehicle. He also submitted that the petitioner being the owner, entrusted his vehicle to the driver on verbal contractual basis and the said driver was given the authority to carry the passengers at his ends with a condition to give him a sum of Rs.18,000/- (Rupees eighteen thousand) only on each month. He further submits that the petitioner was not aware about carrying of any contraband in his vehicle which was kept concealed inside the front side rear cover of the seized vehicle. He also approached before the investigating officer and produced all the relevant documents to proof his ownership, but, the police did not release his vehicle. Hence, he subsequently approached before the learned Special Judge, NDPS, Karbi Anglong, with

a prayer for zimma of the seized vehicle bearing a registration No. AS-01-FE-7366 (Maruti Alto Car) to the petitioner, but, the same has been rejected vide order dated 25.01.2024.

5. Mr. Chowdhury, learned counsel for the petitioner further submits that the vehicle is in custody of police since last 4(four) months and thus, he is suffering from a great financial loss. and accordingly, he filed the present petition praying for zimma of the said seized vehicle by setting aside and quashing of the impugned order dated 25.01.2024 passed by the learned Special Judge, NDPS, Karbi Anglong in connection with Dillai P.S. Case No.65/2023 corresponding to G. R. Case No. 340/2023 registered under Section 21(b)/29 of NDPS Act.

6. In addition to his submission, he relies on the decision passed by the Hon'ble Apex Court reported in **2002 (10) SCC 283 (Sunderbhai Ambalal Desai)**.

7. Further, he submitted that the petitioner being the local person and permanent resident of Kamrup District, Assam under Nagarbera Police Station is ready and willing to abide by any terms and conditions to be imposed on him while releasing the seized vehicle.

8. In this context, Mr. Das, learned Additional Public Prosecutor has submitted that from the seized vehicle some illegal contraband i.e. heroin was recovered weighing around 233.03 grams which was kept concealed inside the front side rear cover of the vehicle. And, as per the report of the IO, the petitioner never approached before concerned IO with the original documents to proof his ownership of the seized vehicle. More so, the IO has already made a prayer before the learned Special Judge, NDPS, Karbi Anglong to pass the order to confiscate the seized vehicle. He further submits that if, in such a situation, the vehicle is release on zimma, there is a probability of using the said vehicle to commit similar kind of offence, cannot be outrightly rejected. Accordingly, the learned Additional Public Prosecutor raised objection in giving zimma

of the seized vehicle to the present petitioner.

9. On the other hand, Mr. Chowdhury, learned counsel for the petitioner has submitted that as per Section 60 of NDPS Act, the concerned authority has the power for confiscation, unless it is proved by the owner that it was used without his knowledge or it was not committed in connivance of the owner. He also submits that as per Section 63 of NDPS Act, the confiscation proceeding can be drawn up only at the stage of trial or after disposal of the case, if it is required. He further submits that the contraband was alleged to have been recovered from the possession of the driver of the vehicle and thus, there is nothing in the record that the contraband was carried in connivance with the present petitioner. Rather, he was not aware about carrying of any illegal substances in his vehicle as he entrusted his vehicle to the driver. Further, he also submitted that the petitioner is ready and willing to abide by any terms and conditions, if to be imposed on him while releasing the seized vehicle and he is also ready to produce the vehicle as and when required for the interest of further investigation or at the time of trial.

10. After hearing the submissions made by the learned counsels for both sides, I have perused the Case Diary as well as the report furnished by the IO. It is seen that the present petitioner produced some of photo copy of the document in support of his plea to prove his ownership. Further, it is seen that there is no mention in the report that as to whether any secret chamber were prepared in the vehicle to carry contraband or concealed contraband inside the secret chamber etc. Further, it is also seen from the report of the IO, that there is no mention in regards to the involvement of the present petitioner to come to a conclusion that the suspected heroin was allegedly carried in connivance with the present petitioner. The materials in the Case Diary also do not specifically mentioned about any involvement of the present petitioner in regards to carrying of the contraband in connivance of present petitioner in his vehicle.

11. As per Sub-Section 3 of Section 60 of NDPS Act, the animal and conveyance used in carrying narcotics is liable for confiscation unless the owner of animal or conveyance has to proved that it was used without his knowledge. For ready reference Section 60(3) of NDPS read as under:-

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance 2 [or controlled substances], or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.”

12. Further from the report of the IO, it is seen that an application has been submitted before the learned Special Judge, NDPS, Karbi Anglong to pass the order for confiscation of the seized vehicle, but before passing any order of confiscation proceeding, it is necessary to hear the person who claim his right over the animal or conveyance, as per proviso of Section 63 of NDPS Act. Further, it is seen that the learned Special Judge, NDPS, Karbi Anglong had passed the order by rejecting the prayer for zimma only on the basis of the report submitted the IO, without passing any detail order in that regard, as to why, the further custody of the vehicle is required by the IO for the purpose of further investigation.

13. Thus, considering the entire facts and circumstances of the case, I find that interference of this Court is requires so as to secure the ends of justice.

14. Accordingly, the impugned order dated 25.01.2024 passed by the learned Special Judge, NDPS, Karbi Anglong Diphu in connection with Dillai P.S. Case No.65/2023 is hereby set aside and quashed. It is provided that on execution of a bond of Rs. 2(two) lakhs and on furnishing 2 (two) solvent sureties of like amount to the satisfaction of learned Special Judge, NDPS, Karbi Anglong, the seized vehicle shall be released in the interim custody of the petitioner within a week from today. The petitioner has to produce all relevant documents and necessary bonds before the

learned Court below. Further, the learned Special Judge, NDPS, Karbi Anglong Diphu is hereby asked to hear the matter of confiscation in presence of the present petitioner while passing any order and further the petitioner is directed to produce the vehicle before the concerned Court or IO, as and when it is required and shall not dispose the same till disposal of the case.

15. In terms of above, this criminal revision petition stands disposed of.

JUDGE

Comparing Assistant