

Page No.# 1/ vs Ram Sankar Maurya on 19 December, 2022

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GAHC010063702022

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

Case No. : CrI.Pet./284/2022

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2: KUMUD CHANDRA TALUKDAR
S/O- LATE KANAK CHANDRA TALUKDAR
R/O- VILL.- HATKHOLA
P.S. SALBARI
DIST. BAKSA (BTR)
PIN- 781318
ASSAM AND PRESENTLY SERVING AS SUB-INSPECTOR
ASSAM POLICE AND INVESTIGATING OFFICER IN BIJNI P.S. CASE NO.
24/2022 UNDER SECTIONS 120-B/379/411/420/468 OF THE INDIAN PENAL
CODE
1860

VERSUS

RAM SANKAR MAURYA
S/O- SHRI JAIRAM MAURYA, R/O- ATHGAON, P.S. BHARALUMUKH, DIST.
KAMRUP(M), PIN- 781001, ASSAM

Advocate for the Petitioner : MR. P N GOSWAMI

Advocate for the Respondent : MS M DAS

Linked Case : CrI.Pet./213/2022

THE STATE OF ASSAM AND ANR

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REP. BY THE PP
ASSAM

2: SRI BILAL UDDIN BARBHUIYA
SON OF LATE HAJI TAJAMUL ALI BARBHUIYA
R/O RAMNAGAR PART-IV
P.O. TARAPUR KHELMA
DIST. CACHAR
PIN-788003
ASSAM AND PRESENTLY SERVING AS SUB-INSPECTOR
ASSAM POLICE AND INVESTIGATING OFFICER IN LALA P.S. CASE NO
493/2021 UNDER SECTIONS 397/411 OF THE INDIAN PENAL CODE
1860.
VERSUS

KAMRUL ISLAM MAZUMDAR
SON OF LATE FAIZUR RAHMAN MAZUMDAR
R/O CHANDRAPUR
P.S.LALA
P.O. LALA
DIST. HAILAKANDI
ASSAM
PIN-788163

Advocate for : MR. P N GOSWAMI
Advocate for : MR H R A CHOUDHURY appearing for KAMRUL ISLAM
MAZUMDAR

Linked Case : Crl.Pet./505/2022

THE STATE OF ASSAM
REP. BY COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
HOME AND POLITICAL DEPARTMENT
DISPUR-6.

VERSUS

ANOWAR HUSSAIN LASKAR @ MONAI
S/O ALIMUDDIN LASKAR
R/O VILL- NORTH HAWAITHANG
P.S. DHOLAI
CACHAR

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ASSAM

Advocate for : PP
ASSAM

Advocate for : MR. N H BARBHUIYA appearing for ANOWAR HUSSAIN LASKAR
@ MONAI

Linked Case : CrI.Pet./517/2022

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

2: SRI MRINAL KUMAR DAS
S/O LATE PUSPA RAM DAS

R/O BHOTNATH ROAD
BHARALAMUKH
GUWAHATI
PIN-781009
DIST. KAMRUP (M)
ASSAM
AND PRESENTLY SERVING AS INSPECTOR
ASSAM POLICE AND OFFICER-IN-CHARGE OF ALGAPUR P.S. AS WELL AS
INVESTIGATING OFFICER
IN ALGAPUR P.S. CASE NO. 377/2021 UNDER SECTIONS 379/411 OF THE
INDIAN PENAL CODE.
VERSUS

SMT. SOMA PAUL
W/O ANJAN KUMAR PAUL

R/O VILL- ALGAPUR PART-I
P.O. KALIBARI BAZAR
P.S. ALGAPUR
DIST. HAILAKANDI
ASSAM
PIN-788150

Advocate for : MR. P N GOSWAMI
Advocate for : MR Z KAMAR appearing for SMT. SOMA PAUL

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Linked Case : CrI.Pet./642/2022

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

2: ISMAIL HUSSAIN
S/O- LATE ATAR ALI

R/O- VILL.- BURINAGAR
P.S. AND DIST. NALBARI
ASSAM AND PRESENTLY SERVING AS ASSISTANT SUB-INSPECTOR
ASSAM POLICE AND INVESTIGATING OFFICER IN SERFANGURI P.S. CASE
NO. 09/2022 UNDER SECTIONS 273/420/34 OF THE INDIAN PENAL CODE.
VERSUS

MD. SHAMSUZZAMAN SHEIKH
S/O- LATE MOHAMMAD ALI
R/O- KRISHNAI
IN FRONT OF KRISHNAI POLICE STATION
P.O. AND P.S. KRISHNAI
DIST. GOALPARA
ASSAM

Advocate for : MR. M PHUKAN
Advocate for : MR N M HAZARIKA appearing for MD. SHAMSUZZAMAN
SHEIKH

Linked Case : Crl.Pet./641/2022

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE P.P.
ASSAM

2: SUSIL CHETRY
S/O- JIT BAHADUR CHETRY
R/O- VILL.- KUMALIA
P.S. BISWANATH CHARIALI
DIST. BISWANATH
ASSAM AND PRESENTLY SERVING AS SUB-INSPECTOR
ASSAM POLICE AND INVESTIGATING OFFICER IN SERFANGURI P.S. CASE
NO. 13/2022 UNDER SECTIONS 273/420/34 OF THE IPC READ WITH SECTION
59(III) OF THE FOOD SAFETY AND STANDARD ACT

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2006.
VERSUS

MD. IMTHIAZ KHAN
S/O- KARIMULLAH KHAN
R/O- VILL.- PUANGANUR
P.O. AND P.S. CHITTOR
ANDHRAPRADESH.

Advocate for : MR. P N GOSWAMI
Advocate for : MR. A SARMA appearing for MD. IMTHIAZ KHAN

Linked Case : I.A.(Crl.)/414/2022

MD. IMTHIAZ KHAN

S/O M KAREEMULLAH KHAN
R/O- 24-10-96 M B T ROAD
PUNGANUR
CHITOR
ANDHRA PRADESH-517247.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PUBLIC PROSECUTOR
ASSAM

2:SUSIL CHETRY
S/O JIT BAHADUR CHETRY
R/O- VILL.- KUMALIA
P.S. BISWANATH CHARIALI
DIST. BISWANATH CHARIALI
ASSAM AND PRESENTLY SERVING AS SUB-INSPECTOR AND
INVESTIGATING OFFICER IN SEFARGURI P.S. CASE NO. 13/2022 UNDER
SECTIONS 273/420/34 OF THE IPC READ WITH SECTION 59(III) OF THE FOOD
SAFETY AND STANDARD ACT
2006..

Advocate for : MR. A SARMA
Advocate for : PP
ASSAM appearing for THE STATE OF ASSAM AND ANR

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Linked Case : Crl.Pet./356/2022

THE STATE OF ASSAM AND ANR
REP. BY THE PUBLIC PROSECUTOR
ASSAM

2: TH. CHINGLEN SINGH
S/O LATE NINGTHOU SINGHA

R/O VILL- THANGJAM LEIKAI
P.S. SONAI
DIST. CACHAR
PIN-788119
ASSAM AND PRESENTLY SERVING AS SUB-INSPECTOR
ASSAM POLICE AND INVESTIGATING OFFICER IN LALA P.S. CASE NO.

848/2021 UNDER SECTIONS 376/411 OF THE INDIAN CODE.
VERSUS

FAKRUL HAQUE LASKAR
SON OF HAZI RASHID AHMED
LASKAR
R/O VILL- SAHABAD PART-1
P.S. LALA
DIST. HAILAKANDI
ASSAM

Advocate for : MR. P N GOSWAMI
Advocate for : MR N DASGUPTA (r-1) appearing for FAKRUL HAQUE LASKAR

Linked Case : CrI.Pet./358/2022

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

2: TH. CHINGLEN SINGH
SON OF LATE NINGTHOU SINGHA
R/O VILL- THANGJAM LEIKAI
P.S. SONAI DIST. CACHAR
PIN-788119
ASSAM AND PRESENTLY SERVING AS SUB-INSPECTOR
ASSAM POLICE AND INVESTIGATING OFFICER IN LALA P.S. CASE NO.

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849/2021 UNDER SECTIONS 379/411 OF THE INDIAN PENAL CODE.
VERSUS

SAHIDUL ALOM LASKAR
SON OF HAZI GULEY AHMED
LASKAR
R/O VILL- SAHABAD PART-I
P.O. SAHABAD
P.S. LALA
DIST. HAILAKANDI
ASSAM

Advocate for : MR. P N GOSWAMI
Advocate for : MR N DASGUPTA appearing for SAHIDUL ALOM LASKAR

BEFORE

ORDER

19.12.2022.

Heard Mr. P.N. Goswami, learned Addl. Advocate General, Assam, being assisted by Mr. K.K. Parasar, learned Addl. P.P., Assam appearing for the petitioner/State of Assam. Also heard Mr. M. Biswas, learned counsel for the respondent in Crl. Petition No.284/2022, Mr. HRA Choudhury, learned Senior Counsel, being assisted by Mr. A. Ahmed, learned counsel for the respondent in Crl. Petition No.213/2022, Mr. Z. Kamar and Mr. PJ Saikia, learned Senior Advocates for the respondents in Crl. Petition No.356/2022 and Crl. Petition No.358/2022, Mr. NH Barbhuiya, learned counsel for the respondent in Crl.

Petition No.505/2022, Mr. Z. Kamar, learned Senior Advocate being assisted by Mr. NH Barbhuiya, learned counsel for the respondent in Crl. Petition Page No.# 8/10 No.517/2022, Mr. A. Sarma, learned counsel for the respondent in Crl. Petition No.641/2022 and Mr. NM Hazarika, learned counsel for the respondent in Crl.

Petition No.642/2022.

2. Mr. Goswami, learned Addl. Advocate General appearing for the petitioner submits that as common question of law is involved in all these eight applications, the same can be disposed of by a common judgment and order.

3. Mr. Goswami further submits that the common question of law involved in all these petitions, is :-

"Whether pending investigation, seized articles can be released by the court, by exercising the jurisdiction, either under section 451, or under section 457 of the Code of Criminal Procedure ?"

4. Mr. Goswami also submits that the answer is got to be emphatic no, in view of judgments of this court in Criminal Petition No. 368/2022 dated 10.05.2022; in Criminal Petition No. 597/2022 dated 16.09.2022; and also in view of the judgment of this court in Criminal Revision Petition No. 16/2022, dated 29.04.2022, where it has been held by the court that pending investigation, seized articles cannot be released by invoking either the provision of section 451 or section 457 Cr.P.C. as such a position is never contemplated under the aforesaid sections.

5. Mr. Goswami also referred one case law of Hon'ble Supreme Court in the case of Naveda Properties Private Ltd. vs. State of Maharashtra reported in [2019] 20 SCC 119. Mr. Goswami further submits that even in the case of Sunderbhai Ambalal Desai vs. State of Gujrat and others reported in [2002] 10 SCC 283, also the Hon'ble Supreme Court has never stated that the power under section 451/457 of the Cr.P.C. can be exercised at the stage of Page No.# 9/10 investigation.

6. Mr. Goswami further submits that in view of the decision of Hon'ble Supreme Court in Official Liquidator vs. Dayananda and others reported in [2008] 10 SCC 1, the decision of a coordinate Bench is binding upon another coordinate Bench of equal strength, and therefore, Mr. Goswami contended to dismiss all these petitions.

7. On the other hand, learned counsels for the respondents submit that in view of all the judgment of Hon'ble Supreme Court in the case of Sundervai Ambala Desai vs. State of Gujrat reported in [2002] 10 SCC 290 the court has the power to release the seized articles during investigation. It is the further submission of learned counsel for the respondents that section 457 of Cr.P.C. is of general application and the Magistrate has the power to release the seized articles which were not produced before this court even at the stage of investigation.

8. In view of the submission so advanced by learned counsel for both the parties, I have carefully gone through the petitions and the documents placed on record and also the case laws relied upon by the learned counsel for the parties.

9. It appears from the submission of Mr. Goswami that there are 3 judgments of this court holding the field and these are Criminal Petition No. 597/2022, dated 16.09.2022; Criminal Revision Petition No. 16/2022, dated 29.04.2022; and Criminal Petition No. 368/2022, dated 10.05.2022, and it has also been found that there is one more judgment of this court in the case of Sunil Gogoi Vs. State of Assam reported in [2022] 3 GLR 572, dated 28.08.2022, and the view consistently been taken by this court in aforementioned petitions is Page No.# 10/10 contrary to the view taken by this court in the criminal revision petition in Sunil Gogoi Vs. State of Assam.

10. In view of above, this Court is of the considered opinion that the law is required to be settled by a Bench of larger strength, on the following point of reference :-

"Whether pending investigation, seized articles can be released by the court, by exercising the jurisdiction, either under section 451, or under section 457 of the Code of Criminal Procedure ?"

11. In view of above the Registry is directed to place the matter before the Hon'ble Chief Justice, Gauhati High Court for kind consideration as to whether the matter may be referred to a larger Bench, to settle the law.

JUDGE Comparing Assistant