

# Page No.# 1/3 vs Md. Imthiyaz Khan on 18 July, 2022

**Author: Kalyan Rai Surana**

**Bench: Kalyan Rai Surana**

Page No.# 1/3

GAHC010133262022

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

Case No. : CrI.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 INSERFANGURI 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

VERSUS

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

Advocate for the Petitioner : MR. P N GOSWAMI

Advocate for the Respondent :

Page No.# 2/3

BEFORE  
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 18.07.2022 Heard Mr. P.N. Goswami, learned Additional Advocate General assisted by Mr. M.K. Goswami, learned APP for the State.

By this application filed under section 482 Cr.P.C., the State has prayed for quashing of the order dated 15.06.2022, passed purportedly under section 451 Cr.P.C., thereby granting interim custody of the areca nuts, which was seized in connection with Serfanguri P.S. Case No. 13/2022 under section 273/420/34 IPC read with section 59 (iii) of the Food Safety and Standard Act, 2006.

The learned Additional Advocate General has submitted that at this stage, the investigation is going on, which has not been completed and that the sample of seized areca nuts have been sent for forensic examination to determine the place of origin. Therefore, it is submitted that the power under section 451 Cr.P.C. can only be invoked during enquiry or trial and not at the investigation stage. It is submitted that if at this stage, the person having the zimma of the seized areca nuts dispose all of it, the State would suffer irreparable prejudice.

Issue notice returnable on 12.08.2022.

The petitioners shall take steps within 2 (two) days for service of notice on the respondent by registered post with A/D. Liberty is granted to the State to serve notice on the respondent through Serfanguri P.S., for which steps shall be routed through the Registry of the Court Page No.# 3/3 and upon service, an affidavit-in-opposition shall be filed prior to the next date of listing.

Having regard to the projection that section 451 Cr.P.C. has to be invoked at the stage of enquiry and trial and not at the stage of investigation, as an interim measure, the Court is inclined to stay the operation of the impugned order dated 15.06.2022 passed by the learned Judicial Magistrate First Class, Kokrajhar by which the custody of areca nuts seized in connection with Serfanguri P.S. Case No. 13/22 has been granted to the respondent.

List on 12.08.2022.

JUDGE Comparing Assistant