

GAHC010047702024



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

**Case No. : Crl.Rev.P./105/2024**

MOZAHAR ALI  
S/O GIYAS UDDIN MUNSI  
R/O VILL- ROWA PT.II  
P.O. SOULMARI  
P.S. DHUBRI  
DIST. DHUBRI, PIN-783331

VERSUS

THE STATE OF ASSAM  
REP BY THE LEARNED PP, ASSAM

**Advocate for the Petitioner : MR. SURAJIT DAS**

**Advocate for the Respondent : PP, ASSAM**

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

**ORDER**

**Date : 20.03.2024**

Heard Mr. S. Nawaz, learned counsel for the petitioner. Also heard Mr. K. K. Das, learned Additional Public Prosecutor for the State.

This application under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973 has been filed by the petitioner, namely, *Mozahar Ali*

impugning the order dated 19.01.2024 whereby the prayer for *zimma* made by the present petitioner of the vehicle, namely, Bajaj Pulsar NS-125 bearing Registration No. AS-17-M-4602 was rejected by the trial court.

The learned counsel for the petitioner has submitted that on the basis of an FIR lodged by one Utpal Ray, SI of Police before the Officer-in-Charge of Dhubri Police Station on 04.08.2023 i.e., Dhubri P.S. Case No. 305/2023 under Section 21(a)/27(a) of the NDPS Act, 1985 was registered. Ultimately, after completion of the investigation, the charge-sheet was laid against three accused persons, namely, Nasir Uddin Sk, Mizanur Rahman and Md. Jahirul Hussain.

It is also submitted by learned counsel for the petitioner that the motorcycle belonging to the present petitioner bearing Registration No. AS-17-M-4602 was also seized from the possession of one Nasir Uddin who was using that vehicle at that point of time. It is submitted by learned counsel for the petitioner that the present petitioner, namely, *Mozahar Ali* is not an accused in this case and he did not know that his vehicle was used for the commission of an offence under the NDPS Act, 1985.

It is submitted that though on an earlier occasion when the petitioner had filed an application seeking *zimma* of the vehicle, the same was rejected by the learned Special Judge, Dhubri on the ground that the vehicle may be required for the purpose of investigation as at that time investigation was still going on. However, thereafter on 17.01.2024, the Investigating Officer had submitted a report before the learned Sessions Judge, Dhubri, *inter alia*, mentioning therein that the seized vehicle is no longer required for investigation of this case.

The learned counsel for the petitioner has submitted that as the investigation has been completed and as the petitioner's motorcycle has been lying in the Dhubri Police Station since 04.08.2023 i.e., for last seven months, the learned Special

Judge has erred in not granting the zimma of the said vehicle to its owner who is the present petitioner inspite of the clear direction of the Apex Court in "**Sunderbhai Ambalal Desai v. State Of Gujarat**" reported in "**(2002) 10 SCC 283**" whereby it was observed as follows:-

***“21. However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly.”***

I have considered the submissions made by learned counsel for the petitioner as well as the learned Additional Public Prosecutor and have also perused the materials available on record.

As quoted herein above, the Apex Court has observed that the seized vehicles should not be kept in the police station for a long time and the powers under Section 451 of the Code of Criminal Procedure, 1973 should be properly and promptly exercised. However, in this instant case, it appears that though on the earlier occasion i.e., on 21.11.2023 the learned Special Judge, Dhubri had rejected the application for *zimma*, there was a reason for him for doing so as the investigation was not completed at that day. However, on the second occasion i.e., on 19.01.2024, the order which has been impugned in this revision petition by merely holding that as the bike in question was used in commission of the alleged offence and thereby rejecting the prayer for *zimma* of the said vehicle to the original owner, who is not even an accused in the case, the

learned Special Judge was not correct in his approach and has failed to comply with the directions of the Apex Court in "*Sunderbhai Ambalal Desai v. State Of Gujarat*" (*supra*) as it is of no use to keep the seized vehicle in the police station under open sky for long period as even if the trial proceed it would take a considerable amount of time for completion and by retaining the vehicle in the police station during the pendency of the trial would serve no purpose.

Furthermore, as per the registration certificate of the seized vehicle had clearly appears that the present petitioner is the owner of the seized vehicle.

Under the facts and circumstances of this case, the owner may not be deprived of the custody of the vehicle during pendency of the trial. Hence, the impugned order dated 19.01.2024 is hereby set aside and the learned Special Judge, Dhubri is hereby directed to pass appropriate orders immediately for giving *zimma* of the seized motorcycle to the present petitioner by taking appropriate bond from the petitioner for production of the said vehicle during the course of trial as and when the same is required.

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

**JUDGE**

**Comparing Assistant**