

**In the Supreme Court of Bangladesh
High Court Division
(Criminal Miscellaneous Jurisdiction)**

Criminal Miscellaneous Case No. 43189 of 2023

In the matter of:

An application under section 517(2) of the Code of Criminal Procedure.

And

In the matter of:

Noni Gopal Sarker

.....Petitioner

-Versus-

The State

.....Opposite party

Mr. Md. Abdur Razzak, with
Mst. Kalpan Aktar, Advocates

..... For the petitioner.

Mr. Md. Sarwar Hossain Bappi, D.A.G.

.....For the State.

Heard and Judgment on: 11.12.2023

Present:

Mr. Justice Zafar Ahmed

And

Mr. Justice Khandaker Diliruzzaman

Khandaker Diliruzzaman, J:

This Rule was issued calling upon the opposite party to show cause as to why order dated 10.04.2023 passed by the learned Additional Sessions Judge, 2nd Court, Dhaka in Metro. Sessions Case No.15072 of 2019 arising out of Gulshan Police Station Case No.30 dated 19.03.2019

corresponding to G.R. No.87 of 2019 under sections 279/304/109 of the Penal Code should not be quashed and/or such other further order or orders passed as to this Court may seem fit and proper.

The prosecution case, in short, is that one Brigadier General Mr. Arif Ahmed Chowdhury lodged First Information Report with the Gulshan Police Station on 19.03.2019 alleging, inter alia, that Abrar Ahmed Chowdhury, son of the informant and a student of Bangladesh University of Profession (BUP) was going to the university in his personal car on 19.03.2019. While his son was crossing the road at 7.30 am, a bus running recklessly and over speeding hit the car and consequently his son died on the spot. The driver of the bus managed to escape from the spot. Gulshan Police took the bus in their custody and the dead body was sent to the CMH Hospital, wherein the concerned doctor declared him dead. After knowing about the incident, the informant went to the spot and found his son dead and hence the case.

The police seized 1. one bus, namely, Suprova (Private) Limited, being registration No. Dhaka Metro Ba-

11-4135, Engine No.UPH-493101 and Chassis No.UPA-082436, 2. Driving License of Driver Md. Sirajul Islam being No.DK0791161L00001, 3. Road Permit from BRTA, 4. Photocopy of the fitness certificate, 5. one tax token, 6. one certificate from Northern Insurance Co. Ltd. and prepared a Seizure List on 19.03.2019.

During investigation, on 05.12.2020, the Investigating Officer filed an application for verification of ownership of the seized bus to the Assistant Director (Engine), BRTA, Mirpur, Dhaka. After obtaining the BRTA report, the Investigation Officer reached a conclusion that the seized bus belongs to the petitioner.

The petitioner filed an application before the learned Additional Metropolitan Sessions Judge, Second Court, Dhaka praying for taking the seized bus in his custody by submitting all the legal papers in support of his valid ownership.

On 10.04.2023, after hearing the application, learned Additional Metropolitan Sessions Judge, Second Court, Dhaka rejected the application for taking custody of the seized bus being registration No. Dhaka Metro Ba-11-4135,

Engine No. UPH-493101 and Chassis No. UPA-082436 by his order No.36 dated 10.04.2023.

Being aggrieved by and dissatisfied with the impugned order No.36 dated 10.04.2023 passed by the learned Additional Metropolitan Sessions Judge, Second Court, Dhaka, the petitioner filed the instant case before this Court under section 517(2) of the Code of Criminal Procedure and obtained the instant Rule.

Mr. Md. Abdur Razzak, with Mst. Kalpana Akter, the learned Advocates appearing for the petitioner by filing supplementary affidavit submits that the petitioner is the owner of seized bus being registration No. Dhaka Metro Ba-11-4135, Engine No. UPH-493101 and Chassis No. UPA-082436. He purchased the bus after availing loan facilities. The Investigating Officer verified papers and document of the seized bus and after conducting the investigation reached a conclusion that the seized bus belongs to the petitioner and, as such, he is entitled to get the custody of the alleged bus for the ends of justice.

He next submits that the bus in question is the subject of natural decay and damage and same has been

kept in the police station in an unsafe condition and if the same is not released to the custody of the petitioner he will be highly prejudiced. Considering the uncertainty of trial, the petitioner is entitled to get the custody of the seized bus.

Mr. Md. Sarwar Hossain Bappi, the learned Deputy Attorney General appearing for the State opposes the Rule and submits that the bus was seized as an asset of the case and, as such, the same cannot be handed over to the petitioner before conclusion of the trial.

We have heard the learned Advocate for the petitioner and the learned Deputy Attorney General for the State, perused the FIR, Charge Sheet and other materials on record placed before us. It appears from the records that the bus in question was seized from the place of occurrence and police after investigation found that the petitioner is the owner of the seized bus.

In the case of *Shahnewaz Karim Vs. the State*, reported in 62 DLR (2010), page- 67, wherein it has been held that:-

“The Court is entitled to release the property in the Jimma of the claimant to save the same from gradual damage being exposed to sun and rain. The petitioner claiming to take the same in his jimma is bound by the bond to produce the same in Court on when directed by the Court.”

Upon careful scrutiny of the materials on record, it appears that the petitioner Noni Gopal Sarker is the owner of the seized bus. The petitioner has produced valid papers and documents supporting his ownership of the seized bus. If the seized bus is not given to the custody of the petitioner the said bus will be damaged and destroyed and he will suffer irreparable loss.

Accordingly, we find substance in the submissions of the learned Advocate for the petitioner. Hence, the Rule has merit.

In the result, this Rule is made absolute.

The petitioner Noni Gopal Sarker be allowed to take the seized bus being registration No. Dhaka Metro Ba-11-4135, Engine No. UPH-493101 and Chassis No. UPA-

082436 in his custody upon furnishing adequate security bond to the satisfaction of the concerned Court below on further undertaking to produce the same before the Court as and when directed by the Court.

The concerned Court below is hereby directed to take necessary steps to give custody the seized bus to the petitioner within 15(fifteen) days from the date of receipt of the copy of this judgment and order in accordance with law.

Communicate this judgment and order to the concerned Court below at once.

Zafar Ahmed, J:

I agree.