

***Present***

*Mr. Justice A.S.M. Abdul Mobin*

&

*Mr. Justice Md. Mahmud Hassan Talukder*

**Criminal Miscellaneous Case No.25308 of 2023.**

Hosna Begum.....Petitioner.

Vs.

The state and another.....Opposite Parties.

Mr. Md. Akramul Haque Baki, Advocate  
For the petitioner.

Ms. Samira Tarenum Rabeya, D.A.G.with

Ms. Shamsun Nahar, AAG with

Mr. Mohammad Akter Hossain, AAG

For the opposite party No.1

Heard on 02.11.2023 &

Judgment on: 07.11.2023.

**A.S.M.ABDUL MOBIN,J.**

This Rule was issued calling upon the opposite parties to show cause as to why the judgment and order dated 10.01.2023 passed by the learned Sessions Judge, Cumilla in Criminal Revision No. 10 of 2023 rejecting the same and thereby affirming the Order dated 20.12.2022 passed by the learned Senior Judicial Magistrate, Cumilla in G.R. Case No. 1001 of 2022 corresponding to Kotwali Model Police Station Case No. 44 dated 13.11.2022 under table 14(Kha), 24(Ka) appended to section 36(1) of the Madok Drabbo Niyontran Aion, 2018 now pending in the Court of Chief Judicial Magistrate, Cumilla refusing a prayer for taking the seized Motocycle in Jimma should not be quashed and/or pass

such other or further order or orders as to this Court may seem fit and proper.

Facts relevant for disposal of the rule are that on 13.11.2022 one Md. Mahbubul Haque, Inspector of Police(Unarmed), as informant lodged an FIR with Kotwali Model Police Station, Cumilla alleging *inter-alia* that the informant along with his companion forces were on patrol duty on 12.11.2022. They received a secret information that some people having had narcotics gathered on the road in front of Jaluapara Central Jame Masjid, Pachthubi Union, Kotwali Model Police Station. They went to the place of occurrence. At that time, two people after getting down from the motorcycle fled away leaving a motorcycle and narcotics. The informant party seized the motorcycle along with narcotics. Thereafter, the informant lodged the first information report(FIR).

The case was investigated into and charge sheet was submitted against the accused person under the Narcotics Control Act, 2018. After submission of charge sheet, the case was sent for trial. While the case is pending for trial, the petitioner claiming herself as owner, filed an application before the learned Senior Judicial Magistrate, Cumilla for taking jimma of the seized motorcycle being No. Cumulla- L-13-5951 stating *inter alia* that Masuk Mia is the actual

owner of the alleged motorcycle and he is an immigrant of Kuwait and in his absence the present petitioner being his wife has been authorized by executing a power of attorney to take the seized motorcycle in her Jimma and the accused is their minor son who is not the owner of the seized motorcycle. She, therefore, prayed for jimma of the said motorcycle. But the prayer was rejected by the learned Senior Judicial Magistrate, Cumilla on 20.12.2022. Against that order, the petitioner filed this application under section 561A of the Code of Criminal Procedure before this Court and obtained the instant Rule.

Mr. Md. Akramul Haque Baki, the learned Advocate appearing on behalf of the petitioner submits that the accused who is alleged to have left the seized motorcycle, is not the owner of the same rather husband of the petitioner is the actual owner of the motorcycle and since he is an immigrant to Kuwait, the petitioner has been authorized by a power to attorney to take all steps to have the motorcycle in her jimma. The motorcycle is kept in open place in the compound of the police station and it is going to get rusted away if not taken due care immediately. The petitioner produced all the papers through the supplementary affidavit regarding ownership of the motorcycle but the Court below did not consider the same and as such, the Court below

failed to apply judicial mind while rejecting the prayer. He also submits that there is no certainty as to when the trial of the case will be concluded and if the motorbike is allowed to be kept in the police station, the same will be damaged and ruined due to lack of proper care of the same and as such, the petitioner being the owner of the motorcycle is ready to furnish all sorts of surety to take the custody of the aforesaid seized motorbike in his favour. Hence he has prayed for making the rule absolute with a direction to handover the vehicle in her favour.

On the other hand, the learned Deputy Attorney General opposes the rule.

We have considered the submissions of the learned Advocates, perused the application and all other relevant papers annexed thereto. It appears from Annexure-F and F-1 to the supplementary affidavit that husband of the petitioner namely Masuk Hossain has been shown as owner of the motorcycle being No. Cumilla-L-13-5951. From Annexure E to the supplementary affidavit, it appears that Sub-Inspector of Police in his report has stated that the owner of the seized vehicle is not involved in connection with the case. So, if the seized vehicle is damaged, the petitioner i.e. owner of the vehicle shall suffer loss and injury and as

such, the prayer for taking the seized vehicle in her jimma should be allowed for the interest of justice.

Accordingly, we find merit in this rule.

In the result, the rule is made absolute. The impugned judgment and order dated 10.01.2023 passed by the learned Sessions Judge, Cumilla in Criminal Revision No. 10 of 2023 rejecting the same and thereby affirming the Order dated 20.12.2022 passed by the learned Senior Judicial Magistrate, Cumilla in G.R. Case No. 1001 of 2022 corresponding to Kotwali Model Police Station Case No. 44 dated 13.11.2022 under table 14(Kha), 24(Ka) appended to section 36(1) of the Madok Drabbo Niyontran Aion, 2018 now pending in the Court of Chief Judicial Magistrate, Cumilla refusing a prayer for taking the seized Motorcycle in Jimma is hereby quashed.

The learned Magistrate is hereby directed to allow the petitioner to take the seized motorcycle being No. Cumilla-L-13-5951 in her jimma on furnishing sufficient security to his the satisfaction.

The petitioner is directed not to transfer or handover the motorbike till disposal of the case.

Communicate this order to the concerned court at once.

**MD. MAHMUD HASSAN TALUKDER,J.**

I agree.