

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CRIMINAL MISCELLANEOUS JURISDICTION)

Present:

Mr. Justice Ashish Ranjan Das

And

Mr. Justice Md. Riaz Uddin Khan

Criminal Miscellaneous Case No.61341 of 2023

IN THE MATTER OF:

An application under Section 561A of the Code of
Criminal Procedure

-And-

IN THE MATTER OF:

Mijanur Rahman

...Petitioner

Versus

The State

...Opposite Party

Mr. A.M. Mahbub Uddin, Advocate

--For the Petitioner

Mr. S.M. Asraful Hoque, D.A.G with

Ms. Fatema Rashid, A.A.G

Mr. Md. Shafiquzzaman, A.A.G. and

Mr. Md. Akber Hossain, A.A.G

...For the State

Heard and Judgment on: 13.05.2024

Md. Riaz Uddin Khan, J:

This Rule was issued on an application filed under Section 561A of the Code of Criminal Procedure asking the opposite party to show cause as to why the impugned order dated 26.06.2023 passed by the Sessions Judge, Cox's Bazar in Criminal Revision No. 294 of 2023 arising out of Ramu Police Station Case No. 74 dated 30.05.2023 corresponding to GR No. 270 of 2023 (Ramu), now pending in the Court of Additional Chief Judicial Magistrate, Cox's Bazar rejecting the application

for Custody (Jimma) of the sized motorcycle should not be quashed and or such other or further order or orders passed as to this Court may seem fit and appropriate.

The succinct fact is that one BGB member Md. Aktar Hossain lodged a First Information Report (FIR) implicating two accused alleging inter alia that acting on a tip of on 29.05.2023 at 18.00 am they stopped a motorbike at the duty check post and on interrogation two accused person who were on the motorbike confessed that they were carrying Yaba Tablet. The informant recovered 4,000(four thousand) pieces of Yaba Tablet from the said two accused and the motorcycle bearing Chassis No.PS2RG64100A060181, Engine No. G3L5E0266469, Colour-Black, 150 CC, Brand-YAMAHA, Model-FZS. V-2 was seized by the informant party and accordingly a seizure list was prepared and the FIR was lodged.

Police took up the matter for investigation and submitted Charge Sheet under Table 10(Kha) appended to Section 36(1)/41/38 of the Madok Drabya Niyantaran Ain, 2018 against the FIR named accused.

The present petitioner, Mijanur Rahman is neither named in the FIR nor implicated in the charge sheet, claiming himself as the real owner of the motorbike seized in connection with the abovementioned case, filed an application before the Court of Senior Judicial Magistrate,

Cognizance Court, Cox's Bazar for custody (jimmah) of the said motorbike upon which the learned Magistrate by order dated 06.06.2023 asked the Investigating Officer to submit a report ascertaining the ownership of the same. On 14.06.2023 the Investigating Officer submitted a report in support of the ownership of the motorbike in favour of the petitioner after ascertaining the same. However, the prayer for jimmah of the motorbike of the petitioner was rejected on 18.06.2023 by the court of Senior Judicial Magistrate on the ground that the seized Motorbike was allegedly used for carrying drugs (Madak).

Against the said order of rejection the petitioner filed Criminal Revision No. 294 of 2023 before the Sessions Judge, Cox's Bazar who after hearing by his judgment and order dated 26.06.2023 was also pleased to reject the same and thereby affirmed the order passed by the learned Magistrate on the finding that the seized Motorbike was used for carrying drugs (Madak) and the same is an important alamot of the case; moreover, the same has not been registered with the BRTA.

Being aggrieved by and dissatisfied with the said judgment and order dated 26.06.2023 the present petitioner preferred the instant application under section 561A of the Code of

Criminal Procedure and obtained the rule as aforesaid.

Mr. A.M. Mahbub Uddin, the learned Advocate for the petitioner submits that admittedly the petitioner is the actual owner of the seized motorbike bearing Chassis No.PS2RG64100A060181, Engine No. G3L5E0266469, Colour-Black, 150 CC, Brand-YAMAHA, Model-FZS. V-2 as found by the Investigating Officer but unfortunately both the Courts below rejected the petitioner's prayer for taking custody (Jimmah) of the Motorbike in question on the ground that it is an important alamot of the case.

Mr. Mahbub further submits that the petitioner was in no way connected with the alleged offence in any manner whatsoever as revealed by the investigation and is the *bonafide* owner of the seized motorbike who applied for registration with the Bangladesh Road Transport Authority (BRTA) after paying required fees which is evident from the report of the Investigating Officer but both the Courts below failed to consider this aspect of the case and rejected the application of the petitioner without applying their judicial minds. He submits that the petitioner is a poor man who bought the motorbike with his hard earned income and let his cousin accused Shihab for riding once.

The learned advocate then submits that the Courts below had sufficient scope to entertain

the application of the petitioner so far allowing custody (Jimmah) of the seized motorbike in favour of the petitioner within the purview of section 516A of the Code of Criminal Procedure but the Courts below without applying the Judicial mind and without accessing the materials on record applicable thereto most erroneously rejected the application of Jimmah of the seized motorbike of the petitioner.

He lastly submits that the petitioner prays for the custody of the seized motorbike and he also undertakes to produce the same before the concern trial Court in any terms and conditions as the trial court deems fit and proper or as fixed by this Court.

On the other hand the learned Deputy Attorney General opposed the rule contending that since the Motorbike in question was used in carrying drugs (Madak Drabya) it is liable to be confiscated or destroyed after conclusion of trial, if the case is proved.

We have heard the submissions of both the parties, perused the application, supplementary affidavit along with the annexure. We have also gone through the order passed by the learned Magistrate as well as the impugned Judgment and Order passed by the learned Sessions Judge.

Section 516A of the Code of Criminal Procedure empowers a criminal court to make an order which it thinks fit for the proper custody

of any property which is produced before it regarding which any offence appears to have been committed or which appears to have been used for the commission of any offence pending conclusion of the inquiry or trial and if the property is subject to speedy or natural decay the court after recording such evidence as it thinks necessary, order the property to be sold or otherwise disposed of. From reading of the aforesaid provision of law it appears that the criminal court is empowered during any inquiry or trial to give proper custody of any property in respect of which there is any allegation of commission of offence or which has been used for any offence.

In the case of Shahnewaz Khan versus the State reported in 62 DLR 67 wherein it is held: "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 and when directed by Courts".

In the present case it has been alleged that the seized motorbike was used in commission of an offence, herein carrying drugs. Admittedly the present petitioner is not involved in the alleged offence as he is not named in the FIR or Charge sheet. The Investigating Officer by the order of the Court submitted report on the finding that

the present petitioner is the owner of the motorbike in question. His ownership is not in question rather undisputed. The petitioner alleged that the motorbike is now in the custody of police keeping it in the open sky without any use being exposed to sun and rain which will ultimately decay the usability of the motorbike in the long run. In such circumstances, to our view, in deciding the question of proper custody the paramount consideration should be the protection and preservation of the property seized. The seized motorbike is an important material (alamot) for the case which should be protected and preserved. Therefore, we are of the opinion that the present petitioner being the undisputed owner of the motorbike is the proper custodian of the same within the meaning of section 516A of the Code of Criminal Procedure who for his own interest will protect and preserve it.

In view of the discussions and the observations made above, we are inclined to interfere with the impugned judgment and order passed by the learned Sessions Judge affirming the order of the learned Magistrate rejecting the prayer for custody of the motorbike in question and the same is set aside. But in this case there is allegation that the motorbike in question was used for carrying drugs (Madak Drabya) and the case is under trial, we think in all fairness the

custody (Jimmah) of the seized motorbike should be given to the petitioner on condition of furnishing bond/ security to the tune of Taka 50,000/- (fifty thousand) to the satisfaction of the trial court. We, therefore, direct the trial court to give the seized Motorbike in the custody (Jimmah) of the present petitioner on furnishing the bond/security as expeditiously as possible on condition to produce the same in Court on and when directed by the trial Court.

In the result, the Rule is made **absolute**. The trial court will be at absolute liberty to decide the case, GR No. 270 of 2023 (Ramu), pending before it under Madak Drabya Niyantran Ain, 2018 in accordance with law.

Communicate the Judgment and order at once.

Ashish Ranjan Das, J:

I agree.