

GAHC010017232026



2026:GAU-AS:3054

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

Case No. : Crl.Pet./127/2026

AMINUL HOQUE LASKAR
S/O SAMSUL HAQUE LASKAR, VILLAGE ALGAPUR PART-V, P.S. ALGAPUR,
P.O. KALIBARI BAZAR DISTRICT HAILAKANDI, ASSAM.

VERSUS

THE STATE OF ASSAM
REPRESENTED BY THE PP, ASSAM

Advocate for the Petitioner : MR. A M BARBHUIYA, MS S R MAZARBHUIYA, MS A BEGUM

Advocate for the Respondent : PP, ASSAM,

BEFORE
HONOURABLE MRS. JUSTICE SHAMIMA JAHAN

ORDER

27.02.2026

Heard Mr. A.M. Barbhuiya, learned counsel for the petitioner. Also heard Mr. M.P. Goswami, learned Addl. Public Prosecutor appearing for the State.

By this application, the petitioner has prayed for custody of the vehicle being Bolero vehicle bearing registration No. AS-01-DY-0119 seized in

connection with Algapur P.S. Case No. 56/2025 registered under Section 21(C) of the NDPS Act.

The case started with lodging of the FIR wherein it was stated that on secret information that a consignment of suspected Narcotic Drugs & Psychotropic Substances is being carried in a bolero vehicle which was meant to be delivered to some pharmacy and that the police personnel after doing the needful under the act noticed the bolero vehicle in front of the said pharmacy and saw the driver of the said vehicle delivering one packet to the said pharmacy. It was also alleged that upon reaching the bolero vehicle, the driver seeing the police party, fled the spot and police party upon entering the pharmacy, searched the said pharmacy and upon search, they found ten (10) numbers of plastic cough syrup bottle containing Codeine Phosphate & Triprolidine Hydrochloride Syrup suspected to be contraband substance under the NDPS Act. The police personnel seized the syrup bottles and also the bolero vehicle.

Mr. A.M. Barbhuiya, learned counsel for the petitioner submits that the said bolero vehicle was seized on 19.08.2025 and that the police have completed the investigation and submitted the charge sheet the fact which is exceeded to by Mr. M. P. Goswami, learned Addl. Public Prosecutor. Mr. A.M. Barbhuiya, learned counsel further submits that since the investigation is over,

the vehicle may be given in custody to the owner of the same during the pendency of the NDPS case. As far as the ownership is concerned, Mr. A.M. Barbhuiya, learned counsel has placed registration certificate of the said vehicle and from the same, it is seen that the petitioner namely, Aminul Hoque Laskar is the registered owner of the said vehicle. He has also placed the Order dated 19.01.2025 by which the learned Court of Special Judge NDPS, Hailakandi has rejected the custody of the vehicle to be given to the petitioner. He also submits that the Hon'ble Supreme Court has held in a number of judgment that custody of the vehicle should be given to the owner of the same immediately by the Magistrate after seizure as it is of no use to keep the vehicle in the police station for long and that the same would result in wear and tear of the seized article.

On the other hand, Mr. M. P. Goswami, learned Addl. Public Prosecutor appearing for the State submits that the vehicle is being used in transportation of the concerned contraband and the driver was seen giving the packet to the pharmacy by getting down from the said vehicle and when the police personnel reached the pharmacy, the driver was seen fleeing from the said place. Mr. M. P. Goswami, learned Addl. Public Prosecutor relies on the judgment of *Bishwajit Dey vs. The State of Assam* delivered by the Hon'ble Apex Court in *Criminal Appeal No. 87 of 2025* wherein the Hon'ble Supreme Court has held that when the contraband is recovered from the possession of the agent of the owner like

driver and that it was found that contraband was stored and transported in the vehicle with owners knowledge and connivance, the same may not be given to the owner.

On consideration of the submissions made by the parties and the law laid down by the Hon'ble Supreme Court that the vehicle seized in connection with any criminal offence may not be kept for long in the police station as the same would lead to destruction of the same. It was held that the same be given in custody to the owner or the person from whom it is seized or to the insurance company at the earliest by the Magistrate. The Hon'ble Apex Court had ordered the same upon satisfaction of few conditions like preparing proper panchnama, taking proper photographs and bond that such articles would be produce during the time of trial and after taking proper security. In *Bishwajit Dey vs. The State of Assam (Supra)* the Hon'ble Apex Court had made distinction in four ways. First, when the owner of the vehicle is the person from whom the contrabands are recovered. Second, when the contrabands is recovered from the possession of the agent of the owner like the driver. Third, when the vehicle has been stolen by the accused and the contraband is recovered and fourth, when the contraband is recovered from a third-party occupant of the vehicle. The Hon'ble Apex Court has concluded that in case of first and second scenario, the vehicle may not be released on custody but in case of third and fourth scenario, where

there is no allegation against the owner or his agent, the vehicle should normally be released in interim subject to owner furnishing a bond.

In the instant case, it is seen that on an information, the police personnel reached the place and saw the driver delivering a packet to the pharmacy and on search being made in the pharmacy, contrabands were recovered. The contraband were neither recovered from the possession of the driver nor it was recovered from the possession of the owner nor the vehicle nor it is stated anywhere that owner had the knowledge.

As such, this Court deems it fit that the vehicle bearing registration No. AS-01DY-0119 be given in interim custody to the petitioner who is the owner of the said vehicle pending the trial of the Special NDPS Case No. 15/2025. Before giving custody of the vehicle to the owner, the necessary bond should be taken and the other requirements has to be fulfilled by the Investigating Officer or by the concerned Court as required under the law.

Petition is disposed of.

JUDGE

Comparing Assistant