

GAHC010203282026



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

Case No. : I.A.(Civil)/3325/2026

ROHIT CHOUDHURY
S/O MR. DEBI PRASAD AGARWAL R/O VILLAGE GORMUR,
P.O LOKHUJAN, BOKAKHAT, DISTRICT GOLAGHAT, ASSAM 785612

-VERSUS-

1: UNION OF INDIA AND ORS. THROUGH THE MINISTRY OF
ENVIRONMENT, FOREST AND CLIMATE CHANGE HAVING ITS ADDRESS
AT INDIRA PARYAVARAN BHAWAN, JORBAGH ROAD, NEW DELHI 110003

2:STATE OF ASSAM THROUGH THE CHIEF WILDLIFE WARDEN ASSAM
FOREST DEPARTMENT ARANYA BHAWAN SRIMANTA SANKARDEVA
KALAKSHETRA PANJABARI GUWAHATI 781037 KAMRUPM ASSAM EMAIL
HOFF-ASSAMGOV.IN

3:STATE OF ARUNACHAL PRADESH THROUGH THE PRINCIPAL CHIEF
CONSERVATOR OF FOREST WILDLIFE AND BD AND THE CHIEF WILDLIFE
WARDEN DEPARTMENT OF ENVIRONMENT FOREST AND CLIMATE
CHANGE GOVERNMENT OF ARUNACHAL PRADES

For the Applicant/Petitioner(s) : Mr. A. Phukan, Advocate,
(through video-conferencing).
: Mr. P .Sharma, Advocate,

For the Respondent(s) : Mr. R.K.D. Choudhury, Deputy Solicitor General of India for
respondent No.1.
: Mr. P.N. Goswami, Addl. Advocate, General, Assam *(through
video-conferencing)*, assisted by Mr. K.P. Pathak and Mr. I.
Borthakur, Standing Counsel, Forest Department for
respondent No.2.
: Mr. A. Chandran, Senior Government Advocate, Arunachal
Pradesh for respondent No.3.

– B E F O R E –
HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

17.09.2026

(Ashutosh Kumar, CJ)

We have heard Mr. A. Phukan, learned Advocate for the applicant and Mr. P.N. Goswami, learned Additional Advocate General, Assam.

This interlocutory application has been filed in a writ petition questioning the validity of the proviso to Section 40(2A) and 40(2B) of the Wild Life (Protection) Act, 1972 as being arbitrary and violative of Article 14 of the Constitution of India, in as much as it creates an exceptional regime governing the ownership, control, custody and possession of the captive elephants. The afore-noted writ petition [WP(C) No.5899/2023] is still under consideration of this Court.

According to the information received by the applicant, 5(five) elephants belonging to private persons, are shortly to be transported to the temples situated in the State of Tamil Nadu.

There is no law circumscribing the transfer of elephants provided there are clearances from the respective bodies under the statute. The only apprehension raised on behalf of the applicant is that there had been, in the past, a known case of overstay of an elephant transferred to Tamil Nadu and, therefore, there could be a possibility of ill-treatment to the transported elephants to the temples of Tamil Nadu.

We are afraid, such apprehension does not appear to be genuine for the reason that because of the overstay of that very elephant, namely, “*Joy mala*”, the State of Assam has filed a writ petition

before this Court seeking its safe return to the State of Assam.

Prima facie, we find no reason, as on date, to pass any restraint order, unless it is clearly shown that necessary clearances have not been obtained. However, keeping in mind the importance of maintaining the health of the elephants, who are captives with private persons from being put to unscrupulous/unauthorized use, we keep this application pending with a direction to the learned Additional Advocate General, Assam to respond to this application by the next date.

Presently, Mr. Goswami, learned Additional Advocate General, Assam has made a statement before this Court that all clearances for transfer of the 5(five) elephants to the temples of Tamil Nadu have been given and all possible care shall be taken for safe transportation of those elephants for religious purposes.

It may also be noted here that the applicant has also approached the High Powered Committee for the needful, which is pending consideration.

This Court has been informed that the State has also filed the response affidavit before the High Powered Committee.

Though the connected writ petition [WP(C) No.5899/2023] is slated to be listed on 24.09.2026, let the afore-noted writ petition and this interlocutory application be listed for consideration on **15.10.2026**.

JUDGE

CHIEF JUSTICE

Comparing Assistant