

(2023) 03 GUJ CK 0036

In the Gujarat High Court

Case No : R/Special Criminal Application No. 7233 Of 2022

Akbar Pasa Budhansabina

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 09-03-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Code Of Criminal Procedure, 1973 — Section 482
Mumbai Animal Preservation Act, 1954 — Section 5, 6, 8
Gujarat Animal Preservation Act, 1954 — Section 5(k), 5(kh), 8

Citation : (2023) 03 GUJ CK 0036

Hon'ble Judges : Samir J. Dave, J

Bench : Single Bench

Advocate : NK Majmudar

Final Decision : Allowed

Judgement

Samir J. Dave, J

1. Rule. Learned APP waives service of notice of rule for and on behalf of respondent – State.

2. The petitioner has filed this petition to invoke inherent jurisdiction vested under Articles 226 and 227 of the Constitution of India and read with Section 482 of the Code of Criminal Procedure to release the muddamal vehicle i.e. Truck bearing RTO Registration No.KA-07-B-0640 in connection with the FIR being CR.No.11214020210181 of 2021 registered with Kamrej Police Station, District-Surat for the offence punishable under Sections 5, 6, 8 of Mumbai Animal Preservation Act, 1954 and Section 5(k), (kh) and 8 of Gujarat Animal Preservation Act, 2017.

3. Heard learned learned advocates for the parties

4. Learned advocate for the petitioner has submitted that the muddamal vehicle has been detained by the investigating officer and that if the interim custody of

the vehicle is not given, serious prejudice would be caused to the petitioner as the muddamal vehicle would get substantially damaged by the time trial gets concluded and probably by that time the value of the muddamal vehicle may also become 'Nil' as the vehicle is lying under the open sky in different climatic conditions. It was further submitted that this Court has ordered release of muddamal vehicles. It was accordingly urged that this Court may direct release of the muddamal vehicle in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India on suitable terms and conditions.

5. It is also contended that as per various judgments of this Court and Hon'ble Apex Court in case of Sundarbhai Ambalal Desai vs. State of Gujarat reported in AIR 2003 SC 638 and in case of Smt. Basava Kom Dyaman Gauda Patil Vs. State of Mysore reported in (1977) 4 SCC 358, wherein the captioned mudamal has been released.

6. Per contra, learned APP has heavily opposed and placed reliance upon the judgment dated 18.12.2017 passed by Co-ordinate Bench of this Court in case of Jhala Ghanshyamsingh Mobatsingh vs. State of Gujarat in Special Criminal Application No. 9745 of 2017. Learned APP further contended that the order passed by the learned trial Court is just and proper.

7. Having heard the arguments advanced by both the sides, while determining the other issues raised by the learned APP with reference to Mines Act and also with reference to judgments of this Court and judgment dated 18.12.2017 in case of Jhala Ghanshyamsingh Mobatsingh vs. State of Gujarat and other provisions of the said Act and referring to that and the issues to be determined in future in appropriate proceedings being contentious issue, this Court is not inclined to enter into that arena in the present matter and instead exercised powers vested under Articles 226 and 227 of the Constitution of India.

8. This Court has also assistance of judgments and orders passed by the Co-ordinate Bench of this Court, which are as under:

(a) In case of Vipul Roshan Kumar Shah vs. State of Gujarat order dated 15.06.2020 passed in Special Criminal Application No. 6957 of 2019.

(b) In case of Saramanbhai Devsibhai Barad vs. State of Gujarat order dated 10.06.2020 passed in Special Criminal Application No. 8601 of 2019.

(c) In case of Mahesh Mansukhbhai Dholaria vs. State of Gujarat order dated 19.08.2019 passed in Special Criminal Application No. 7806 of 2019.

(d) In case of Anirrudhsinh Pravinsinh Jadeja vs. State of Gujarat order dated 10.08.2018 passed in Special Criminal Application No. 6039 of 2018.

(e) In case of Dilipbhai Ramanbhai Chaudhari (Legal Heirs of Late Ramanbhai Chaudhari) vs. State of Gujarat order dated 14.08.2020 passed in Special Criminal Application No. 3387 of 2020.

(f) In case of Smitaben Kalpeshbhai Chaudhary vs. State of Gujarat order dated

20.07.2020 passed in Special Criminal Application No. 2851 of 2020.

(g) In case of Jignasha Kalpeshbhai Prajapati thro POA Kalpeshbhai Bhagwanbhai Prajapati vs. State of Gujarat order dated 20.07.2020 passed in Special Criminal Application No. 2896 of 2020.

(h) In case of Devabhai Ranchhodbhai Ahir vs. State of Gujarat order dated 20.07.2020 passed in Special Criminal Application No. 2853 of 2020.

(i) In case of Vipul Roshan Kumar Shah vs. State of Gujarat order dated 15.06.2020 passed in Special Criminal Application No. 6957 of 2019.

(j) In case of Vipul Roshan Kumar Shah vs. State of Gujarat order dated 22.07.2020 passed in Special Criminal Application No. 7143 of 2019

9. This Court notices that the said muddmal vehicle was meant for transfer of material from legal mines and further this offence was not as per instructions of present petitioner to the driver, considering the decision of Sunderbhai Ambalal Desai Vs. State of Gujarat (Supra), wherein Hon'ble Apex Court lamented scenario that vehicle having unattended and becoming junk within the premises of Police Station, further the captioned muddamal vehicle was used by employee of the petitioner and petitioner is suffering from many months, therefore, bearing in mind all such facts and circumstances, the petitioner has to be given back his muddamal vehicle with few conditions.

10. Resultantly, this petition is allowed, and the order dated 24.02.2021 passed by the learned Judicial Magistrate, First Class, Kathor and the order dated 16.10.2021 passed by the learned 10th Additional Sessions Judge, Surat are set aside. The authority concerned is directed to release the vehicle of petitioner, Truck bearing RTO Registration No.KA-07-B-0640 in the terms and conditions that the petitioner:

1. shall furnish a solvent surety of the amount equivalent to the value of the vehicle in question as per the value disclosed in the seizure memo or panchnama.
2. Shall file an undertaking before the trial Court that prior to alienation or transfer in any mode or manner, prior permission of the concerned Court shall be taken till conclusion of the trial,
3. Shall also file an undertaking to produce the vehicle as an when directed by the trial Court
4. If the I.O. finds use of vehicle in such anti-social, illegal activity by the present petitioner then this order shall stand cancel and the vehicle will be seized.
5. The trial Court shall verify the ownership of the vehicle before releasing the same.

11. Before handing over the possession of the vehicle to the petitioner, necessary photographs shall be taken and a detailed Panchnama in that regard, if not already drawn, shall also be drawn for the purpose of trial.

12. If, the I.O. finds it necessary, Videography of the vehicle also shall be done. Expenses towards the photographs and the videography shall be BORNE by the petitioner. Rule is made absolute. Direct Service is permitted.