

(2020) 06 GUJ CK 0126

In the Gujarat High Court

Case No : R/Special Criminal Application No. 535 Of 2020

Alpeshbhai Babubhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 17-06-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Gujarat Mineral (Prevention Of Illegal Mining Storage And Transportation) Rules, 2017 — Rule 3, 21
Code Of Criminal Procedure, 1973 — Section 451, 482
Indian Penal Code, 1860 — Section 114, 196, 379
Mines And Mineral (Regularization And Development) Act, 1957 — Section 4(1)(A), 21(1)
Gujarat Prohibition Act, 1949 — Section 98, 98(2), 99

Citation : (2020) 06 GUJ CK 0126

Hon'ble Judges : B.N. Karia, J

Bench : Single Bench

Advocate : Kruti M Shah, Manan Mehta

Final Decision : Allowed

Judgement

B.N. Karia, J

Leave to amend.

Rule returnable forthwith. Learned APP waives service of notice of rule for and on behalf of respondent-State.

1. The petitioner has preferred this petition, seeking to invoke extraordinary jurisdiction of this Court under Article 226 and supervisory jurisdiction

under Section 227 of the Constitution of India so also inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973.

2. This application is preferred seeking release of Muddamal Vehicle Truck bearing Registration No. GJ-21-V-7585.

3. It is the case of the petitioner that he is the owner of the aforesaid vehicle and it is duly registered with the transport department of the

Government. He is, therefore, before this Court.

4. The case of the prosecution is that on 08.05.2019 two vehicles i.e. Truck bearing Registration No. GJ-21-V-7585 and Truck No. GJ-16-X-9059

were seized by Geology and Mining Department for illegally transporting the ordinary sand. After sizing when the said trucks were taken to Shriji

Construction causeway, the owner of the said vehicle Truck No.GJ-21-V- 7585 has obstructed their way and tried to obstruct the public servant from

performing the duties, there was illegal transportation of 35 and 40 metric tons. On 09.05.2019 the complainant received a phone call that the owners

and drivers of the vehicles had taken away the trucks from the place where the same were parked. It is further stated that there was evasion of

royalty along with penalty of compounding fess of Rs.2,01,200/- and Rs.2,26,400/- of these two vehicles.

Therefore, an FIR being C.R. No.I-64 of 2019 came to be lodged with Mandvi Police Station for the offences punishable under Sections 379, 186, 114

of Indian Penal Code and under Sections 4(1)(A) and 21(1) of the Mines and Mineral (Regularization and Development) Act, 1957 and under Rule 3

and 21 of Gujarat Mineral (Prevention of Illegal Mining Storage and Transportation) Rules,2017.

5. This Court had issued rule. Today, learned Advocate appearing for the petitioner is heard at length.

6. Learned Advocate for the petitioner has urged that this Court has wide powers, while exercising such powers under Article 226 of the Constitution.

It can also take into account the ratio laid down in the case of 'SUNDERBHAI AMBALAL DESAI VS. STATE OF GUJARAT', AIR 2003 SC 638,

wherein, the Apex Court lamented the scenario of number of vehicles having been kept un-attended and becoming junk within the police station

premises. Lastly, learned advocate for the applicant has requested to release Vehicle Truck bearing Registration No. GJ-21-V-7585.

7. This Court has also heard the learned APP and he has urged this Court that the appropriate conditions be imposed, while ordering the release of the

vehicles. He further pointed out that this Court (Coram: J.B. Pardiwala, J.) in the case of 'ANILKUMAR RAMLAL @ RAMANLALJI MEHTA

VS. STATE OF GUJARAT' in Special Criminal Application No. 2185 of 2018, Dated: 05.04.2018, and in the earlier decision in 'PARESHKUMAR

JAYKARBHAI BRAHMBHATT VS. STATE OF GUJARAT' in Special Criminal Application No. 8521 of 2017 and the allied matters decided on

15.12.2017, has held that the powers of the Magistrate to order interim release of the seized vehicle under Section 98(2) of the said Act has been

curtailed, and therefore, the Courts below have been held to have no jurisdiction to order interim release of the vehicle, pending trial, where, the

vehicle is seized in connection with the offence under the Prohibition Act and the quantity of the liquor seized exceeds 10 liters. He, further, urged

that, of course, powers of this Court under Article 226 of the Constitution to order release of the vehicles can be exercised at any time, whenever the

Court deems it appropriate. He also pointed out that the recent decision of this Court in Special Criminal Application No. 2185 of 2018, where, this

Court, in exercise of the powers under Article 226 of the Constitution, has ordered the release of the vehicle, pending trial. He has also pointed out the

order passed by this Court in Special Criminal Application No. 1126 of 2018, Dated: 21.06.2018, in case of 'GUJARAT STATE ROAD

TRANSPORT CORPORATION THROUGH DEPOT MANAGER, MORBI, VS. STATE OF GUJARAT'.

8. On thus hearing both the sides, without determining the other issues raised by the petitioner, in reference to Sections 98 and 99 and other provisions

of the said Act and reserving that to be determined in future, in an appropriate proceedings being a contentious issue, this Court choses not to enter

into that arena in the present matter and instead exercise the powers under Articles 226 and 227 of the Constitution.

9. This Court (Coram: J.B. Pardiwala, J.) however in the case of in 'ANILKUMAR RAMLAL @ RAMANLALJI MEHTA VS. STATE OF

GUJARAT' (Supra) in Special Criminal Application No. 2185 of 2018, Dated: 05.04.2018, has also returned the vehicle recently under Articles 226

and 227 of the Constitution, exercising its powers to do that even at an initial stage.

9.1 It would be worthwhile to refer profitably at this stage to the observations made by the Apex Court in 'SUNDERBHAI AMBALAL DESAI VS.

STATE OF GUJARAT' (Supra), which read as under:

15. Learned senior counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of

vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates

who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking

appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is

seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

17. In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to

pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any

point of time. This can be done pending hearing of applications for return of such vehicles.

9.2 The Apex Court has, thus, directed that within a period of six months from the date of production of the vehicle before the Court concerned,

needful be done. It even went to the extent of directing that where the vehicle is not claimed by the accused, owner, or the insurance company or by

third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance

company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails

to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the

date of production of the said vehicle before the Court. It also directed that before handing over possession of such vehicles, appropriate photographs

of the said vehicle should be taken and a detailed panchnama should also be prepared. The Apex Court also held and specifically directed that

concerned Magistrate would take immediate action for seeing that powers under Section 451 of the Code are properly and promptly exercised and

articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. It, therefore, directed that this object

can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly.

10. Resultantly, this application is ALLOWED. The authority concerned is directed to RELEASE the vehicle of the petitioner, Vehicle Truck bearing

Registration No. GJ-21-V-7585 on the terms and conditions that the petitioner:

(i) shall furnish, by way of security, bond of Rs.10,00,000/- (Rupees Ten Lakhs only) and vehicle and solvent surety of the equivalent amount;

(ii) 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;

(iii) shall also file an undertaking to produce the vehicle as and when directed by the trial Court;

(iv) in the event of any subsequent offence, the vehicle shall stand CONFISCATED.

10.1 Before handing over the possession of the vehicles 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.

10.2 If, the IO finds it necessary, VIDEOGRAPHY of the vehicle also shall be done. Expenses towards the photographs and the videography shall be

BORNE by the petitioner.

11. It appears from the order passed by Court below that externment order has been passed by the competent Authorities against the present

applicant and in connection with this order, the applicant would not be permitted to enter into the area of the concerned police station. So far as the

present issue is concerned, applicant shall be permitted to take possession of the Vehicle Truck bearing Registration No. GJ- 21-V-7585 from the

concerned police station only for this purpose.

Rule is made absolute, accordingly. Direct service is permitted.