

(2020) 08 GUJ CK 0191

In the Gujarat High Court

Case No : R/Special Criminal Application No. 3358 Of 2020

Arjubhai Digambarbhai Patil

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 14-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Code Of Criminal Procedure, 1973 — Section 451, 482

Gujarat Prohibition Act, 1949 — Section 65(A)(E), 81, 98, 98(2), 99, 116(B)

Citation : (2020) 08 GUJ CK 0191

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : Kishan H Daiya, JK Shah

Final Decision : Allowed

Judgement

Ashutosh J. Shastri, J

RULE. Learned APP Mr. J.K. Shah waives service of Rule for and on behalf of the respondent-State.

1. Present petition under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code is filed for the purpose of

seeking following reliefs:-

â??(A) That the Honâ??ble Court may be pleased to admit this Special Criminal Application.

(B) That this Honâ??ble Court be pleased to allow this Special Criminal Application by quashing and setting aside the judgment and order passed by

the 4th Add. Sessions Judge, at Surat in Criminal Revision Application No. 355 of 2019 dated 16.12.2019 and further be please to quash and set aside

the order passed by 14th (Ad-hoc) Add. ACJ and JMFC, Surat dated 10.10.2019

and be further please to allow the application as prayed by the petitioner before court below in the interest of justice.

(C) Pending admission, hearing and final disposal of this petition, this Honâ??ble Court may be pleased to grant stay of implementation, operation and

execution of the order passed by the 4th Add. Sessions Judge, Surat in Criminal Revision Application No. 355 of 2019 dated 16.12.2019 and be further

please to stay the order and judgment dated 10.10.2019 passed by the 14th (Ad-hoc) Add. ACJ and JMFC, Surat in the interest of justice.

(D) Grant such other and further relief as deemed just and proper by this Honâ??ble Court in the interest of justice.â??

2. The case of the petitioner is that the petitioner is the owner of the vehicle, i.e. Moped Honda Activa 4G, Two Wheeler, having registration No. GJ-

05-SC 3274, which has been detained by the investigating officer in connection with the offence being C.R. No. III-5212 of 2019 lodged before Surat

Railway Police Station, for the offences punishable under Sections 65-(A)(E), 116(B), 81 and 98(2) of the Gujarat Prohibition Act. The FIR came to

be lodged on 14.09.2019.

3. For the purpose of release of the vehicle in question, the petitioner has invoked the extraordinary jurisdiction of this Court by way of filing the present petition.

4. Learned advocate for the petitioner has submitted that the vehicle in question of the petitioner is detained by the investigating officer and if the

interim custody of the same is not given, there will be serious prejudice to the petitioner and the vehicle in question will be substantially damaged and

by the time, trial is over, the vehicle will be in a deteriorated condition. Hence, a request is made to exercise the extraordinary jurisdiction to release

the said muddamal. For the purpose of this submission, learned advocate has relied upon several decisions of the Coordinate Benches of this Court

and has submitted that even after considering the rigor of Section 98(2) of the Amended Act, the Court has allowed the vehicle to be released in

favour of the applicants and here, the ownership is not in question. Hence, a request is made to grant the reliefs as prayed for in the petition. Learned

advocate has relied upon the decision dated 10.4.2019 passed in Special Criminal Application No.3649 of 2019 and also relied upon the decision dated

12.6.2020 passed in Special Criminal Application No.7631 of 2019 and further

relied upon the other decisions as well and has requested the Court that on similar line, by imposing suitable conditions, the vehicle in question may be released.

5. To the aforesaid submission, learned Additional Public Prosecutor appearing for the respondent-State has vehemently contended that no special case is made out to ignore the mandate of Section 98(2) of the Amended Act. However, he could not withstand the circumstances which are pointed out that several Coordinate Benches have released the vehicles in similar set of circumstance and by considering the effect of Section 98(2) of the Amended Act as well, and by exercising the extraordinary jurisdiction, the vehicles have been released and has left the matter to the discretion of this Court.

6. Having heard learned advocates appearing for the parties and having gone through the material on record, it is clearly visible from the record that the ownership of the vehicle in question is not in dispute at all and further, the vehicle is seized in connection with the very same FIR. Hence, in view of several decisions referred to above delivered by the Coordinate Benches of this Court by exercising the extraordinary jurisdiction of this Court, this Court is of the view to release the vehicle in question in favour of the petitioner. Since the Court has taken note of several decisions of the Coordinate Benches on similar issue, some of the observations made therein are taken note of and are deemed proper to be reproduced hereinafter:-

9. 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 chooses not to enter into that arena in the present matter and instead exercise the powers under Articles 226 and 227 of the Constitution.

10. 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.

10.1 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.

10.2 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.â??

7. Accordingly, in view of the aforesaid circumstance, this Court is of the opinion that case is made out for release of the vehicle in question.

Accordingly, the petition is ALLOWED. The concerned authority is directed to RELEASE the vehicle in question, being Moped Honda Activa 4G

Two Wheeler having registration No. GJ-05 SC 3274, on the terms and conditions that the petitioner:-

(i) shall furnish a security bond of Rs.30,000/- and solvent surety of the equal amount within a period of ONE WEEK from today;

(ii) shall file an undertaking before the Trial Court that prior to alienation or transfer of any mode or manner, prior permission of the concerned Court shall be takenÂ 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.

8. Before handing over the possession of the vehicle in question, necessary photographs shall be taken and detailed panchnama in that regard, if not already drawn, shall also be drawn for the purpose of trial.

9. If the I.O. finds it necessary, videography shall also be done at the cost of the petitioner and photograph thereof also to be taken at the cost of the petitioner.

10. WithÂ theÂ above-saidÂ conditions,Â theÂ present petition stands allowed. Rule is made absolute to the aforesaid extent.

11. The Registry is directed to communicate this order by fax or e-mail to the concerned authority.