

(2021) 01 GUJ CK 0004

In the Gujarat High Court

Case No : R/Special Criminal Application No. 205 Of 2021

Bhimabhai Panchabhai Karamata

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 27-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(g), 21, 226, 227

Code Of Criminal Procedure, 1973 — Section 451, 482

Gujarat Prohibition Act, 1949 — Section 66(1)B, 81, 83, 98, 98(2), 99, 116B

Citation : (2021) 01 GUJ CK 0004

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Imtiyaz I Mansuri, Shruti Pathak

Final Decision : Allowed

Judgement

Dr.Ashokkumar C. Joshi, J

1. The petitioner has filed this petition seeking to invoke extra ordinary jurisdiction of this Court under Articles 14, 19(1) (g), 21, 226 and 227 of the

Constitution of India and inherent powers under section 482 of the Criminal Procedure Code, 1973 (Code) seeking to quash and set aside the order

dated 16.07.2020, passed by the learned Judicial Magistrate First Class, Porbandar in Muddamal Application and the judgment and order dated

11.12.2020, passed by the learned Principal District & Sessions Judge, Porbandar in Criminal Revision Application No. 13/2020, whereby, the learned

Courts below have rejected the applications for release of muddamal, and with a further prayer to release the muddamal vehicle â?" Hero Splendor+

motorcycle, bearing RTO registration No. GJ-25-AB-5360 in connection with the FIR being C.R. No. IIIâ?"315 of 2019, registered before the

Harbour Marine Police Station, Dist. Porbandar for the offence punishable under Sections 65(E), 66(1)B, 81, 83, 116B, 99 and 98(2) of the Gujarat Prohibition Act.

2. Heard learned advocate Mr. I. I. Mansuri for the petitioner and learned APP Ms. Shruti Pathak on behalf of the respondent - State through video conference.

Factual Matrix of the case:

3. As per the allegations made in the FIR, liquor worth Rs.19,26,000/- was found in the muddamal vehicle. It is the case of the petitioner that the petitioner is the owner of the muddamal vehicle in question. It is further the case of the petitioner that the learned Courts below have rejected the release of muddamal applications, only because of restriction under Section 98(2) of the Prohibition Act and if the muddamal vehicle would lie at the police station for more time, there will be physical damage to it and therefore, interference of this Honâ??ble Court is required in the interest of justice.

3.1 It is contended that the muddamal vehicle was seized by the police as the liquor was found in the muddamal vehicle and the offence, as aforesaid, came to be registered.

3.2 It is also contended that the petitioner has purchased the muddamal vehicle with aforesaid registration number. That, at present the said vehicle is lying at the police station in abandoned condition. It is also contended that learned trial Court had rejected the muddamal application and thereafter, the learned Sessions Judge also confirmed the said order and therefore, the present petition is filed with a prayer to set aside the orders passed by the learned Courts below and also prayed for releasing the aforesaid muddamal vehicle. It is submitted that, otherwise the petitioner has no antecedents.

3.3 The learned advocate for the petitioner time and again vehemently submitted that the Coordinate Bench passed the order in favour of the petitioner in identical cases. Further learned advocate for the petitioner has placed reliance upon the judgments of Coordinate Bench (1) in case of

Ritesh Bishmber Agrawal vs. State of Gujarat in Special Criminal Application No. 5533 of 2018 order dated 18.01.2019, (2) in case of Ganibhai

Yusufbhai Jamroth vs. State of Gujarat in Special Criminal Application No. 2776 of 2020 order dated 07.07.2020, (3) in case of Ranjitbhai Ishvarbhai

Chunara (Vaghela) vs. State of Gujarat in Special Criminal Application No. 7631 of 2019 order dated 12.06.2020, (4) in case of Zala Mahendrasinh

Kirtisinh vs. State of Gujarat in Special Criminal Application No. 2717 of 2020 order dated 26.06.2020, (5) in case of Prajapati Rajendrakumar

Rameshbhai Vs. State of Gujarat in Special Criminal Application No. 2692 of 2020 order dated 14.07.2020 and also placed reliance upon the judgment

delivered by the Honâ??ble Apex Court in case of Sunderbhai Ambalal Desai Vs. State of Gujarat, AIR 2003 SC 638.

4. Per contra, learned APP for the respondent - State has vehemently argued that in the present case, the quantity of liquor is huge therefore, if the

said muddamal vehicle is released, in that case there are all chances of committing the same offence in future under the Prohibition Act. Further, it is

submitted that the petitioner may not have any antecedents but there are antecedents against the co-accused. Therefore, learned trial Court has rightly

disallowed the muddamal application. Further, learned APP has also placed reliance upon the judgment passed by this Court in case of Anilkumar

Ramlal @ Ramanlaji Mehta Vs. State of Gujarat in Special Criminal Application No. 2185 of 2018 dated 05.04.2018. Order dated 12.06.2020 passed

in Special Criminal Application No. 7631 of 2019, wherein contrary view has been taken in releasing muddamal vehicle involved in the Gujarat

Prohibition Act. Learned APP further contended that SLP (Cri.) No. 886 of 2018 is pending before the Honâ??ble Apex Court in respect of the said

issue, and therefore, no power would be exercised by this Court for releasing the vehicle seized by Police in the prohibition Offence. It is also

contended that learned trial Court has rightly disallowed the muddamal application by invoking Section 98(2) of the Prohibition Act and Court below

has no jurisdiction to pass order for interim release of muddamal vehicle when trial is pending in connection with offence under the Prohibition Act.

Learned APP further urged that in view of Section 98(2) of the latest Prohibition Act, as well as, as per judgment passed by this Court in case of

Anilkumar Ramlal @ Ramanlaji Mehta Vs. State of Gujarat (supra), the vehicle used in Prohibition, where quantity is more than 10 liters, cannot be

released. Further, learned APP also placed reliance upon judgment of Coordinate Bench dated 15.12.2017 in Special Criminal Application No. 8521 of

2017.

5. Having heard the arguments advanced by both the sides, without determining the other issues raised 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 is not

inclined to enter into that arena in the present matter and instead, exercise the powers vested under Articles 226 and 227 of the Constitution.

5.1 In the case of Anilkumar Ramlal @ Ramanlaji Mehta Vs. State of Gujarat in Special Criminal Application No. 2185 of 2018, by order dated

05.04.2018, this Court has also released the vehicle involved in the Prohibition Act under Articles 226 and 227 of the Constitution by exercising its

powers even at initial stage.

6. Having heard the arguments advanced by both the sides, it would be worthwhile to refer profitably at this stage to the observations made by the

Honâ??ble Apex Court that within a period of six months from the date of production of the vehicle before concerned Court, needful be done.

Further, the Honâ??ble Apex Court also 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 the

Insurance company fails to take possession, the vehicle 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 such vehicle before the Court. It is also directed that before handing over possession of such

vehicle, appropriate photographs of the said vehicle should be taken and a detailed panchnama should also be prepared. The Honâ??ble Apex Court

also held and specifically directed that the 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 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.

6.1 Learned APP has submitted the report of the IO, which has been taken into consideration by this Court. It is nobody's case that same vehicle

is used earlier in any offence and therefore, the petitioner cannot be denied the interim possession of vehicle and on the basis of the judgment of

Hon'ble Supreme Court in case of Sunderbhai Ambalal Desai Vs. State of Gujarat (Supra), this Court is inclined to exercise extraordinary powers

under Articles 226 and 227 of the Constitution. It is observed by the Hon'ble Apex Court in case of Sunderbhai Ambalal Desai Vs. State of

Gujarat (Supra), 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."

6.2 This Court has assistance of orders passed by the Coordinate Bench in case of Ritesh Bishmber Agrawal vs. State of Gujarat in Special Criminal

Application No. 5533 of 2018 order dated 18.01.2019, (2) in case of Ganibhai Yusufbhai Jamroth vs. State of Gujarat in Special Criminal Application

No. 2776 of 2020 order dated 07.07.2020, (3) in case of Ranjitbhai Ishvarbhai Chunara (Vaghela) vs. State of Gujarat in Special Criminal Application

No. 7631 of 2019 order dated 12.06.2020, (4) in case of Zala Mahendrasinh Kirtisinh vs. State of Gujarat in Special Criminal Application No. 2717 of

2020 order dated 26.06.2020,

(5) in case of Prajapati Rajendrakumar Rameshbhai Vs. State of Gujarat in Special Criminal Application No. 2692 of 2020 order dated 14.07.2020,

wherein, muddamal vehicle was used in offences under the Prohibition Act released by this Court at many occasions.

7. Resultantly, in-fleri the petition succeeds and is allowed. The order dated 16.07.2020, passed by the learned Judicial Magistrate First Class,

Porbandar in Muddamal Application and the judgment and order dated 11.12.2020, passed by the learned Principal District & Sessions Judge,

Porbandar in Criminal Revision Application No. 13/2020, are hereby set aside. The authority concerned is directed to release the vehicle of petitioner

being Hero Splendor+ motorcycle, bearing RTO registration No. GJ-25-AB-5360 on the terms and conditions that the petitioner:

a) shall furnish, by way of security, bond as per valued cited in Panchnama or seizure memo and solvent surety of the equivalent amount;

b) 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;

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

d) if the IO finds use of vehicle in any illegal activity by the present petitioner then this order shall stand cancelled and the vehicle will be seized;

e) shall appear before the IO, as and when called for and cooperate with the investigating agency.

7.1 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.

7.2 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.

7.3 Prior to release of the muddamal vehicle, the trial Court concerned shall verify the ownership of the same.

8. Rule is made absolute to the aforesaid extent. Direct service is permitted through fax / e-mail / any other electronic mode.

8.1 The Registry is directed to communicate this order by fax / e-mail to the

concerned Court and police station.