

(2020) 07 GUJ CK 0039

In the Gujarat High Court

Case No : R/Special Criminal Application No. 2941 Of 2020

Chauhan Mohanbhai Somabhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 22-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Gujarat Prohibition Act, 1949 — Section 65AE, 81, 83, 98, 98(2), 99, 116B

Code Of Criminal Procedure, 1973 — Section 451

Citation : (2020) 07 GUJ CK 0039

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : Jaydeep H Sindhi, JK Shah

Final Decision : Allowed

Judgement

Ashutosh J. Shastri, J

1. Rule returnable forthwith. Learned APP waives service of notice of rule of rand on behalf of respondent State.

2. The present petition is filed under Article 226 of the Constitution of India for the purpose of seeking following reliefs :

â??(A) Your Lordships may please to issue a writ, order or direction directing the respondent No.1 to release / handover the possession of muddamal

i.e. TRUCK-11.10 XP H HSD (Make â?" VE COMMERCIAL VEHICLES LTD) bearing Registration No.GJ-06-XX-9516 and Chasis

No.MC233HRC0BA0455953 and Engine No.E483CDBA518384 to the applicant on appropriate conditions as deemed fit by this Honourable Court.

B. Pending admission and final hearing of this application, Your Lordships may please to issue a writ, order or direction to respondent No.1 to release /

handover the possession of muddamal i.e. TRUCK-11.10 XP H HSD (Make â?" VE COMMERCIAL VEHICLES LTD) bearing Registration

No.GJ-06-XX-9516 and Chasis No.MC233HRC0BA0455953 and Engine No.E483CDBA518384 to the applicant on appropriate conditions as deemed

fit by this Honourable Court.

C. Such other and further order as thought fit in the interest of justice.

3. The case of the applicant is that the applicant is the owner of the Truck bearing Registration No.GJ- 06-XX-9516 and in connection with the FIR

bearing III-C.R.No.118 of 2019 lodged with Vankaner Taluka Police Station for the offences punishable under Sections 65AE, 116-B, 81, 83 and

98(2) of the Prohibition Act, the said muddamal vehicle is seized by the authority. For the purpose of release of the vehicle in question, the applicant

has filed the present petition mainly on the ground that though the applicant is the owner of the vehicle, the same was not being driven by him at the

relevant point of time and the vehicle in question was given and entrusted to the driver and the applicant is an innocent person and not aware about

such episode which took place at the instance of the driver and, therefore, that being the position, the vehicle in question may not be allowed to be kept

as it is as muddamal, since the trial is likely to take some more time. It has been submitted that by that time, the vehicle will be destroyed.

4. By presenting such circumstance, learned advocate for the applicant has contended that the applicant is ready and willing to abide by any of the

conditions which may be imposed upon at the time of release of the vehicle. But if the said vehicle in question is not released and kept as it is, the

same will be destroyed and will not be utilized in any manner. It has also been submitted that the trial is likely to take more time and that will be a

permanent loss to the applicant. Learned advocate has pointed out, that there are series of orders passed by the Coordinate Benches of this Court in

which after considering the provision of Section 98(2) of the Prohibition Act, the vehicle in question has been released and as such also, the request be

considered. Learned advocate has also pointed out that it may be that the courts below could not release by virtue of rigor of Section 98(2) of the

Gujarat Prohibition Act but, by exercising extraordinary jurisdiction, the Coordinate Benches have passed the orders and as such, keeping that

circumstance in mind, an appropriate order be passed. To strengthen his

submissions, learned advocate has pointed out the decisions of recent time rendered in Special Criminal Application No.7631 of 2019 dated 12.6.2020, Special Criminal Application No.2758 of 2020 dated 13.7.2020 and Special Criminal Application No.3494 of 2019 dated 2.5.2019 by the Coordinate Bench of this Court and a request is made to consider the case of the applicant.

5. To this submission, Mr.J.K.Shah, learned APP, has submitted that the vehicle in question if released then, the same would be used again by the applicant. However, the learned APP could not able to controvert the various orders passed by the coordinate benches of this Court, even keeping in view Section 98(2) of the Gujarat Prohibition Act and ultimately, has left it to the discretion of the Court.

6. Having heard the learned advocates appearing for the respective parties and having gone through the material on record, it appears that the ownership of the vehicle in question is not in controversy at all and further, there is a specific assertion that the applicant has entrusted the vehicle to the driver and he himself was not dealing with the vehicle at the relevant point of time. Hence, considering the several decisions which have been delivered by the Coordinate Benches of this court, the Court is inclined to consider the request of the applicant. Hence, keeping in view the specific recent decision rendered in Special Criminal Application No.7631 of 2019 dated 12.6.2020, Special Criminal Application No.2758 of 2020 dated 13.7.2020, the Court is inclined to consider the request of the applicant. The Court would like to refer to relevant observations made by the coordinate bench in the order referred to above :

â??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 choses 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. Resultantly, this application is allowed. The authority concerned is directed to release the vehicle of the applicant being TRUCK bearing

Registration No.GJ-06-XX-9516 on the terms and conditions that the applicant:

(i) shall furnish, by way of security, bond of Rs.5,00,000/(Rupees Five Lakhs only) 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.

8. Before handing over the possession of the vehicle to the applicant, 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.

9. 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 applicant.

10. Rule is made absolute to the aforesaid extent.

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