

(2020) 08 GUJ CK 0101

In the Gujarat High Court

Case No : R/Special Criminal Application No. 3216 Of 2020

Dashrathbhai Bachubharati Goswami (Bava)

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 06-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Code Of Criminal Procedure, 1973 — Section 451

Gujarat Prohibition Act, 1949 — Section 65(e), 65(a), 81, 98(2), 116(b)

Citation : (2020) 08 GUJ CK 0101

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : Jigneshkumar M Nayak, JK Shah

Final Decision : Allowed

Judgement

Ashutosh J. Shastri, J

RULE. Learned Additional Public Prosecutor waives service of Rule on behalf of the respondent- State.

1. The present petition has been filed under Articles 226 and 227 of the Constitution of India read with Section 451 of the Cr.P.C. for the purpose of

seeking release of muddamal vehicle â?" MARUTI SUZUKI INDIA LTD. (SWIFT DZIRE, VDI) bearing registration No.GJ-08-AJ-2063, in

connection with FIR bearing Prohibition CR No.11216024200120 of 2020 for offences punishable under Sections 65(e), 65(a), 116(b), 81, and 98(2) of

the Gujarat Prohibition Act.

3. The case of the petitioner is that the petitioner is the owner of the vehicle in question and without the knowledge of the petitioner, the son of the

petitioner appears to have misused the vehicle. The petitioner was unaware

about the fact that his vehicle - muddamal vehicle â?" MARUTI

SUZUKI INDIA LTD. (SWIFT DZIRE, VDI) bearing registration No.GJ-08-AJ-2063 was used for illegal transport of liquor which came to be

intercepted and seized as muddamal in connection with aforesaid FIR. It has also been submitted that the vehicle in question is belonging to him and

has not been involved in other crime and as such, considering the fact that trial is likely to take more time, the vehicle in question be released,

otherwise after completion of trial, there will be nothing left in vehicle to be used and it will be a serious loss to the petitioner. It has further been

submitted that the trial has yet not been commenced and even the charges have not been framed and as such, looking to these circumstances, the

vehicle in question be released which the lifeline of the present petitioner. It has been submitted that in similar kind of situation, several vehicles which

have been seized in prohibition cases, the Coordinate Benches have considered the case and released the vehicle on some suitable conditions, to which

the petitioner is ready and willing to abide by.

4. As against this, Mr.J.K.Shah, learned APP, has submitted that the vehicle in question is intercepted and seized as muddamal in commission of

prohibition offences and as such, by virtue of Section 98(2) of the amended Act, the muddamal may not be released, otherwise the same would

frustrate the very object for enactment of Statute. But, the learned APP has lastly candidly submitted that there are several orders passed by the

Coordinate Benches on the basis of which the vehicles in question have been released during the pendency of trial on some suitable conditions and has

left it to the discretion of the Court.

5. Having heard the learned advocates appearing for the respective parties and having gone through the material on record, prima facie, it appears that

the question of ownership is not at all at issue and undisputedly, the petitioner is the owner of vehicle in question and the same is seized as muddamal

in connection with prohibition offence, as indicated above.

6. Further, looking to the fact that there is a consistent trend to release the vehicle during the pendency of trial, in view of settled proposition of law

laid down by the Apex Court as well as by the Coordinate Benches of this Court, the Court is inclined to consider the request since the petitioner is

ready and willing to abide by any of the terms on which the request be

considered.

7. Additionally, the Court has also taken note of the situation that the present issue is squarely covered by the decision rendered by the Coordinate

Bench of this Court rendered in Special Criminal Application No.7642 of 2017, decided on 5.9.2018 and hence also, the Court is inclined to consider

the request of the petitioner.

8. Resultantly, this petition is ALLOWED. The authority concerned is directed to RELEASE the vehicle of the petitioner, being muddamal vehicle â?

MARUTI SUZUKI INDIA LTD. (SWIFT DZIRE, VDI) bearing registration No.GJ-08-AJ-2063, on the terms and conditions that the petitioner:

(i) shall furnish, by way of security, bond of Rs.3,00,000/- (Rupee Three 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.

9. 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.

10. If, the Investigating Officer 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. Rule is made absolute, accordingly.

12. The applicant is permitted to serve a copy of this order upon the concerned authority through fax, e-mail and/or any other suitable electronic mode.