

(2020) 07 GUJ CK 0077

In the Gujarat High Court

Case No : R/Special Criminal Application No. 9937 Of 2020

Hasambhai Adambhai Dela

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 21-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Code Of Criminal Procedure, 1973 — Section 451
Gujarat Prohibition Act, 1949 — Section 98, 98(2), 99

Citation : (2020) 07 GUJ CK 0077

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : H P Baxi, Shivani R Mod, Ronak Raval

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 Articles 226 and 227 of the Constitution of India read with Section 451 of the Cr.P.C. for the purpose of seeking

following reliefs :

â??(A) Admit this Special Criminal Application.

(B) Allow this Special Criminal Application by issuing an appropriate writ, order or direction in nature of writ and thereby, quashing and setting aside

the order passed by the learned Judicial Magistrate, F.C., Vinchia, dated 10.10.2019 and further be pleased to quash and set aside the order passed by

the learned 11th Additional district and Sessions Judge, Rajkot in Criminal Revision Application No.143 of 2019 dated 25.10.2019 and return the

muddamal TATA Mini-truck bearing Registration No.GJ-03-BV-5978 to the petitioner.

(C) Pending admission and till final disposal of this petition, stay and suspend and implementation and operation of order passed by the learned Judicial

Magistrate, F.C., Vinchia, dated 10.10.2019 and further be pleased to quash and set aside the order passed by the learned 11th Additional district and

Sessions Judge, Rajkot in Criminal Revision Application No.143 of 2019 dated 25.10.2019 and return the muddamal TATA Mini-truck bearing

Registration No.GJ-03-BV-5978 to the petitioner on any condition.

(D) Any such other and further order as thought fit in the interest of justice.

3. Mr.H.P.Baxi, learned advocate for the petitioner, has submitted that the courts below have not properly appreciated the request in its true

perspective and adopted too technical view of the matter. On the contrary, if this vehicle in question is allowed to be retained in custody till the trial is

over, by that time the vehicle in question will be destroyed and will not be in a position to be used and that will be a permanent loss to the petitioner. It

has been pointed out that though by virtue of an order dated 19.11.2019 in the present proceedings, the latest position of the SLP which is filed before

the Apex Court was required to be inquired but, the same is pending so far and it is likely to take some more time which is not ascertainable. But by

that time, learned advocate has pointed out, that there are series of orders passed by the Coordinate Bench of this Court in which after considering the

provision of Section 98(2) of the Gujarat 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 one decision of recent time rendered in Special

Criminal Application No.1862 of 2020 dated 11.6.2020 by the Coordinate Bench of this Court and a request is made to consider the case of the

applicant.

4. To this submission, Mr.Ronak Raval, 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.

5. Having heard the learned advocates appearing for the respective parties and having gone through the material on record, it is undisputed position

that the vehicle in question is intercepted and seized as Muddamal in connection with an offence punishable under the Gujarat Prohibition Act and the

Courts below have substantially not considered the request only on account of Section 98(2) of the Gujarat Prohibition Act. So far as the ownership

issued is concerned, there is no controversy at all and as such, 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 suchseized 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??

6. Resultantly, this application is allowed. The authority concerned is directed to release the vehicle of the petitioner being TATA Mini-truck bearing

Registration No.GJ-03-BV-5978 on the terms and conditions that the petitioner:

(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.

7. 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.

8. 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.

9. Rule is made absolute to the aforesaid extent.

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