

(2022) 03 GUJ CK 0037

In the Gujarat High Court

Case No : R/Special Criminal Application No. 12952 Of 2021

Hitesh Mukeshbhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 10-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Gujarat Prohibition Act, 1949 — Section 98, 99

Citation : (2022) 03 GUJ CK 0037

Hon'ble Judges : Vipul M. Pancholi, J

Bench : Single Bench

Advocate : Hemant B Raval, RB Raval

Final Decision : Allowed

Judgement

Vipul M. Pancholi, J

1. Rule. Learned Additional Public Prosecutor waives service of notice of Rule for respondents.

2. The petitioner has preferred this petition, seeking to invoke extraordinary jurisdiction of this Court under Article 226 and supervisory jurisdiction under Article 227 of the Constitution of India for the release of the muddamal vehicle i.e. TVS Apache Motorcycle bearing Registration No.GJ-01-UA-5258.

3. Learned advocate for the petitioner submitted that on registration of the FIR being C.R. No.11216006210347/2021 registered with Chilodai Police Station, Gandhinagar for the offences under the provision of the Gujarat Prohibition Act, the vehicle of the petitioner has been seized as muddamal in connection with the aforesaid offence, however, the said vehicle is duly registered with the transport department of the Government and in support of it, RC Book is placed on record at Page No.7 of the compilation.

4. Learned advocate for the petitioner submits that the petitioner is not shown as

accused in the FIR and subsequently also, he has not been arraigned as accused. He further, under the instructions, submitted that the petitioner is the registered owner of the vehicle in question and till date, the vehicle in question is not involved in any other case and even no one has claimed for the interim custody of the muddamal vehicle and if the interim custody of the said vehicle is handed over to the petitioner, he will abide by the conditions that may be imposed by this Court while handing over the vehicle. He, therefore, urged that this petition may be allowed on suitable conditions.

5. Learned advocate for the petitioner has urged that this Court has wide powers, while exercising such powers under Article 226 of the Constitution. It can also take into account the ratio laid down in the case of 'SUNDERBHAI AMBALAL DESAI VS. STATE OF GUJARAT', reported in AIR 2003 SC 638, wherein, the Apex Court lamented the scenario of number of vehicles having been kept unattended and becoming junk within the police station premises. Learned advocate has also placed reliance upon the orders passed by the Coordinate Bench of this Court.

6. Learned APP for the respondent-State has strongly objected the submissions made by learned advocate for the petitioner and submitted that the vehicle in question was used for transporting liquor by the accused and if this motor vehicle would be released, it will be used for transporting liquor by the petitioner. However after referring to the documents produced on record with regard registration of certification and Identity Card, it is submitted that the petitioner is the owner of the vehicle.

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

8. Further, from the submissions canvassed by learned advocate for the petition, it is revealed that if the vehicle in question is not released, ultimately it would reduce to scrape and further the land / space of the campuses of police stations are also reduced to scrapyards. As against this, continuing the vehicle in police custody as muddamal, for various reasons, hardly turns out to be a factor for furtherance of dispensation of justice, on conclusion of the trial, as and when that stage is reached.

9. The Co-ordinate Benches of this Court in number of cases have released the vehicles, upon which reliance has been placed by learned advocate for the petitioner. This Court has taken into consideration those decisions and the judgments / orders referred in those decisions. Having considered the same, taking any different view would not be proper.

10. Resultantly, this application is allowed. The authority concerned is directed to

release the vehicle of the petitioner, muddamal vehicle i.e. TVS Apache Motorcycle bearing Registration No.GJ-01-UA-5258, on the terms and conditions that the petitioner:

- (i) furnish a solvent surety of the amount equivalent to the value of the vehicle in question as per the value disclosed in the seizure memo or panchnama;
- (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 .
- (v) shall not use this vehicle in transporting liquor in future.
- (vi) 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.
- (vii) 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.

11. Rule is made absolute to the aforesaid extent. Direct service is permitted.