

(2023) 06 GUJ CK 0009

In the Gujarat High Court

Case No : R/Special Criminal Application No. 5808 Of 2023

Husen Ismailbhai Dholkawala

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Code Of Criminal Procedure, 1973 — Section 482
Gujarat Prohibition Act, 1949 — Section 98(2)

Citation : (2023) 06 GUJ CK 0009

Hon'ble Judges : Samir J. Dave, J

Bench : Single Bench

Advocate : Mufizahmed Kadri, DP Jhala

Final Decision : Allowed

Judgement

Samir J. Dave, J

1. Rule. Learned APP waives service of Rule on behalf of respondent-State.
2. By way of this petition, the petitioner has sought invocation of the extraordinary jurisdiction of this Court under Article 226 and supervisory jurisdiction under Article 227 of the Constitution of India so also the inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 with a prayer to release the muddamal vehicle being Volkswagen India Pvt. Ltd. - Vento 1.6 CR (MT) bearing Registration No. GJ-16-BB-1290 on suitable terms and conditions.
3. The case of the prosecution is that while the police personnel were on patrolling, they received a secret information of the vehicle in question carrying prohibited liquor. When they intercepted and searched the vehicle, it was found to be carrying prohibited liquor, without any pass or permit. Therefore, a complaint being FIR No.11204027230011 was registered with Kathlal Police Station, Kheda for the offence punishable under the Gujarat Prohibition Act.
4. Heard learned advocate for the petitioner and learned APP for the respondent

State.

5. It has been urged by learned advocate for the petitioner that this Court has wide powers under Article 226 of the Constitution. Attention was drawn to the ratio laid down by the Apex Court in the case of *SUNDERBHAI AMBALAL DESAI VS. STATE OF GUJARAT*, AIR 2003 SC 638, wherein, the Apex Court lamented the scenario of a number of vehicles having been kept unattended and becoming junk within the police station premises.

6. Learned APP for the respondent-State has objected the submissions made by learned advocate for the petitioner and pointed out that this Court (Coram: J.B. Pardiwala, J.) in the case of *ANILKUMAR RAMLAL @ RAMANLALJI MEHTA VS. STATE OF GUJARAT* in Special Criminal Application No. 2185 of 2018 decided on 05.04.2018 and also in the earlier decision in *PARESHKUMAR JAYKARBHAI BRAHMBHATT VS. STATE OF GUJARAT* rendered in Special Criminal Application No. 8521 of 2017 and allied matters decided on 15.12.2017, has held that the powers of Magistrate to order interim release of seized vehicles under Section 98(2) of the Act has been curtailed and therefore, the Courts below have no jurisdiction to order interim release of vehicles, pending the trial, where the vehicle has been seized in connection with the offence under the Prohibition Act and the quantity of liquor seized exceeds 10 liters. Learned APP further urged that, of course, the powers of this Court under Article 226 of the Constitution to order release of vehicle can be exercised at any time when the Court deems it appropriate.

7. The coordinate bench of this Court in the case of *Musa Khan Jat Vs. State of Gujarat* decided in Special Criminal Application No.7190 of 2017, in an identical case, had released the vehicle by exercising powers under Articles 226 and 227 of the Constitution of India.

8. It would be profitable to refer at this stage to the following observations made by the Apex Court in the case of *SUNDERBHAI AMBALAL DESAI VS. STATE OF GUJARAT* (supra), which reads thus:

"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."

9. In the result, this petition is allowed. The respondent-authority concerned is directed to release the muddamal vehicle of the petitioner being Volkswagen India Pvt. Ltd. - Vento 1.6 CR (MT) bearing Registration No. GJ-16-BB-1290 on the condition that the petitioner:

(i) shall furnish a solvent surety of the amount equivalent to the value of the vehicle in question as disclosed in the seizure memo or panchnama.

(ii) shall file an undertaking before the trial Court that he will not sell, alienate or transfer the vehicle in question without the prior permission of the concerned Court or till conclusion of trial and shall produce the vehicle as and when directed by the trial Court;

(iii) in the event of any subsequent offence involving the vehicle in question, the same shall stand confiscated.

9.1 Before handing over possession of the vehicle to the petitioner, the Investigating Officer shall take necessary photographs of the vehicle and shall also draw a detailed panchnama, if not already drawn, for the purpose of trial. Rule is made absolute accordingly. Direct service is permitted.