

(2021) 01 GUJ CK 0001
In the Gujarat High Court

Case No : R/Special Criminal Application No. 226 Of 2021

?Maheshbhai Dayashankar Teraiya

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 27-01-2021

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Code Of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 114, 186, 379
Mines And Minerals (Development And Regulation) Act, 1957 — Section 3, 21, 22

Citation : (2021) 01 GUJ CK 0001

Hon'ble Judges : Dr. Ashokkumar C. Joshi, J

Bench : Single Bench

Advocate : Siddharth R Kheskani, Shruti Pathak

Final Decision : Allowed

Judgement

Dr.Ashokkumar C. Joshi, J

1. The petitioner has filed this petition seeking to invoke inherent jurisdiction vested under Articles 226 and 227 of the Constitution of India and read

with Section 482 of the Code of Criminal Procedure to release the muddamal vehicle- Ashok Leyland Goods Carrier bearing RTO Registration No.

GJ-16-X-6937 in connection with the FIR being CR. No. 11193004201004 of 2020 registered with Amreli Rural Police Station, District- Amreli for the

offences punishable under Sections 186, 379 and 114 of the Indian Penal Code and Sections 3, 21 of the Mines and Minerals (Development and Regulation) Act.

2. Heard learned advocate Mr. Siddharth Kheskani for the petitioner and Ms. Shruti Pathak learned APP for the respondent State through video

conference.

3. The petitioner has prayed for following reliefs, which are as under:

â??a. To allow this application;

b. To delete and /or modify the condition imposed to furnish unconditional nationalized Bank Guarantee worth 1.5 times the value of the vehicle i.e.

ASHOK LEYLAND GOODS CARRIER bearing registration no. GJ-16-X-6937, Chasis No. CPE612477 and Engine No. DPH445754, by the

Learned 2nd Additional Chief Judicial Magistrate, Amreli via order dated 31.08.2020 and upheld by the learned Additional Sessions Judge, Amreli, in

CRRA No. 35/2020, via order dated 13.10.2020;

c. Pending admission and final hearing and disposal of this application to stay the implementation of condition imposed to furnish unconditional

nationalized Bank Guarantee worth 1.5 times th value of the vehicle i.e. ASHOK LEYLAND GOODS CARRIER bearing registration no. GJ-16-X-

6937, Chasis No. CPE612477 and Engine No. DPH445754, by the Learned 2nd Additional Chief Judicial Magistrate, Amreli via order dated

31.08.2020 and upheld by the learned Additional Sessions Judge, Amreli, in CRRA No. 35/2020, via order dated 13.10.2020;â??

Factual Matrix of the case:

4. The fact in nutshell is that the petitioner herein is the owner of ASHOK LEYLAND GOODS CARRIER bearing registration no. GJ-16-X-6937. It

is alleged that the Police had detained the said Truck as muddamal as it is involved in illegal mining and transportation of mineral sand and therefore

name of many other accused persons along with the present petitioner were arraigned in the FIR and the present complaint was lodged and the FIR

being CR. No. - 11193004201004 of 2020 came to be registered with Amreli Rural Police Station District- Amreli for the offences under Sections 186,

379 and 114 of the Indian Penal Code and Sections 3, 21 of the Mines and Minerals (Development and Regulation) Act.

5. Learned advocate for the petitioner further submitted that the petitioner initially moved before the Learned 2nd Additional Chief Judicial Magistrate,

Amreli, which was rejected. Thereafter, petitioner has preferred Criminal Revision Application No. 35 of 2020, wherein order of releasing the

muddamal Truck was passed on condition that the petitioner has to furnish unconditional Bank Guarantee to the tune of 1.5 time of value of the Truck

and with other strict conditions.

6. It is further contended that the petitioner is mere a transporter and he in normal course, asks the driver to the Truck to load the sand mineral from

legally valid lease area, therefore, he had no knowledge about the alleged incident of carrying sand illegally in the captioned muddamal Truck. Learned

advocate for the petitioner urged that offence under the MMDR Act, so it is a compoundable offence and the petitioner is ready to pay any penalty

laid down by the Mines and Minerals Department, as per Rule 12 and Section 22 of the said Act. He has further contended that the muddamal Truck

is the only means of livelihood of the petitioner and his family. Moreover, since October 2018, the said Truck has been taken as muddamal, therefore,

there is no earning source of income for the petitioner. It is further urged that because of imposing strict condition of furnishing unconditional bank

guarantee to the tune of 1.5 times of the value of the muddamal Truck would be extremely higher and almost impossible for the petitioner to pay.

7. It is also contended that as per various judgments of this Court and Honâ??ble Apex Court in case of Sundarbhai Ambalal Desai vs. State of

Gujarat reported in AIR 2003 SC 638 and in case of Smt. Basava Kom Dyaman Gauda Patil Vs. State of Mysore reported in (1977) 4 SCC 358,

wherein the captioned mudamal has been released.

8. Learned advocate Mr. Jay Shah for the petitioner heavily placed reliance upon the judgments of co- ordinate Bench of this Court, which are as

under:

(a) In case of Vipul Roshan Kumar Shah vs. State of Gujarat order dated 15.06.2020 passed in Special Criminal Application No. 6957 of 2019.

(b) In case of Saramanbhai Devsibhai Barad vs. State of Gujarat order dated 10.06.2020 passed in Special Criminal Application No. 8601 of 2019.

(c) In case of Mahesh Mansukhbhai Dholaria vs. State of Gujarat order dated 19.08.2019 passed in Special Criminal Application No. 7806 of 2019.

(d) In case of Anirrudhsinh Pravinsinh Jadeja vs. State of Gujarat order dated 10.08.2018 passed in Special Criminal Application No. 6039 of 2018.

(e) In case of Dilipbhai Ramanbhai Chaudhari (Legal Heirs of Late Ramanbhai Chaudhari) vs. State of Gujarat order dated 14.08.2020 passed in

Special Criminal Application No. 3387 of 2020.

(f) In case of Smitaben Kalpeshbhai Chaudhary vs. State of Gujarat order dated

20.07.2020 passed in Special Criminal Application No. 2851 of 2020.

(g) In case of Jignasha Kalpeshbhai Prajapati thro POA Kalpeshbhai Bhagwanbhai Prajapati vs. State of Gujarat order dated 20.07.2020 passed in

Special Criminal Application No. 2896 of 2020.

(h) In case of Devabhai Ranchhodbhai Ahir vs. State of Gujarat order dated 20.07.2020 passed in Special Criminal Application No. 2853 of 2020.

(i) In case of Vipul Roshan Kumar Shah vs. State of Gujarat order dated 15.06.2020 passed in Special Criminal Application No. 6957 of 2019.

(j) In case of Vipul Roshan Kumar Shah vs. State of Gujarat order dated 22.07.2020 passed in Special Criminal Application No. 7143 of 2019.

9. It is also urged that petitioner has only the captioned muddamal Truck for livelihood and source of income, further other strict conditions have been

imposed and the said condition having been found to be too harsh, the petitioner is left with no other alternate but to challenge by way of present

petition. Therefore, to that extent conditions may be modified.

10. Per contra, learned APP Ms. Shruti Pathak has heavily opposed and placed reliance upon the judgment dated 18.12.2017 passed by Co-ordinate

Bench of this Court in case of Jhala Ghanshyamsingh Mobatsingh vs. State of Gujarat in Special Criminal Application No. 9745 of 2017 and taken this

Court at relevant Para Nos. 10 and 15 and contended that Bank Guarantee to the tune of 1.5 time of value of vehicle is just and proper, therefore,

order of the trial Court is not required to be modified.

11. Having heard the arguments advanced by both the sides, while determining the other issues raised by the learned APP with reference to Mines

Act and also with reference to judgments of this Court and judgment dated 18.12.2017 in case of Jhala Ghanshyamsingh Mobatsingh vs. State of

Gujarat and other provisions of the said Act and referring to that and the issues to be determined in future in appropriate proceedings being contentious

issue, this Court is not inclined to enter into that arena in the present matter and instead exercised powers vested under Articles 226 and 227 of the

Constitution of India.

12. This Court has also assistance of judgments and orders passed by the Co-ordinate Bench of this Court, which are as under:

(a) In case of Vipul Roshan Kumar Shah vs. State of Gujarat order dated 15.06.2020 passed in Special Criminal Application No. 6957 of 2019.

(b) In case of Saramanbhai Devsibhai Barad vs. State of Gujarat order dated 10.06.2020 passed in Special Criminal Application No. 8601 of 2019.

(c) In case of Mahesh Mansukhbhai Dholaria vs. State of Gujarat order dated 19.08.2019 passed in Special Criminal Application No. 7806 of 2019.

(d) In case of Anirrudhsinh Pravinsinh Jadeja vs. State of Gujarat order dated 10.08.2018 passed in Special Criminal Application No. 6039 of 2018.

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13. This Court notices that the said Truck was meant for transfer of material from legal mines and further this offence was not as per instructions of

present petitioner to the driver, considering the decision of Sunderbhai Ambalal Desai Vs. State of Gujarat (Supra), wherein Honâ??ble Apex Court

lamented scenario that vehicle having unattended and becoming junk within the premises of Police Station, further the captioned muddamal vehicle

was used by employee of the petitioner and petitioner is suffering from many months, therefore, bearing in mind all such facts and circumstances, the

petitioner has to be given back his truck with few conditions since conditions imposed by trial Court appear too harsh. Therefore, when the Co-

ordinate Bench passed many orders in similar set of circumstances and released vehicles/ machinery, this Court is also inclined to modify the

conditions, considering the fact that the petitioner is ready to compound the offence by depositing the fine amount and bank guarantee. The petitioner

is permitted to deposit an amount of Rs. 2,00,000/- (Two Lacs) and bank

guarantee instead of 1.5 times value of seized vehicle.

14. Resultantly, in-fieri this petition is allowed, the authority concerned is directed to release the vehicle of petitioner - ASHOK LEYLAND GOODS

CARRIER bearing registration no. GJ-16-X-6937 in the terms and conditions that the petitioner:

(1) Shall furnish fine amount of Rs.2,00,000/- and bank guarantee instead of furnishing the Bank Guarantee to the tune of 1.5 times of the value of the vehicle ;

(2) 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,

(3) Shall also file an undertaking to produce the vehicle as an when directed by the trial Court;

(4) If the I.O. finds use of vehicle in such illegal activity by the present petitioner then this order shall stand cancel and the vehicle will be seized.

(5) The trial Court shall verify the ownership of the vehicle before releasing the same.

15. 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.

16. If, the I.O. finds it necessary, VIDEOGRAPHY of the vehicle also shall be done. Expenses towards the photographs and the videography shall be BORNE by the petitioner.

17. This petition is partly allowed. Rule is made absolute. The Registry is directed to communicate this order by Fax / by E-mail to the concerned Court and Police Station.