

(2020) 08 GUJ CK 0113

In the Gujarat High Court

Case No : R/Special Criminal Application No. 3275 Of 2020

Maheshsinh Chimansinh Chauhan

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 10-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Code Of Criminal Procedure, 1973 — Section 451, 482

Gujarat Prohibition Act, 1949 — Section 65E, 81, 98, 98(2), 99

Citation : (2020) 08 GUJ CK 0113

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : Aditya R Parikh, JK Shah

Final Decision : Allowed

Judgement

Ashutosh J. Shastri, J

RULE. Learned APP Mr. J.K. Shah waives service of Rule for and on behalf of the respondent-State.

1. Present petition under Article 226 of the Constitution of India read with Section 482 of the Criminal Procedure Code is filed for the purpose of

seeking following reliefs:-

â??(a) This Honorable Court may be pleased to issue an appropriate writ, order or direction and thereby release the Suzuki SX4 being registered with

the Ahmedabad East Regional Transport Office, having registration no.GJ.01.HP.4484 and Chassis No.MA3EFJC1500127550 on appropriate terms

and conditions seized on 13.10.2019 in connection with III-CR.No.498 of 2019 registered with Kothamba Police station, Mahisagar.

(b) â?|â?|â?|â?|..â??

2. The case of the petitioner is that the petitioner is the owner of the vehicle, i.e. Suzuki SX4, having registration No.GJ-01 HP 4484 and Chassis

No.MA3EFJC1500127550, which has been detained by the investigating officer in connection with the offence being C.R. No.III-498 of 2019 lodged

before Kothamba Police Station, Mahisagar for the offences punishable under Sections 65E, 81 and 98(2) of the Gujarat Prohibition Act. The FIR

came to be lodged on 13.10.2019.

3. For the purpose of release of the vehicle in question, the petitioner has invoked the extraordinary jurisdiction of this Court by way of filing the

present petition.

4. Learned advocate for the petitioner has submitted that the vehicle in question of the petitioner is detained by the investigating officer and if the

interim custody of the same is not given, there will be serious prejudice to the petitioner and the vehicle in question will be substantially damaged and

by the time, trial is over, the vehicle will be in a deteriorated condition. Hence, a request is made to exercise the extraordinary jurisdiction to release

the said muddamal. For the purpose of this submission, learned advocate has relied upon several decisions of the Coordinate Benches of this Court

and has submitted that even after considering the rigor of Section 98(2) of the Amended Act, the Court has allowed the vehicle to be released in

favour of the applicants and here, the ownership is not in question. Hence, a request is made to grant the reliefs as prayed for in the petition. Learned

advocate has relied upon the decision dated 10.4.2019 passed in Special Criminal Application No.3649 of 2019 and also relied upon the decision dated

12.6.2020 passed in Special Criminal Application No.7631 of 2019 and further relied upon the other decisions as well and has requested the Court that

on similar line, by imposing suitable conditions, the vehicle in question may be released.

5. To the aforesaid submission, learned Additional Public Prosecutor appearing for the respondent-State has vehemently contended that no special

case is made out to ignore the mandate of Section 98(2) of the Amended Act. However, he could not withstand the circumstances which are pointed

out that several Coordinate Benches have released the vehicles in similar set of circumstance and by considering the effect of Section 98(2) of the

Amended Act as well, and by exercising the extraordinary jurisdiction, the

vehicles have been released and has left the matter to the discretion of this Court.

6. Having heard learned advocates appearing for the parties and having gone through the material on record, it is clearly visible from the record that

the ownership of the vehicle in question is not in dispute at all and further, the vehicle is seized in connection with the very same FIR. Hence, in view

of several decisions referred to above delivered by the Coordinate Benches of this Court by exercising the extraordinary jurisdiction of this Court, this

Court is of the view to release the vehicle in question in favour of the petitioner. Since the Court has taken note of several decisions of the Coordinate

Benches on similar issue, some of the observations made therein are taken note of and are deemed proper to be reproduced hereinafter:-

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 CriminalApplication 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 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.

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??

7. Accordingly, in view of the aforesaid circumstance, this Court is of the opinion that case is made out for release of the vehicle in question.

Accordingly, the petition is ALLOWED. The concerned authority is directed to RELEASE the vehicle in question, being Suzuki SX4, having

registration No.GJ-01 HP 4484 and Chassis No.MA3EFJC1500127550,, on the

terms and conditions that the petitioner:-

(i) shall furnish a security bond of Rs.3,00,000/- and solvent surety of the equal amount within a period of ONE WEEK from today;

(ii) shall file an undertaking before the Trial Court that prior to alienation or transfer of 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.

8. Before handing over the possession of the vehicle in question, necessary photographs shall be taken and detailed panchnama in that regard,

if not already drawn, shall also be drawn for the purpose of trial.

9. If the I.O. finds it necessary, videography shall also be done at the cost of the petitioner and photograph thereof also to be taken at the cost of the

petitioner.

10. With the above-said conditions, the present petition stands allowed. Rule is made absolute to the aforesaid extent.

11. The Registry is directed to communicate this order by fax or e-mail to the concerned authority.