

(2021) 06 GUJ CK 0050

In the Gujarat High Court

Case No : R/Special Criminal Application No. 4179 Of 2021

Nareshkumar Malaji Nayi

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 08-06-2021

Acts Referred:

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

Citation : (2021) 06 GUJ CK 0050

Hon'ble Judges : Vipul M. Pancholi, J

Bench : Single Bench

Advocate : JV Padhiyar, DM Devnani

Final Decision : Allowed

Judgement

Vipul M. Pancholi, J

1. Rule. Learned Additional Public Prosecutor waives service of notice of Rule for the 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. Toyota Fortuner Car bearing Registration No.GJÂ11ÂSÂ?

9161.

3. It is the case of the petitioner that on registration of the FIR being C.R. No.11208055210050 of 2021 registered with DCB Police Station, District

Rajkot City, 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.11 of the compilation. He further submitted that till date, 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.

4. 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.

5. 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.

6. Learned APP for the respondent[^]State has urged this Court that the appropriate conditions be imposed, while ordering the release of the vehicle.

He further 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, Dated: 05.04.2018, and in the earlier decision in 'PARESHKUMAR

JAYKARBHAI BRAHMBHATT VS. STATE OF GUJARAT' in Special Criminal Application No. 8521 of 2017 and the allied matters decided on

15.12.2017, has held that the powers of the Magistrate to order interim release of the seized vehicle under Section 98(2) of the said Act has been

curtailed, and therefore, the Courts below have been held to have no jurisdiction to order interim release of the vehicle, pending trial, where, the

vehicle is seized in connection with the offence under the Prohibition Act and the quantity of the liquor seized exceeds 10 liters. He, further, urged

that, of course, powers of this Court under Article 226 of the Constitution to order release of the vehicle can be exercised at any time, whenever the

Court deems it appropriate. He also pointed out that the recent decision of this Court in Special Criminal Application No. 2185 of 2018, where, this

Court, in exercise of the powers under Article 226 of the Constitution, has ordered the release of the vehicle, pending trial. He has also pointed out the

order passed by this Court in Special Criminal Application No. 1126 of 2018, Dated: 21.06.2018, in case of 'GUJARAT STATE ROAD

TRANSPORT CORPORATION THROUGH DEPOT MANAGER, MORBI, VS. STATE OF GUJARAT'.

7. However, with regard to the aspect of ownership, learned APP, from the documents placed on record, submitted that the petitioner is owner of the vehicle in question.

8. 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.

9. 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.

9.1 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.

9.2 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.

10. Resultantly, this petition is ALLOWED. The authority concerned is directed to RELEASE the vehicle of the petitioner, muddamal vehicle i.e.

Toyota Fortuner Car bearing Registration No.GJÂ? 11Â?SÂ?9161, 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. Registry to communicate this order to the concerned Court/ authority

forthwith.