
(2020) 07 GUJ CK 0041

In the Gujarat High Court

Case No : R/Special Criminal Application No. 10719 Of 2019

Pratapbhai Khushalbhai Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 22-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 226
Gujarat Mineral (Prevention Of Illegal Mining The Transportation And Storage) Rules,
2017 — Rule 21
Indian Penal Code, 1860 — Section 21, 186, 379, 505
Code Of Criminal Procedure, 1973 — Section 451

Citation : (2020) 07 GUJ CK 0041

Hon'ble Judges : Ashutosh J. Shastri, J

Bench : Single Bench

Advocate : Jaydeep H Sindhi, JK Shah

Final Decision : Disposed Of

Judgement

Ashutosh J. Shastri, J

1. Rule returnable forthwith. Learned APP waives service of notice of rule of rand on behalf of respondent State.

2. The present petition is filed under Article 226 of the Constitution of India for the purpose of seeking following reliefs :

â??A. Your Lordships may kindly be pleased to modify / delete the conditions imposed in Para.7 of order for release of vehicle dated 15.10.2019

passed by Id. Add. District & Sessions Judge, Vyara, Tapi in Criminal Revision Application No.65 of 2019;

B. Your Lordships may please to issue a writ, order or direction, directing the respondent No.1 to release / handover the possession of muddamal i.e.

TRUCK-SE1613697 (Make â?" TATA MOTORS LTD.) bearing Registration No.GJ-15-

YY- 1484 and Chassis No.MAT373133D7C07299 and

Engine No.697TC69CWY104247 to the applicant on appropriate conditions as deemed fit by this Honâ??ble court.

C. Pending admission and final hearing of this application, Your Lordship may please to issue a writ, order or direction to respondent No.1 to release /

handover the possession of muddamal i.e. TRUCK-SE1613697 (Make â?" TATA MOTORS LTD.) bearing Registration No.GJ-15-YY-1484 and

Chassis No.MAT373133D7C07299 and Engine No.697TC69CWY104247 to the applicant on appropriate conditions as deemed fit by this Honâ??ble

court.

D. Such other and further order as thought fit in the interest of justice.â??

3. The present applicant is the owner of vehicle in question bearing Registration No.GJ-15-YY-1484 which is seized as muddamal by the Investigating

officer in connection with FIR being I-CR No.5 of 2019 dated 15.6.2019 lodged before Ukai Police Station, District â?" Tapi for the offence

punishable under Sections 379, 186, 505, 114 and 21 of the IPC read with Section 21 of the Gujarat Mineral (Prevention of Illegal Mining the

Transportation and Storage) Rules, 2017. For the purpose of release of the said muddamal, an application was submitted by the applicant before the

learned JMFC, Songadh under Section 451 of the Cr.P.C. which came to be rejected. Being aggrieved, the applicant was constrained to approach

before the District Court, Vyara by filing Criminal Revision Application No.65 of 2019. The learned (Ad-hoc) Additional District & Sessions Judge,

Vyara-Tapi, by virtue of an order dated 15.10.2019, was pleased to release the muddamal vehicle on certain conditions. However, one of the

conditions is that the applicant shall furnish unconditional bank guarantee to the tune of 1.5 times the value of the muddamal seized. The said condition

being harsh and unreasonable, the applicant has approached this Court by way of present application.

4. Mr.Jaydeep Sindhi, learned advocate for the applicant, has contended that no doubt, the vehicle in question is ordered to be released but, the

condition which has been engrafted is too harsh and the same would put the applicant in severe financial crunch. It has further been contended that on

account of seizure of the vehicle in question, the business of the applicant has been at standstill and is not in a position to mitigate with this condition. In

similar such situation, the Coordinate Benches of this Court have time and again released the vehicle by substituting the condition of unconditional bank

guarantee and the applicant is ready and willing to abide the substitution of such condition, upon some reasonable condition. For the purpose of

submitting this, learned advocate has pointed out two decisions delivered by the Coordinate Benches of this court and has pointed out that the applicant

is ready and willing to offer a solvent surety to the extent of seized vehicle value and would like to furnish the solvent surety to the extent of Rs.6

lakhs and upon such condition, the vehicle in question be released by modifying the order which is passed by the appellate court.

5. As against this, Mr.J.k.shah, learned APP for the respondent, has submitted that the learned Sessions Judge has passed the reasonable order,

keeping in view the decisions delivered by the Coordinate Benches of this Court and, therefore, no irregularity is committed. However, he could not be

in a position to meet with the several decisions which have been pointed out before this Court on the issue of substitution of condition and ultimately,

has left it to the discretion of the Court.

6. Having heard the learned advocates appearing for the respective parties and having gone through the material on record, it is very clear that in

several cases, such kind of condition of imposing unconditional bank guarantee is substituted by permitting the concerned applicant to offer a solvent

surety to the extent of value of vehicle. Therefore, keeping in view those decisions, this Court is also of the opinion that the vehicle in question may be

permitted to be released by modifying the said condition.

7. This Court, while examining this request of the applicant about substitution of condition of unconditional bank guarantee has taken into consideration

the decisions of the Coordinate Benches rendered in Special Criminal Application No.7631 of 2019 dated 12.6.2020, Special Criminal Application

No.2758 of 2020 dated 13.7.2020, Special Criminal Application No.3317 of 2019 dated 7.5.2019 and Special Criminal Application No.6957 of 2019

dated 15.6.2020 and other several orders.

8. In view of the above, the present application is disposed of with following directions :

(1) The impugned order dated 15.10.2019 passed by the learned (Ad-hoc) Additional District & Sessions Judge, Vyara-Tapi, is modified to the extent

that instead of condition to offer unconditional bank guarantee of 1.5 times the value of the muddamal seized, the applicant is permitted to submit a solvent surety to the extent of Rs.6 lakhs to the satisfaction of the authority concerned and upon such furnishing, the vehicle in question shall be released in favour of the applicant, forthwith.

(2) It is clarified that rest of the conditions of the order 15.10.2019 shall remain intact.

9. Rule is made absolute to the aforesaid extent.

10. The Registry is directed to communicate this order by fax or e-mail to the trial court.