

(2020) 07 GUJ CK 0003

In the Gujarat High Court

Case No : R/Special Criminal Application No. 792 Of 2020

Rizwan Ishaq Patel

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 14-07-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Code Of Criminal Procedure, 1973 — Section 451

Narcotic Drugs And Psychotropic Substances Act, 1985 — Section 8(c), 20(c), 21(c), 22(c), 23(c), 25, 29, 60(1)(2)(3)

Citation : (2020) 07 GUJ CK 0003

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

Bench : Single Bench

Advocate : Adilhushain M Saiyed, Chintan Dave

Final Decision : Allowed

Judgement

Dr. Ashokkumar C. Joshi, J

1. Heard learned advocate Mr. Adilhushain M. Saiyed for the applicant and learned APP Mr. Chintan Dave for the respondent - State through video

conference.

2. The petitioner - Rizwan Ishaq Patel has preferred this petition seeking to invoke extraordinary jurisdiction of this Court under Article 226 and

supervisory jurisdiction under Section 227 of the Constitution of India so also inherent powers of this Court under Section 451 of the Code of Criminal

Procedure, 1973.

3. Rule. Leaned APP Mr. Chintan Dave waives service of rule on behalf of the Respondent State.

4. This petition is preferred seeking release of the muddamal - Mobile - I Phone

6S bearing IMEI - 1 No. 355764077748400, I- Phone 7 Black bearing

IMEI No. 356554082829728 which are seized in connection with FIR being CR No. II 33/2018 registered at Bharuch Rural, Police Station, District-

Bharuch for the offences punishable under Sections 8(c), 20(c), 21(c), 22(c), 23(c), 25, 29, 60(1)(2)(3) of the Narcotic Drugs And Psychotropic

Substances Act.

5. Learned Advocate for the petitioner has submitted that the Application preferred by the Applicant being Criminal Miscellaneous Application No.

196 of 2019 before the learned Sessions Judge, Bharuch came to be partly allowed whereby the learned Sessions Judge has released the muddamal

Yamaha but the mudamal mobile phones have not been released by the learned Sessions Judge.

6. Learned Advocate for the Applicant has submitted that the petitioner is the owner and occupier of the Mobile Phones which are very useful and

valuable gadgets in his routine life. It is further submitted that the charge sheet is already filed and the police has recovered the entire data of the

mobile phones. It is further submitted that the seizure of the Mobiles has no nexus with the commission of the offence and merely because the mobiles

are recovered from the petitioner, the Mobile does not amount to involvement in the offence. It is argued that hearing of the case may take years and

the continuation of the Mobiles in such condition with the police shall cause loss to the petitioner to such extent that the same is irreversible. It is

further argued that the petitioner is ready and willing to furnish the bank security for the amount as deemed to be proper by this Court.

7. Learned Advocate for the petitioner has urged that this Court has wide powers, while exercising such powers under Article 226 of the Constitution.

This Court can also take into account the ratio laid down in the case of SUNDERBHAI AMBALAL DESAI VS. STATE OF GUJARAT, 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.

Â 8. Per contra, learned APP has opposed this Application for release of muddamal mobile phones so involved in the offence and submitted that

appropriate orders may be passed.

9. On thus hearing both the sides, without determining the other issues raised by

the petitioner, this Court chooses to exercise the powers under Articles 226 and 227 of the Constitution.

9.1 It would be worthwhile to refer profitably at this stage to the observations made by the Honâ??ble Apex Court in *SUNDERBHAI AMBALAL*

DESAI VS. STATE OF GUJARAT (Supra), which read as under:

â??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.â??

9.2 The Honâ??ble Apex Court has, thus, directed that within a period of six months from the date of production of the mudamal before the Court

concerned, needful be done. It even went to the extent of directing that where the mudamal is not claimed by the accused or by third person, then

such mudamal may be ordered to be auctioned by the Court. If the said mudamal is insured with the insurance company then insurance company be

informed by the Court to take possession of the mudamal which is not claimed by the owner or a third person. If Insurance company fails to take

possession, the mudamal 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 mudamal, appropriate photographs of

the said mudamal should be taken and a detailed panchnama should also be prepared. The Honâ??ble 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 application is allowed. The authority concerned is directed to release the two mobile phones of the petitioner, i.e. I Phone 6S

bearing IMEI - 1 No. 355764077748400 and I- Phone 7 Black bearing IMEI No. 356554082829728 on the terms and conditions that;

(i) the petitioner shall furnish a solvent surety of the amount equivalent to the value of mobile phones in question before the trial Court as per the value

disclosed in the seizure memo or panchnama.

(ii) the petitioner shall file an undertaking before the trial Court that prior to alienation or transfer, alienate, part with the possession of the mobile

phones or create any charge over the mobile phones or manner, prior permission of the concerned Court shall be taken till conclusion of the trial;

(iii) the petitioner shall also file an undertaking to produce the two mobile phones as and when directed by the trial Court;

(iv) in the event of any subsequent offence, the two mobile phones shall stand confiscated.

(v) the authority is permitted to take back the mobiles as and when required for investigation.

11. Before handing over the possession of the two mobile phones 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.

12. If, the IO finds it necessary, videography of the two mobile phones also shall be done. Expenses towards the photographs and the videography

shall be borne by the petitioner.

Rule is made absolute, accordingly. Direct service is permitted through fax/ e-mail.