

(2021) 04 GUJ CK 0012

In the Gujarat High Court

Case No : R/Special Criminal Application No. 1501 Of 2021

Savjibhai Nathabhai Vasani

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 06-04-2021

Acts Referred:

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

Citation : (2021) 04 GUJ CK 0012

Hon'ble Judges : B.N. Karia, J

Bench : Single Bench

Advocate : Nilay Thaker, K S Chandrani, Manan Mehta

Final Decision : Disposed Of

Judgement

B.N. Karia, J

Report of Police Inspector, Morbi Taluka Police Station is taken on record.

By way of present writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has sought for a direction to concerned authority to hand over the muddamal vehicle bearing registration No.GJ-13-AW-2900 in connection with the FIR being C.R. No.1118900521007 registered with Morbi Taluka Police Station, Morbi in view of clear embargo under Section 98(2) of the Prohibition Act, 1949 ("the Act" for short) the subordinate courts are not granting any relief.

It is contended by learned advocate for the petitioner that by virtue of the provisions of section 98 of the Act, there is a clear embargo for handing over the custody of the vehicle used in the offence pending the trial by learned trial Courts. It is, therefore, requested that appropriate directions should be given to the concerned Magistrate/trial Court who is 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/guarantee/solvent surety for the return of the said vehicles if required by the Court at any point of time.

On the other-hand, learned Additional Public Prosecutor vehemently submitted that there is embargo under Section 98 of the Act to release the muddamal vehicle used in the offence and while interpreting the provisions of law, the coordinate bench of this Court in the case of Pareshkumar Jaykarbhai Brahmbhatt vs. State of Gujarat decided on 15.12.2017 held that in view of the embargo, the magisterial courts as well as revisional courts have no jurisdiction to hand over custody of the vehicle used in the offence as per the provisions of section 451 of the Code of Criminal Procedure 1973. Lastly, he requested this Court to dismiss the present petition in limine.

Considering the facts and circumstances of the present case as well as that the applicant is the owner of vehicle, who gave his vehicle for transportation work, who is not in the crime in question and the arguments advanced by learned advocate for the parties, it can be seen that the present matter is squarely covered by the decision rendered by this Court in Special Criminal Application No. 7642 of 2018 (Hardikbhai Mukeshbhai Chauhan Vs. State of Gujarat) decided on 05.09.2018. Applicant has also produced xerox copy of Certificate of Registration of his motor vehicle issued by Competent Authority, which clearly shows ownership as well as registration number of the motor vehicle as well as name of the applicant shown in the complaint.

In the result, this application is allowed. The learned trial Court concerned is directed to immediately release the vehicle in question bearing registration No.GJ-13-AW-2900 in connection with the FIR being C.R. No.1118900521007 registered with Morbi Taluka Police Station, Morbi after due verification as well as learned Magistrate shall inquire as regards entitlement as to whether he is the owner of vehicle or not and following the procedure as it thinks necessary as provided under section 451 of the Code of Criminal Procedure 1973 and on the petitioner fulfilling the following conditions:

- (i) The petitioner shall 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) The petitioner shall file an undertaking on oath before the learned trial Court that he shall not transfer, alienate, part with the possession of the vehicle or create any charge over the vehicle till the conclusion of the trial;
- (iii) The petitioner shall produce the vehicle as and when the Authority or the Court concerned directs him to do so.

With the above, this petition is disposed of. Rule is made absolute. Registry to send copy of this Order to the concerned Court/Authority through Fax and Email.