

(2023) 02 GUJ CK 0045

In the Gujarat High Court

Case No : R/Special Criminal Application No. 2036 Of 2023

Sohil Mohammadsalim Shaikh

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 13-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Code Of Criminal Procedure, 1973 — Section 451

Citation : (2023) 02 GUJ CK 0045

Hon'ble Judges : Ilesh J. Vora, J

Bench : Single Bench

Advocate : Farajkhan N Pathan, Hannan A Qureshi, Moxa Thakkar

Final Decision : Allowed

Judgement

Ilesh J. Vora, J

1. Rule. Learned APP waives service of notice of rule for and on behalf of respondent – State.

2. This petition has been preferred under Articles 226 and 227 of the Constitution of India essentially seeking relief to release the muddamal i.e. Android Mobile Phone and Redmi Note 8 Company having its Moonlight White, 64GB, 4 GB RAM and having Vodafone SIM Card No.9824433098 and having its IMEI No.864941041718578 and 864941041718586, which were seized in pursuance of the FIR bearing C.R.No.11191041221424 of 2022 registered at Saherkotda 7 Police Station, Ahmedabad City, for the offences as mentioned in the FIR.

3. Heard learned advocate for the petitioner and learned APP for the respondent – State.

4. Learned advocate for the petitioner submits that the applicant, said muddamal have been seized pursuant to the FIR in question.

5. The attention of the Court was invited to the judgment of the Apex Court in

the case of *Sunderbhai Ambalal Desai v. State of Gujarat*, AIR 2003 SC 638, wherein the Apex Court in regard to the valuable articles and currency notes, held that no useful purpose would be served to keep such articles in police custody for years till the trial is over and in such cases, Magistrate should pass appropriate orders as contemplated under Section 451 of the Cr.P.C., at the earliest.

6. Learned Additional Public Prosecutor appearing for the respondent - State has opposed this petition and submits that the powers of this Court under Article 226 of the Constitution to order release of the muddamal can be exercised at any time whenever the Court deems it appropriate, still however it was urged that the present petition may not be entertained.

7. Considering the facts of the case, it would be beneficial to refer to the decision rendered by the Apex Court in *Sunderbhai Ambalal Desai's* case (*supra*), the relevant portion of which reads thus;

"5. Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, such as-

- (1) for the proper custody pending conclusion of the inquiry or trial;
- (2) to order it to be sold or otherwise disposed of, after recording such evidence as it think necessary;
- (3) if the property is subject to speedy and natural decay, to dispose of the same.

7. In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.
2. Court or the police would not be required to keep the article in safe custody;
3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

8. The question of proper custody of the seized article is raised in number of matters. In *Smt. Baswa Kom Dyanmangouda Patil v. State of Mysore and Anr.*, [1977] 4 SCC 358, this Court dealt with a case where the seized articles were not available for being returned to the complainant. In that case, the recovered ornaments were kept in a trunk in the police station and later it was found missing, the question was with regard to payment of those articles. In that context, the Court observed as under-

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

9. The Court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.

10. To avoid such a situation, in our view, powers under Section 451 Cr.P.C. should be exercised promptly and at the earliest.

7.1 The Apex Court in case of *Sunderbhai Ambalal Desai* (supra) has expressed its view, directing the procedure for handing over currency notes, which is as under:

Valuable Articles and Currency Notes

11. With regard to valuable articles, such as golden or silver ornaments or articles studded with precious stones, it is submitted that it is of no use to keep such articles in police custody for years till the trial is over. In our view, this submission requires to be accepted. In such cases, Magistrate should pass appropriate orders as contemplated under Section 451 Cr.P.C. at the earliest.

12. For this purposes, if material on record indicates that such articles belong to the complainant at whose house theft, robbery or dacoity has taken place, then seized articles be handed over to the complainant after:-

- (1) preparing detailed proper panchanama of such articles:
- (2) taking photographs of such articles and a bond that such articles would be produced if required at the time of trial; and
- (3) after taking proper security.”

8. The power under Section 451 of Cr.P.C. should be exercised expeditiously and judiciously, which clearly empowers the Court to order for proper custody of the articles or property pending conclusion of the trial, as owner of the article would not suffer because of its remaining unused or its misappropriation. The Court or the police would not be required to keep the article in safe custody and if the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial.

9. Considering the factual aspects of the case and the principle rendered in *Sunderbhai Ambalal Desai's case* (supra), this Court is of the considered opinion that the custody of the cash, if granted in favour of the petitioner, no prejudice is likely to be caused to the prosecution.

10. In the result, the petition is allowed. The authority concerned is directed to release the mudamal i.e. Android Mobile Phone and Redmi Note 8 Company having its Moonlight White, 64GB, 4 GB RAM and having Vodafone SIM Card No.9824433098 and having its IMEI No.864941041718578 and 864941041718586 to the Petitioner on condition of furnishing personal bond of the equivalent amount.

11. Before handing over the possession of the muddamal to the petitioner, detailed panchnama in that regard, if not already drawn, shall be drawn for the purpose of trial.

12. Rule is made absolute. Direct service is permitted.