

(2020) 08 GUJ CK 0060

In the Gujarat High Court

Case No : R/Special Criminal Application No. 2738 Of 2020

Thakore Renusinh Dineshbhai

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 05-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227
Code Of Criminal Procedure, 1973 — Section 451, 482
Gujarat Prohibition Act, 1949 — Section 98, 98(2), 99

Citation : (2020) 08 GUJ CK 0060

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

Bench : Single Bench

Advocate : Khyati A Chugh, Niyati N Vaidya, M.H. Bhatt

Final Decision : Allowed

Judgement

B.N. Karia, J

1. The petitioner 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 482 of the Code of Criminal Procedure, 1973 and

seeking to release of Muddamal Vehicle Mahindra Bolero Car bearing registration No.GJ-27-K-6540.

2. It is the case of the petitioner that he is the owner of the aforesaid vehicle and it is duly registered with the transport department of the

Government. He is, therefore, before this Court.

3. The case of the prosecution is that while the police personnels were on patrolling, they received a secret information of the vehicle in question

carrying liquor and when police authorities intercepted the same, on carrying out

the search of the said vehicle, its driver was found carrying liquor without any pass or permit. Therefore, an FIR being Prohibition C.R. No.322 of 2019 came to be lodged with Vijapur Taluka Police Station for the offence under the Gujarat Prohibition Act.

4. This Court had issued rule. Today, learned Advocate appearing for the petitioner and learned APP for the respondent-State are heard at length.

5. 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', AIR 2003 SC 638,

wherein, the Apex Court lamented the scenario of number of vehicles having been kept un-attended and becoming junk within the police station

premises

6. While opposing this application, learned APP for the respondent-State has submitted that transferring of the vehicle is never disclosed by the

present petitioner before the learned Trial Court or Revisional Court and for the first time, this affidavit is filed by the petitioner. That more than 10

liters liquor was seized and the petitioner is habitual in transporting such illegal liquor in the said motor vehicle and therefore, there is clear bar under

Section 98(2) of the Act and no interim custody of the said vehicle can be handed over to the present petitioner. In support of her submission, she has

placed reliance upon the case of Pareshkumar Jaykarbhai Brahmhatt Vs. State of Gujarat reported in 2018(1) GLR 558. Hence, it was requested by

learned APP for the respondent-State to dismiss the present application.

7. Learned APP for the respondent-State 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. She, 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. She 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. She 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'.

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 chos es 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 application is ALLOWED. The authority concerned is directed to RELEASE the vehicle of the petitioner, Vehicle Mahindra

Bolero Car bearing registration No.GJ- 27-K-6540, on the terms and conditions that the petitioner:

(i) shall furnish, by way of security, bond of Rs.4,50,000/- (Rupees Four Lakhs

Fifty Thousand only) and solvent surety of the equivalent amount;

(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 such kind of illegal activities of transporting liquor in future;

10.1 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.

10.2 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.

Rule is made absolute, accordingly.

Registry shall forward a copy of this order to the concerned police station through fax or e-mail forthwith.