

(2020) 12 GUJ CK 0030

In the Gujarat High Court

Case No : R/Special Criminal Application No. 6526 Of 2020

Yusufbhai Kalubhai Khatki (Shaikh)

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 15-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Code Of Criminal Procedure, 1973 — Section 451, 482

Indian Penal Code, 1860 — Section 120(B), 429, 295(A)

Gujarat Animal Preservation Act, 1954 — Section 4, 5, 6, 6(B), 8, 10, 11(1)(f), 11(1)(h)

Gujarat Police Act, 1951 — Section 119

Citation : (2020) 12 GUJ CK 0030

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

Bench : Single Bench

Advocate : SS Saiyed, 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 with a

prayer to release Muddamal Vehicle i.e Splendor Motorcycle (Bike) bearing RTO registration No.GJÂ?38Â?CÂ?8445.

2. It is the case of the petitioner that he is the owner of the aforesaid muddamal vehicle. He had preferred an application for releasing the muddamal

vehicle, which came to be rejected by the learned Additional Chief Judicial Magistrate First Class, Dhandhuka vide order dated 05.08.2020. Therefore,

he also had preferred revision, which too came to be rejected by the learned 11th Additional District & Sessions Judge, Ahmedabad Rural at

Mirzapur, vide order dated 06.10.2020 in Criminal Revision Application No.94 of 2020.

3. The case of the prosecution is that while the police personnels were on patrolling, they received a secret information of the accused carrying illegal

transportation of animal and when police authorities intercepted the same, on carrying out the search of the said vehicle, its driver was found without

and pass or permit. Therefore, an FIR being C.R. No. 11192018200003 of 2020 came to be lodged with Dhandhuka Police Station, Dist. Ahmedabad

Rural for the offence punishable under Sections 429, 295(A) and 120(B) of the Indian Penal Code; under Section 5, 6, 6(B), 8, 10 and 4 of the Gujarat

Animal Prevention Act; under Sections 11(1)(f) and 11(1)(h) of the Gujarat Prevention of Animal Cruelty Act and under Section 119 of the G.P. Act.

4. Heard learned advocate for the petitioner and learned APP for the respondent. State.

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 unattended and becoming junk within the police station

premises.

6. This Court has also heard the learned APP and she has strongly objected the submissions made by learned advocate for the petitioner and

requested not to grant any relief to the petitioner by releasing vehicle in question.

7. On hearing both the sides, without determining the other issues raised by the petitioner, in an appropriate proceedings being a contentious issue, this

Court chooses not to enter into that arena in the present matter and instead exercise the powers under Articles 226 and 227 of the Constitution.

8. 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.

8.2 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.

9. Resultantly, this application is ALLOWED. The authority concerned is directed to RELEASE the muddamal vehilce i.e. Splendor Motorcycle

(Bike) bearing RTO registration No.GJÂ? 38Â?CÂ?8445 on the terms and conditions that the petitioner:

(i) shall furnish, by way of security, bond of Rs.15,000/Â? (Rs. Fifteen 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.

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 eÂ?mail forthwith.