IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 3441 of 2020

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SIPAI MAHMAD ARIF SORAMKHAN

Versus

STATE OF GUJARAT

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Appearance:
MR CHINTAN V ACHARYA(10558) for the Applicant(s) No. 1
MS NISHA THAKOR, ADDITIONAL PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1
RULE NOT RECD BACK(63) for the Respondent(s) No. 2

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CORAM: **HONOURABLE MS. JUSTICE SANGEETA K. VISHEN**

Date : 21/08/2020

ORAL ORDER

1. On the facts and in the circumstances of the case and with the consent of the learned advocates for the respective parties, the petition is taken up for final disposal.

2. By this petition under Articles 226 and 227 of the Constitution of India, the petitioner prays for quashing and setting aside the order dated 15.7.2020 passed by the learned Chief Judicial Magistrate (First Class), Siddhpur in Criminal Misc. Application No.97 of 2020 whereby the application filed by the petitioner has been rejected on the ground of bar contained under sub-section (2) of Section 98 of the Gujarat Prohibition Act, 1949. In the alternative, it is urged that the custody of Tata Truck bearing Registration No.GJ-08-AU-3538, Chassis No.MAT373031F1E11069, Engine No.697TC69EUY105700 (hereinafter referred to as 'the vehicle in question') be handed over to the petitioner, pending trial.

3. Mr. Siddharth Dave, learned advocate for Mr.Chintan V. Acharya, learned advocate for the petitioner submitted that the vehicle in question

was seized in connection with the First Information Report being Prohibition C.R.No.11217030200578 of 2020 registered with Siddhpur Police Station, Siddhpur for the offences under Sections 65(a), 65(e), 67-1A, 98(2) and 116B of the Gujarat Prohibition Act, 1949 (hereinafter referred to as 'the Prohibition Act').

4. It is submitted that the petitioner is the owner of the vehicle in question. It is submitted that the vehicle in question has been seized on 20.6.2020 and since then, the same is in custody of the police lying idle in the place open to sky. It is submitted that in view of bar contained in sub-section (2) of Section 98 of the Prohibition Act, the courts below will have no jurisdiction to release the vehicle. Thus, it is submitted that the vehicle in question may be released by imposing suitable conditions. It is submitted that if the vehicle in question is not released, the petitioner would suffer loss inasmuch as the vehicle in question is used by the petitioner for his daily use for earning bread and butter.

5. The learned advocate, upon instructions, states before this Court that the petitioner will not misuse the liberty granted by this court and produce the muddamal, i.e. the vehicles in question as and when required during the course of the trial. It is also stated that the muddamal, i.e. the vehicle in question shall not be transferred, alienated or part with. Under the circumstances, it is prayed that the muddamal, i.e. the vehicle in question be released by imposing suitable conditions.

6. On the other hand, Ms. Nisha Thakor, learned Additional Public Prosecutor for the respondent State submitted that though the petitioner is not named in the First Information Report, however, during the course of the investigation, the petitioner was arraigned as an accused. It is submitted that looking to the involvement of the petitioner, the vehicle in question may not be allowed to be released.

7. Heard learned advocates for the respective parties through video conference.

8. Pertinently, the petitioner is owner of the vehicle in question. At the time of commission of offence, the vehicle in question was found transporting the contraband liquor worth Rs.87,120/-. Except one offence under the provisions of the Prevention of Cruelty to Animals Act, there are no other criminal antecedents against the petitioner. As is discernible from the record, the First Information Report came to be registered on 20.6.2020 for the offences under the provisions of the Prohibition Act, wherein the contraband liquor of Rs.87,120/- was found from the vehicle in question. Since the seizure, the vehicle in question is kept idle at the police station in the place open to sky, which is likely to reduce the vehicle in question to junk.

9. The petitioner preferred an application under Section 451 of the Code seeking custody of the vehicle in question before the learned Judicial Magistrate which came to be rejected vide order dated 15.7.2020. Being aggrieved and dissatisfied, the present petition is filed with the aforementioned prayers.

10. Pertinently, as contemplated under the provisions of Section 451 of the Code, when any property is produced before any criminal Court during any inquiry or trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

11. The Apex Court in the case of *Sunderbhai Ambalal Desai vs. State of Gujarat*, reported in *(2002) 10 SCC 283*, has observed and held

that to keep such seized vehicles at the police stations for a long period should be avoided and 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. Relevant paragraph 17 reads thus:

> *"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."*

The Apex Court, while dealing with the aspect of seized vehicles, has observed that it is of no use to keep such seized vehicles at the police station for a long period.

12. In the subsequent judgment in the case of *General Insurance Council and others vs. State of A.P.*, reported in *2010 AIR SCW 2967*, the Apex Court has observed in paragraphs 14 and 15 as under:

> *"14. In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the Insurer. We also feel, it is necessary that in addition to the directions issued by this Court in Sunderbhai Ambalal Desai (Supra) considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given. "(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the Jurisdicitonal Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchamama may be prepared before such release. (B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with. (C) Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the event that the Magistrate finally adjudicates that the rightful ownership of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer.*
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> *15. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy*

substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/ Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district."

13. The Apex Court has observed that it is a matter of common knowledge that as and when the vehicles are seized and kept in the various police stations, not only they occupy substantial space of the police station, but upon being kept in open are also prone to fast natural decay on account of weather conditions and even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than 15 days.

14. While adverting to the aspect of exercise of powers by the learned Judicial Magistrate under sub-section (2) of Section 98 of the Gujarat Prohibition Act, it is required to be noted that this Court in the case of *Paresh Jaykarbhai Brahmbhatt vs. State of Gujarat*, rendered in *Special Criminal Application No.8521 of 2017 and other allied matters*, has held that sub-section (2) of Section 98 of the Prohibition Act curtails the powers of the Magistrate to order interim release of the said vehicles under Section 451 or 457 of the Code as the case may be and the courts below will have no jurisdiction to order interim release pending the trial of the seized vehicle in connection with the offence under the Prohibition Act if the quantity of the liquor recovered exceeds 10 litres in quantity. Subsequently, the coordinate bench in the case of *Anilkumar Ramlal Ramanlalji Mehta vs. State of Gujarat*, rendered in *Special Criminal Application No.2185 of 2018*, while applying the

principles laid down by the Apex Court in the case of *Hema Mishra vs. State of Uttar Pradesh*, reported in *(2014) 4 SCC 453*, exercised the writ powers under Article 226 of the Constitution of India and released the vehicle, pending the trial.

15. As discussed hereinabove, apropos the lodging of the First Information Report, the vehicle in question was seized by the police personnel in connection with the offence registered with Siddhpur Police Station, Siddhpur under the provisions of the Prohibition Act. Since the seizure, the vehicle in question is kept idle at the police station in the place open to sky, which is likely to reduce the vehicle in question to junk. Further, no concrete reasons are made available to this Court for not releasing the vehicle in question. Thus, applying the aforesaid principles of law to the facts of the present case as well as the declaration recorded of the petitioner through learned advocate in the preceding paragraph, this Court is inclined to exercise the powers under Article 226 of the Constitution of India and order the release of the muddamal, i.e. Tata Truck bearing Registration No.GJ-08-AU-3538, Chassis No.MAT373031F1E11069, Engine No.697TC69EUY105700 on the following conditions that the petitioner shall –

(i) 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) file an undertaking on oath before the trial Court that the petitioner shall not transfer, alienate, part with the possession of the vehicle in question or create any charge over the vehicle in question, till the conclusion of the trial;

(iii) produce the vehicle in question as and when the authority or the court concerned directs him to do so.

16. It is clarified that in the event of commission of subsequent repetition of such offence by the petitioner, the vehicle in question shall stand confiscated.

17. With the aforesaid directions and observations, the petition is allowed. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(SANGEETA K. VISHEN, J)

BHARAT/RAVI P. PATEL