IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 6080 of 2019

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KIRANSINH TAKHATSINH PADHIYAR

Versus

STATE OF GUJARAT

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Appearance:
MR DHAVAL N VAKIL(3556) for the Applicant(s) No. 1
for the Respondent(s) No. 2
MR HARDIK SONI APP (2) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.G.URAIZEE**

Date : 22/12/2020

ORAL ORDER

1. The petitioner has preferred this petition under Article 227 of the Constitution of India to get the custody of muddamal vehicle being Skoda Car having registration number GJ-33-B-0567, which is seized by police in connection with FIR being Prohibition C.R.No.III-54 of 2019 of registered with Botad Police station, Botad for offences punishable under sections 65(E), 98(D) and 116(B) etc. of the Gujarat Prohibition Act.

2. Mr. Vakil, learned advocate for the petitioner, submits that the petitioner being the owner of muddamal vehicle moved an application under section 451 of the Code of Criminal Procedure 1973 ['the code for short] before the learned Chief Judicial Magistrate First Class, Botad for interim custody of the vehicle during the pendency of the Trial of the case. The learned Magistrate, by his order dated 28.03.2019, allowed the application and ordered to hand

over the possession of the aforesaid Skoda Car to the petitioner. The Investigating Agency assailed the order of the learned Magistrate by preferring the Criminal Revision Application No.22 of 2019 in the Sessions Court, Botad. Learned Additional District and Sessions Judge, Botad by his order dated 31.05.2019, allowed the revision application and directed the petitioner to hand over the possession of the vehicle in question to the Investigating Officer within seven days. The petitioner is therefore, before this Court with the present petition.

3. Rule returnable forthwith. Learned APP waives service of notice of rule on behalf of the respondent-State. With consent of the learned advocates for the parties, the matter is taken up for final disposal today.

4. I have heard Mr. Dhaval Vakil, learned advocate for the petitioner and Mr. Hardik Soni, learned APP for the respondent-State.

5. Learned APP has opposed this application. He submits that the provisions of section 98(2) of the Gujarat Prohibition Act contains an embargo against handing over custody of the vehicle involved in prohibition case. He has relied upon the decision of this Court in case of ***Pareshkumar Jaykarbhai Brahmbhatt vs. State of Gujarat*** decided on 15.12.2017 in support of his contention. It is his further contention that the vehicle would be used for similar offence if the custody is given to the petitioner, He therefore, urges that petition may be dismissed.

6. Having heard learned advocate for the parties and having considered the fact that value of liquor seized is small and if the muddamal vehicle is allowed to remain in the custody of the police, the same is likely to deteriorate and reduce to scarp.

7. Supreme Court in case of **Sudarbhai Ambalal Desai vs. State of Gujarat** has also considered the aspect of seized vehicles lying in the police station where they remained unattended and by each passing day have become a junk. I am of the opinion that the muddamal vehicle needs to be handed over to the petitioner pending the criminal trial on appropriate terms and conditions.

8. For the foregoing reasons, the petition succeeds and is hereby allowed and the order passed by the Court below is set aside. The custody of muddamal vehicle being Skoda Car having registration number GJ-33-B-0567, which is seized by police in connection with FIR being Prohibition C.R.No.III-54 of 2019 registered with Botad Police station, Botad, is ordered to be handed over to the petitioner on the following conditions:-

(i) shall furnish, by way of security, bond of Rs.8,00,000/- (Rupees Eight Lakhs Only) and solvent surety of the equivalent amount;

(ii) The petitioner shall file an undertaking on oath before the learned trial Court that he shall not

transfer, alienate or part with possession of the vehicle till conclusion of the trial and further, produce the vehicle as and when the Court directs him to do so.

(iii) the muddamal vehicle shall not be used for any illegal activities including transporting live stock

(iv) The petitioner shall not change the colour and scheme of the vehicle.

(v) Before release of the vehicle, the police authority shall take photographs of the vehicle at the cost of the petitioner.

9. Rule is made absolute to the aforesaid extent. Registry to communicate this order to the concerned Court/authority through Fax/E-mail.

(A.G.URAIZEE, J)

NAIR SMITA V./zgs