IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 4577 of 2020

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KAMLESHBHAI S/O BIPINBHAI RATHOD

Versus

STATE OF GUJARAT

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Appearance:
VISHAL S AWTANI(7913) for the Applicant(s) No. 1
for the Respondent(s) No. 2
MR RONAK RAVAL, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**

Date : 21/10/2020

ORAL ORDER

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 for the release of the muddamal vehicle i.e. Tata Sumo Gold bearing Registration No.GJ-09-BA-4456.

2. The brief facts leading to the filing of the present petition are as under,

3.1 The petitioner is the owner of the muddamal vehicle i.e. Tata Sumo Gold bearing Registration No.GJ-09-BA-4456 and it is duly registered with the transport department of the Government. However on account of registration of FIR being C. R. No.III-363 of 2019 registered with Kosamba Police Station, Surat for the offences under the provision of the Gujarat Prohibition Act, the vehicle of

the petitioner was recovered as muddamal.

3.2 Therefore to get the custody of the said vehicle, the petitioner filed an application under Section 451 of the Criminal Procedure Code, however, the learned Additional Judicial Magistrate First Class, Mangrol rejected the said application vide order dated 07.02.2020.

3.3 Being aggrieved by the aforesaid order, the petitioner filed an application before the learned Court below being Criminal Revision Application No.146/2020, which came to be rejected by an order dated 24.08.2020.

3.4 Being aggrieved by the aforesaid order rejecting the Revision Application filed by the petitioner, the petitioner has filed present petition with a prayer to release the muddamal of vehicle.

4. Learned advocate appearing for the petitioner has referred to the RC Book placed on record at Page No.14 and submitted that deceased father of the petitioner is the owner of the vehicle in question and till date, no one has claimed for the vehilce in question. It is submitted that the father of the petitioner died on 27.02.2018. The death certificate of the father of the petitioner is placed on record at page 15. It is submitted that the petitioner was not aware about the usage of the vehicle in question in commission of such offence under provisions of the Gujarat Prohibition Act, 1949. It is submitted that the vehicle in question is the source of livelihood of the petitioner and if the same is not released,

the petitioner would suffer grave hardship.

5. In support of his submission, learned advocate, for the petitioner has placed reliance on the judgment of the coordinate benches of this Court rendered in Special Criminal Application No.7761 of 2018 rendered in the case of Pravinbhai Chhaganbhai Parmar vs. State of Gujarat as well as the order passed in Special Criminal Application No.3494 of 2019 rendered in the case of M/s. Om Shakti Travesl vs. State of Gujarat. It is submitted that this Court has, while exercising powers under Articles 226 and 227 of the Constitution of India, released the vehicle by imposing suitable conditions. In view of the said, the present petition may also be allowed releasing the vehicle in question by imposing suitable conditions.

6. On the other hand, Learned APP Mr. Ronak Raval appearing for the respondent State, while opposing the petition, has vehemently submitted that the vehicle in question was involved in the offence under the provisions of the Gujarat Prohibition Act, 1949 and at this stage, permission for releasing the vehicle in question to the petitioner may not be granted. That in view of the embargo contemplated under the provisions of Section 98 of the Gujarat Prohibition Act, 1949, the Courts below have rightly not exercised powers releasing the vehicle in question. Reliance has been placed on the judgment in case of Pareshkumar Jaykarbhai Brahmbhatt vs. State of Gujarat rendered in Special Criminal Application No.8521 of 2017, decided on 15.12.2017, wherein this Court

held that in view of the embargo, the Courts below have no jurisdiction to hand over the custody of the vehicle in question used in the offence. It is, thus, submitted that the writ petition may not be entertained and it may be rejected.

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

8. On hearing learned advocates appearing for the parties and on perusal of the documents produced on record including the facts mentioned hereinabove, it is clear that the petitioner is the owner of the vehicle in question, which was seized in connection with an FIR being C.R. No.III-363 of 2019 registered with Kosamba Police Station, Surat for the offences under the provision of the Gujarat Prohibition Act. However, since the vehicle in question, which is seized in connection with aforesaid FIR, is kept idle at the police station, in the place open to sky, it is likely to reduce the life of the vehicle in question.

9. This Court in case of Anilkumar Ramlal alias Ramanlalji Mehta vs. State of Gujarat rendered in Special Criminal Criminal Application No.2185 of 2018, has directed the release of the vehicle by imposing suitable conditions. Moreover, the coordinate benches of this Court have also directed the release of the vehicle applying the principles laid down by the Apex Court in case of **Sunderbhai Ambalal Desai vs. State of Gujarat**, reported in **AIR 2003 SC 638**. Except the fact that in view of the embargo provided in Section 98 of the Gujarat Prohibition Act, 1949, the Courts

below have rightly not exercised the powers, nothing adverse has been pointed out by the learned Additional Public Prosecutor for not exercising the powers for releasing the vehicle in question, by this Court. Thus, applying the aforesaid principles of law to the facts of the present case, this Court is inclined to exercise power under Article 226 of the Constitution of India.

10. Therefore in view of the above facts, the present petition is allowed. The muddamal vehicle i.e. Tata Sumo Gold bearing Registration No.GJ-09-BA-4456 is ordered to be released, pending the trial, on the terms and conditions that the petitioner:

(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 he shall not transfer, alienate, part with the possession of the vehicle or create any charge over the vehicle till the conclusion of the trial;

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

11. Rule is made absolute to the aforesaid extent. Direct service is permitted. Registry to communicate this order to the concerned Court/ authority forthwith.

(VIPUL M. PANCHOLI, J)

SRILATHA