IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 8299 of 2020

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DHARMENDRA KEDAR RAJPUT

Versus

STATE OF GUJARAT

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Appearance:
MS RINKU PATEL for POOJA D BASWAL(9601) for the Applicant(s) No. 1
MS MOXA THAKKAR, APP (2) for the Respondent(s) No. 1

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CORAM: **HONOURABLE DR. JUSTICE A. P. THAKER**

Date : 11/12/2020

ORAL ORDER

1. Heard Ms.Rinku Patel for Ms.Pooja Baswal, learned advocate for the applicant and Ms.Moxa Thakkar, learned APP for the respondent – State through Video Conferencing. Rule. Learned APP waives service of Rule on behalf of the respondent-State. With the consent of the parties, the matter is taken up for final hearing today.

2. The present application has been filed under Articles 226 and 227 of the Constitution of India and under the provisions of the Criminal Procedure Code with a prayer to issue direction for release of muddamal vehicle i.e. Maruti Suzuki Ind. Ltd. EECO 5 Star AC bearing registration No.GJ-05 JH-2285, which is seized by police in connection with FIR No.11200011201814 of 2020 registered with Valsad Rural Police Station, District-Valsad.

3. It is averred in the application that the present applicant is the owner of the vehicle in question i.e. Maruti Suzuki Ind. Ltd. EECO 5 Star AC bearing registration No.GJ-05 JH-2285, which came to be seized by the police

authority. It is also averred by the applicant that he is not the accused in the offence and, therefore, considering the provisions of the Prohibition Act and other decisions of this Court, the application may be allowed.

4. Learned advocate for the applicant has submitted the same facts which are narrated in the memo of application. He has prayed to allow the present application.

4.1 Learned advocate for the applicant has urged that this Court has wide powers, while exercising such powers under Article 226 of the Constitution of India. 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.

4.2 Learned advocate for the applicant has relied upon the following orders of the Coordinate Bench of this Court:-

(i) Parmar Karansinh Manibai Vs. State of Gujarat dated 08.01.2019 rendered in Special Criminal Application No. 11472 of 2018;

(ii) Dilipsinh Amrasinh Kumpavat Vs. State of Gujarat dated 30.10.2018 rendered in Special Criminal Application No. 9484 of 2018;

(iii) Ranjitbhai Ishvarbhai Chunara (Vaghela) Vs. State of Gujarat dated 12.06.2020 rendered in Special Criminal Application No. 7631 of 2019;

(iv) Shankar Rajdev Yadav Vs. State of Gujarat dated 17.06.2020 rendered in Special Criminal Application No. 359 of 2020;

(v) Shobhadevi Sanjaykumar Shah Vs. State of Gujarat dated 18.06.2020 rendered in Special Criminal Application No. 2033 of 2020;

5. Learned APP has strongly opposed to the grant of present application. She has submitted that in view of Section 98 of the Act, the vehicle used in the crime under Prohibition Act is liable to be confiscated. She also submitted that if the vehicle is released, the same may be used in another crime and, therefore, this Court may not allow the present application.

6. It would be worthwhile to refer profitably at this stage to the observations made by the Apex Court in the case of ***Sunderbhai Ambalal Desai*** (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.*
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> *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."

7. Having considered the submissions made on behalf of learned advocates for both the sides and considering the facts that the vehicle i.e. Maruti Suzuki Ind. Ltd. EECO 5 Star AC bearing registration No.GJ-05 JH-2285 has been seized by the concerned police authority during the course of the search under the Prohibition Act. It also reveals from the materials placed on record that the applicant is the owner of the said vehicle and is not the accused in the crime. It is an admitted fact that if the vehicle is kept unused then it will become useless.

8. At this stage, it is worthwhile to refer to the provisions of the Prohibition Act, especially, Sections 98, 100 and 132, which provide for confiscation of the vehicle involved in the prohibition offence. Sections 98, 100 and 132 reads as under:-

Section 98. Things Liable to confiscation:-

(1) whenever any offence punishable under this Act has been committed,

(a) any intoxicant, hemp, mhowra flowers., molasses, materials. still, utensil, implement or apparatus in respect of which the offence has been committed,
(b) where in the case of an offence involving illegal possession, the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or molasses other than those in respect of which an offence under this Act has been committed, the entire stock of such intoxicant, hemp, mhowra flowers or molasses,

(c) where, in the case of an offence of illegal import, export or transport, the offender has attempted to import, export or transport any intoxicant, hemp, mhowra flowers or molasses, in contravention of the provisions of this Act, rule, regulation or order or in breach of a condition of licence, permit, pass or authorisation, the whole quantity of such intoxicant, hemp, mhowra flowers or molasses which he has attempted to import, export, or transport,

(d) where in the case of an offence of illegal sale, the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or molasses other than that in respect of which an offence has been committed, the whole of such other intoxicant, hemp, mhowra flowers or molasses, shall be confiscated by the order of the court.

(2) Any receptacle, package or covering in which any of the articles liable to confiscation under sub-section (1) is found and the other contents of such receptacle, package or covering and the animals, carts, vessels or other conveyances used in carrying any such article shall likewise be liable to confiscation by the order of the Court.

100. Procedure in confiscation.-

When an offence under this Act has been committed and the offender is not known or cannot be found or when anythingliable to confiscation under this Act is found or seized, the [Director], Director or any other officer authorised by the [State] Government in this behalf may make an inquiry and if after such inquiry is satisfied that an offence has been committed, may order the thing found to be confiscated:

Provided that no such order shall be made before the expiry of one month from the date of seizure, or without hearing [the person, if any, claiming any right thereto] and the evidence, if any, which he produces in support of his claim.

132. Articles seized.- *[When anything has been seized under the provisions of this Act by a Prohibition Officer exercising powers under Section 129 or by an officer-in-charge of a police station], or has been sent to him in accordance with the provisions of this Act, such officer, after such inquiry as may be, deemed necessary,-*

(a) if it appears that such thing is required as evidence in the case of any person arrested, shall forward it to the Magistrate to whom such person is forwarded or for his appearance before whom bail has been taken;

(b) if it appears that such thing is liable to confiscation but is not required as evidence as aforesaid, shall send it with a full report of the particulars of seizure to the Collector;

(c) if no offence appears to have been committed shall return it to the person from whose possession it was taken.

9. In view of the aforesaid provisions, it appears that the provisions provide for confiscation. However, considering the factual aspects of this case, this Court is of the considered opinion that the custody of the vehicle, if granted in favour of the applicant, no prejudice is likely to be caused to the prosecution as there will be stringent conditions on the applicant with regard to the seized vehicle i.e. Maruti Suzuki Ind. Ltd. EECO 5 Star AC bearing registration No.GJ-05 JH-2285.

10. This Court has considered the principles laid down by the Apex Court in the case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat, AIR 2003 SC 638***. This Court has also considered the following orders of the Coordinate Bench of this Court.

(i) *Gujarat State Road Transport Corporation Through Depot Manager Morbi Vs. State of Gujarat rendered in Special Criminal Application No.1126 of 2018 dated 21.06.2018;*

(ii) *Anilkumar Ramlal @ Ramanlalji Mehta Vs. State of Gujarat rendered in Special Criminal Application No.2185 of 2018 dated 05.04.2018;*

(iii) Munavarbhai Dadabhai Sandhi Vs. State of Gujarat rendered in Special Criminal Application No.4996 of 2018 dated 19.07.2018;

(iv) Dikulbhai Dineshbhai Patel Vs. State of Gujarat rendered in Special Criminal Application No.10437 of 2018 dated 07.12.2018;

(v) Balvantbhai Jivanbhai Sapra Vs. State of Gujarat rendered in Special Criminal Application No.10835 of 2018 dated 19.12.2018;

(vi) Rathod Gopalbhai Devabhai Vs. State of Gujarat rendered in Special Criminal Application No.10964 of 2018 dated 21.12.2018;

11. In the result, this application is allowed. The authority concerned is directed to release the vehicle of the applicant, being Maruti Suzuki Ind. Ltd. EECO 5 Star AC bearing registration No.GJ-05 JH-2285, on the terms and conditions that the applicant :

(i) shall furnish, by way of security, bond of Rs.2,00,000/- (Rupees Two Lakhs Only) and solvent surety of the equivalent amount;

(ii) shall file an undertaking on oath 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 on oath 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.

11.1 Before handing over the possession of the vehicle to the applicant, necessary photographs shall be taken and detailed panchnama in that regard, if not already drawn, shall also be drawn for the purpose of trial.

11.2 If, the Investigating Officer finds it necessary, videography of the vehicle also shall be done. Expenses towards the photographs and the videography shall be borne by the applicant. Rule is made absolute, accordingly. Direct service is permitted.

12. Registry is directed to intimate about this order to the concerned authorities through fax, email and/or any other suitable electronic mode. Learned advocate for the petitioner is also permitted to intimate about this order to the concerned authorities through fax, email and/or any other suitable electronic mode. The concerned Trial Court be informed accordingly.

(DR. A. P. THAKER, J)

RS MALEK/ VARSHA DESAI