IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 6653 of 2020

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THAKOR BALBHA DALPATSINH

Versus

STATE OF GUJARAT

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Appearance:
MR NIRAV K PADHIYAR(5678) for the Applicant(s) No. 1
for the Respondent(s) No. 2
MR. MANAN MEHTA, APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MR. JUSTICE B.N. KARIA**

Date : 16/12/2020

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 with a prayer to release Muddamal Vehicle i.e Maruti Suzuki Zen Car bearing RTO registration No.GJ-08-BH-2879.

2. It is the case of the petitioner that petitioner is the owner of the aforesaid vehicle and it is duly registered with the transport department of the Government. He is, therefore, before this Court.

3. The case of the prosecution is that while the police personnels were on patrolling, they received a secret information of the vehicle in question carrying liquor and when police authorities intercepted the same, on carrying out the search of the said vehicle, its driver was found carrying liquor without any pass or permit. Therefore, an FIR being Prohibition / III C.R. No.414 of 2019 came to be lodged with Dhanera Police Station, Dist-Banaskantha for the offence punishable under the Prohibition 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 un-attended and becoming junk within the police station premises.

6. Learned APP for the respondent-State has objected the submissions made by learned advocate for the petitioner and pointed out that this Court (Coram: J.B. Pardiwala, J.) in the case of '***ANILKUMAR RAMLAL @ RAMANLALJI MEHTA VS. STATE OF GUJARAT***' in Special Criminal Application No. 2185 of 2018, Dated: 05.04.2018, and in the earlier decision in '***PARESHKUMAR JAYKARBHAI BRAHMBHATT VS. STATE OF GUJARAT***' in Special Criminal Application No. 8521 of 2017 and the allied matters decided on 15.12.2017, has held that the powers of the Magistrate to order interim release of the seized vehicle under Section 98(2)of the said Act has been curtailed, and therefore, the Courts below have been held to have no jurisdiction to order interim release of the vehicle, pending trial, where, the vehicle is seized in connection with the offence under the Prohibition Act and the quantity of the liquor seized exceeds 10 liters. She, further, urged that, of course, powers of this Court under Article 226 of the Constitution to order release of the vehicle can be exercised at any time, whenever the Court deems it appropriate. She also

pointed out that the recent decision of this Court in Special Criminal Application No. 2185 of 2018, where, this Court, in exercise of the powers under Article 226 of the Constitution, has ordered the release of the vehicle, pending trial. She has also pointed out the order passed by this Court in Special Criminal Application No. 1126 of 2018, Dated: 21.06.2018, in case of '***GUJARAT STATE ROAD TRANSPORT CORPORATION THROUGH DEPOT MANAGER, MORBI, VS. STATE OF GUJARAT***'.

7. On thus hearing both the sides, without determining the other issues raised by the petitioner, in reference to Sections 98 and 99 and other provisions of the said Act and reserving that to be determined in future, in an appropriate proceedings being a contentious issue, this Court choses not to enter into that arena in the present matter and instead exercise the powers under Articles 226 and 227 of the Constitution.

8. This Court (Coram: J.B. Pardiwala, J.) however in the case of in '***ANILKUMAR RAMLAL @ RAMANLALJI MEHTA VS. STATE OF GUJARAT***' (Supra) in Special Criminal Application

No. 2185 of 2018, Dated: 05.04.2018, has also returned the vehicle recently under Articles 226 and 227 of the Constitution, exercising its powers at an initial stage.

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.*
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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.*
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> *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 vehicle of the petitioner, being ***Maruti Suzuki Zen Car bearing RTO registration No.GJ-08-BH-2879***, on the terms and conditions that the petitioner:

(i) shall furnish, by way of security, bond of Rs.**40,000/- (Rupees Forty Thousands 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**.

9.1 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.

9.2 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 is directed to send a copy of this order to the concerned Police Station through fax or e-mail forthwith.

(B.N. KARIA, J)

VARSHA DESAI