IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 6834 of 2020

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RAHULBHAI RATANBHAI PALASH

Versus

STATE OF GUJARAT

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Appearance:
MR.MINHAJ M SHAIKH(6847) for the Applicant(s) No. 1
PUBLIC PROSECUTOR(2) for the Respondent(s) No. 1
MS METHLI MEHTA, APP (64) for the Respondent(s) No. 2,3
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CORAM:**HONOURABLE MR. JUSTICE R.P.DHOLARIA**

Date : 22/12/2020

ORAL ORDER

[1] Rule. Learned APP waives service of notice of rule for the respondent State.

[2] What is challenged in the present writ petition under Articles 226 & 227 of the Constitution of India is the order dated 13.10.2020 passed by learned 2nd Additional Sessions Judge, Dahod as well as the order dated 6.7.2020 passed by learned Chief Judicial Magistrate, Dahod rejecting the prayer of handing over the muddamal vehicle having its registration No. GJ-20 X 0704 in connection with the FIR being II C.R.No.138 of 2019 registered with Dahod Town Police Station for the offence under the provisions of Gujarat Animal Preservation Act (**'the Act'** for short). Being aggrieved by the same, the petitioner has preferred the present petition under Article 227 of the Constitution of India.

[3] It is contended by learned advocate for the petitioner that learned trial Court as well as revisional Court have not handed over

interim custody of the vehicle in question in view of the provisions of the Act pending the trial. It is, therefore, requested that appropriate directions should be given to the concerned Magistrate/Trial Court who is dealing with such questions to hand over such vehicle to its owner or to the person from whom the said vehicle is seized by taking appropriate bond/guarantee/solvent surety for the return of the said vehicle if required by the Court at any point of time.

[4] On the other hand, learned APP has strongly objected to release the muddamal vehicle used in the offence and he requested this Court to dismiss the present petition in limine.

[5] Having heard learned advocates for the respective parties and having gone through the impugned orders passed by the Courts below, wherein the Courts were not inclined to release the muddamal vehicle due to Amendment of Prevention of Cruelty to Animals Act. By way of the said Amendment, the said vehicle is made subject to the confiscation, due to which, the Courts below have rejected the application for releasing the vehicle.

[6] On overall facts and circumstances of the case as well as principle laid down in the celebrated decisions of the Apex Court as well as in the case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat***. Since the vehicle in question is perishable, if it would remain before the Police Station for a longer period and its value would be diminished, if it may remain more than three to four years before the police station it would be completely destroyed and it is loss for nation itself.

[7] In view of the aforesaid factual scenario, the present petition is allowed. The learned trial Court concerned is directed to immediately release the vehicle in question i.e. vehicle in question i.e.

vehicle having its registration No. GJ-20 X 0704 in connection with the FIR being II C.R.No.138 of 2019 registered with Dahod Town Police Station after due verification as well as learned Magistrate shall inquire as regards entitlement as to whether he is the owner of vehicle or not and following the procedure as it thinks necessary as provided under section 451 of the Code of Criminal Procedure 1973 and the learned trial Court shall impose solvent surety as well as personal bond of one and half times considering its value revealing from panchnama as well as FIR and other suitable conditions.

[8] With the above, this petition is disposed of. Rule is made absolute to the aforesaid extent. Registry to send the copy of the this Order to the concerned Authority/learned trial Court through Fax and Email.

(R.P.DHOLARIA, J)

MOHMMEDSHAHID/PATHAN