IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 6822 of 2020

==========

SHAHNAVAZ ABDULLATIFKHAN PATHAN

Versus

STATE OF GUJARAT

==========

Appearance:
MR. NISARG D SHAH(7299) for the Applicant(s) No. 1
ULLASH N GOHIL(8357) for the Applicant(s) No. 1
MS SHRUTI PATHAK, APP for the Respondent(s) No. 1
RULE SERVED(64) for the Respondent(s) No. 2

==========

CORAM:**HONOURABLE MR. JUSTICE A.S. SUPEHIA**

Date : 15/12/2020

ORAL ORDER

(1) Heard the learned advocates for the respective parties through video conferencing.

(2) By way of the present petition under Article 226 of the Constitution of India, the petitioner has prayed to release / handover the possession of the muddamal vehicle bearing registration No.GJ-27-TA-0506 to the petitioner.

(3) Learned advocate for the petitioner submitted that the muddamal vehicle has been detained by the investigating officer and that if the interim custody of the vehicle is not given, serious prejudice would be

caused to the petitioner as the muddamal vehicle would get substantially damaged by the time the trial gets concluded and probably, by that time, the value of the muddamal vehicle may also become 'NIL' as the vehicle is lying under the open sky in different climatic conditions. It was further submitted that this Court has ordered release of muddamal vehicles even in instances under section 98(2) of the Gujarat Prohibition (Amendment) Act and hence, the Court may consider the case of the petitioner since this may fall under section 99 of the Gujarat Prohibition Act, 1949 (for short "the Act"). It was, accordingly, urged that this Court may direct release of the muddamal vehicle in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India on suitable terms and conditions.

(4) Reliance was placed upon several decisions rendered by the Coordinate Benches of this Court to submit that even after considering the rigor of section 99 of the Act, this Court has allowed the muddamal vehicles to be released in favour of the petitioner therein. Reliance is also placed on the decisions of the Coordinate Benches of this Court rendered in Special Criminal Applications No.4010 of 2020, 4041 of 2020, and 4253 of 2020 on

01.10.2020 as well as orders dated 14.07.2020 and 23.07.2020 passed in Special Criminal Application No.2692 of 2020 and Special Criminal Application No.3012 of 2020, respectively.

(5) Attention of the Court was invited to the judgment of the Apex Court in the case of Sunderbhai Ambalal Desai v. State of Gujarat, AIR 2003 SC 638, wherein the Apex Court ordered release of muddamal vehicle seized under the provisions of the Act while lamenting the scenario of a number of vehicles having been kept unattended and becoming scrap within the police station premises or at any other designated places.

(6) Learned APP Ms.Pathak has vehemently opposed the present petition. She has submitted that the issue is pending before the Apex Court and hence, the mudammal may not be released. She has vehemently contended that the muddamal vehicle was involved in the offence under the Act and that in view of the embargo contemplated under the provisions of section 98 of the Act, the Courts below are not empowered to release the muddamal vehicle. Reliance has been placed on the judgment of this Court in the case of Pareshkumar Jaykarbhai Brahmbhatt v. State of

Gujarat, rendered in Special Criminal Application No.8521 of 2017 decided on 15.12.2017, wherein it has been held that the Courts below have no jurisdiction to hand over custody of the muddamal vehicle in view of the embargo under section 98 of the Act. It was submitted that a petition being S.L.P. (Cri.) No. 886 of 2018 is pending before the Apex Court in respect of the said issue and therefore, no powers may be exercised by this Court by releasing the muddamal vehicle seized by the police in connection with an offence under the Act. It was, however, urged that the 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. It was, accordingly, urged that the present petition may not be entertained.

(7) Considering the facts of the case, it would be beneficial to refer to the decision rendered by the Apex Court in ***Sunderbhai Ambalal Desai's case (supra***), the relevant portion of which reads thus;

> "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.

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 application for return of such vehicles."

(8) Considering the facts and circumstances of the case and the decisions of the Coordinate Benches of this Court rendered in Special Criminal Applications No.4010 of 2020, 4041 of 2020, and 4253 of 2020 on 01.10.2020 as well as orders dated 14.07.2020 and 23.07.2020 passed by the Coordinate Bench in Special Criminal Application No.2692 of 2020 and Special Criminal Application No.3012 of 2020, respectively the present application deserves to be allowed. The identical submissions are considered by the Coordinate Benches and the mudammal article is ordered to be released on the following conditions: Hence, the following order:

(i) The petitioner shall execute a bond, within a period of one week from today, for the production of the vehicle so released, if and when required before the authorized officer;

(ii) The petitioner shall not use the vehicle involved in the crime in such activities, in future;

(iii) The petitioner shall not sell, transfer or alienate the vehicle in any manner, pending the confiscation proceedings, and shall produce the vehicle before the authorized officer, as and when call upon to produce the same for the purpose of further proceedings in the matter;

(9) The petitioner is directed to file an undertaking on oath on the above terms, and on filing such an undertaking before the authorized officer or the authority concerned, the authorized officer shall immediately release the vehicle and hand over the same to the petitioner.

(10) RULE is made absolute to the aforesaid extent.

(11) Registry is directed to communicate the present order to the concerned police station through Fax message, email and/or any other suitable electronic mode.

(A. S. SUPEHIA, J)

NEHA GUPTA /// NVMEWADA // 66