IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 7017 of 2020

==========

NARENDRA BHAVAN VADHVANI

Versus

STATE OF GUJARAT

==========

Appearance:
MR. RAJAN J PATEL, ADVOCATE for the Applicant
MS NISHA THAKORE, APP for the Respondent STATE
==========

CORAM:**HONOURABLE MR. JUSTICE PARESH UPADHYAY**

Date : 18/12/2020

ORAL ORDER

1. This is an application for release of muddamal.

2. The petitioner is an accused in the FIR being C.R. No.11196009200557 of 2020 registered with the Jawaharnagar Police Station, Vadodara City for the offences punishable under Sections 406, 420, 465, 468, 471 and 473 of the Indian Penal Code and Sections 51, 63 and 64 of the Copyright Act.

3. While registering the said FIR, the police has seized certain items, which the accused / present petitioner wants back.

4. Heard learned advocate for the petitioner and learned Additional Public Prosecutor for the State through video conference.

5. Learned advocate for the petitioner has taken this Court

through the narration in the FIR and the contents of his applications before the Courts below and the orders passed thereon. It is submitted that the petitioner is a small trader and he is facing economical death, for no fault on his part. It is submitted that this petition be allowed.

6. Learned Additional Public Prosecutor has vehemently opposed this petition. Attention of the Court is also invited to the affidavit in reply dated 16.12.2020 and the material annexed therewith. It is submitted that this petition be dismissed.

7. Having heard learned advocates for the respective parties and having considered the material on record, this Court finds as under :

7.1 There is no complainant who had approached the police for filing FIR in this regard. It is the wisdom of the Special Operation Group of Vadodara Police itself, which went to the work place of the accused on 08.08.2020 and found that the accused is doing some illegalities in his business of assembling the electronic / electrical items like T.V., A.C. etc. All the accessories and items are seized. The details thereof are noted in the orders of the Courts below, which are on record.

7.2 The petitioner approached the Trial Court for release of the said muddamal by filing an application No. 1964 of 2020. The said application was rejected by the learned Judicial Magistrate, First Class, Vadodara vide order dated 01.09.2020.

7.3 Being aggrieved, the petitioner approached the Appellate

Court below by filing Criminal Revision Application No.112 of 2020. The 2nd Additional Sessions Judge, Vadodara has, vide order dated 24.09.2020 rejected the said revision application.

7.4 It is under these circumstances, the petitioner has approached this Court.

8.1 As noted above, there is no complaint to the police. The Special Operation Group is so enthusiastic that, even for the offence under the Copyright Act, they have conducted raid, without there being any aggrieved party and have registered the offence.

8.2 The say of the petitioner is that, he is a small trader, who gets parts purchased from market, assembles it and sells televisions / air-conditioners, etc. He further states that, on all the items which he purchased, even tax is paid by him.

8.3 In totality, this Court finds that, in the post-lockdown period, when small traders are struggling to survive, such mischiefs by police, in no way, takes the course of justice any further. On the contrary, it proves to be counter-productive to the public at large.

8.4 Since the issue before this Court in this petition is limited, as to whether the items seized by the police should be released or not, wider issue about the sustainability of the very FIR in question is not gone into. Suffice it to hold that, the items seized by the police need not be kept by police and need to be returned to the petitioner.

8.5 This Court finds that, the Courts below were in error in not looking at the issue from this dimension. This petition needs to be allowed.

9. For the reasons recorded above, the following order is passed.

9.1 This petition is allowed.

9.2 The concerned authority, in whose custody the muddamal in question is, is directed to release the said muddamal, immediately. The details with regard to this muddamal is, as noted in Para : 2 of the application of the present petitioner before the Trial Court, which is on record, which is also noted in Para : 1 of the Revision Application before the Sessions Court, Vadodara, which is also on record, the details of which are noted above.

10. Rule is made absolute in above terms. Direct service is permitted.

(PARESH UPADHYAY, J)

SALIM/MHDave/Bhati/ 56