IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 7514 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	No
2	To be referred to the Reporter or not ?	No
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

==========

SHAILESHBHAI JERAMBHAI KAKADIYA

Versus

STATE OF GUJARAT

==========

Appearance:
MR. HARDIK Y KOTHARI(6895) for the Applicant(s) No. 1
MR. L. B. DABHI, APP for the Respondent(s) No. 1

==========

CORAM: **HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI**

Date : 15/12/2020
ORAL JUDGMENT

1. The petitioner has filed this petition seeking to invoke extra ordinary jurisdiction of this Court under Article 226 of the Constitution of India, mainly supervisory jurisdiction so also inherent powers under Section 482 of the Code of Criminal Procedure to quash and set aside the order dated 20.10.2020 in Criminal Revision Application No. 99 of 2020 passed by the learned 5th Additional Sessions Judge, Rajkot and also quash and set aside order dated 01.10.2020 passed by the Magistrate Court,

Rajkot and to release the muddamal vehicle- Ashok Leyland Truck- Model No. Ashok Leyland 3118IL bearing RTO registration No. GJ-03-BV-5627 in connection with the FIR being CR. No. - 11208055200197 of 2020 before the D.C.B. Police Station, Rajkot City, District – Rajkot (City) for the offence punishable under Sections 65(E), 81, 98(2) and 116B of the Gujarat Prohibition Act.

2. Heard learned advocate Mr. Hardik Y. Kothari for the petitioner and learned APP Mr. L. B. Dabhi on behalf of the Respondent State of Gujarat through video conference.

Factual Matrix of the case:

3. It is the case of the petitioner that the petitioner is the owner of Ashok Leyland Truck- Model No. Ashok Leyland 3118IL bearing RTO registration No. GJ-03-BV-5627. It is the case of the petitioner that the learned Courts below have rejected release of muddamal applications, only because of restriction under Section 98(2) of the Prohibition Act but if the vehicle would lie at the Police Station for more time, there will be physical damage to it, and therefore interference of this Hon’ble Court is required and therefore, this Court may please to allow this application in the interest of justice.

4. It is contended that as per the allegations in the FIR, the Police Officers have received secret information regarding prohibition activity and liquor came to be found worth Rs. 32,400/- and the same came to be seized by the Police and accordingly an FIR came to be registered.

5. It is also contended that petitioner has purchased Ashok Leyland Truck- Model No. Ashok Leyland 3118IL bearing RTO

registration No. GJ-03-BV-5627, which is at present lying in Police Station in abandoned condition. It is also contended that learned Magistrate Court, Rajkot has rejected the muddamal application and thereafter learned 5th Additional Sessions Judge, Rajkot also rejected the revision application and therefore, the present petition is filed to set aside the order and also prayed for releasing captioned muddamal vehicle.

6. Earlier this Court has issued Rule on 26.11.2020, returnable on 14.12.2020. Learned advocate for the petitioner time and again vehemently submitted that the co–ordinate Bench passed the order in favour of the petitioner in identical cases. Further learned advocate for the petitioner has placed reliance upon the judgments of co-ordinate Bench (1) in case of **Ritesh Bishmber Agrawal vs. State of Gujarat** in Special Criminal Application No. 5533 of 2018 order dated 18.01.2019, (2) in case of **Ganibhai Yusufbhai Jamroth vs. State of Gujarat** in Special Criminal Application No. 2776 of 2020 order dated 07.07.2020, (3) in case of **Ranjitbhai Ishvarbhai Chunara (Vaghela) vs. State of Gujarat** in Special Criminal Application No. 7631 of 2019 order dated 12.06.2020, (4) in case of **Zala Mahendrasinh Kirtisinh vs. State of Gujarat** in Special Criminal Application No. 2717 of 2020 order dated 26.06.2020 (5) in case of **Prajapati Rajendrakumar Rameshbhai Vs. State of Gujarat** in Special Criminal Application No. 2692 of 2020 order dated 14.07.2020 and also placed reliance upon the judgment delivered by the Hon’ble Apex Court in case of **Sunderbhai Ambalal Desai Vs. State of Gujarat**, AIR 2003 SC 638.

7. Per contra, learned APP for the State has vehemently argued that if the said muddamal vehicle is released, in that case there

are all chances of committing the same offence in future under the Prohibition Act. The petitioner having no antecedent and his name is not shown in the FIR. Therefore, learned Trial Court has rightly disallowed the muddamal application. Further, learned APP has also placed reliance upon the judgment passed by this Court in case of **Anilkumar Ramlal @ Ramanlaji Mehta Vs. State of Gujarat** in Special Criminal Application No. 2185 of 2018 dated 05.04.2018. Order dated 12.06.2020 passed in Special Criminal Application No. 7631 of 2019, wherein contrary view has taken in releasing muddamal vehicle involved in the Gujarat Prohibition Act. Learned APP further contended that SLP (Cri.) No. 886 of 2018 is pending before the Hon'ble Apex Court in respect of the said issue, and therefore, no power would be exercise by this Court for releasing the vehicle seized by Police in the prohibition Offence. It is also contended that learned trial Court has rightly disallowed the muddamal application by invoking Section 98(2) of the Prohibition Act and Court below has no jurisdiction to pass order for interim release of muddamal vehicle when trial is pending in connection with offence under the Prohibition Act. Learned APP further urged that in view of Section 98(2) of the latest Prohibition Act, as well as, as per judgment passed by this Court in case of **Anilkumar Ramlal @ Ramanlaji Mehta Vs. State of Gujarat,** the vehicle used in Prohibition, where quantity is more than 10 liters, cannot be released. Further, learned APP also placed reliance upon judgment of Co ordinate Bench dated 15.12.2017 in Special Criminal Application No. 8521 of 2017.

8. Having heard the arguments advanced by both the sides, without determining the other issues in reference to Sections 98 and 99 and other provisions of the said Act, and reserving that to be determined in future in appropriate proceedings being

contentious issue, this Court is not inclined to enter into that arena in the present matter and instead exercised the powers vested under Articles 226 and 227 of the Constitution.

9. The Coordinate Bench in case of **Anilkumar Ramlal @ Ramanlaji Mehta Vs. State of Gujarat** in Special Criminal Application No. 2185 of 2018 dated 05.04.2018 has also returned the captioned involved vehicle in the Prohibition Act under Articles 226 and 227 of the Constitution by exercising its powers even at initial stage.

10. Having heard the arguments advanced by both the sides, it would be worthwhile to refer profitably at this stage to the observations made by the Hon'ble Apex Court that within a period of six months from the date of production of the vehicle before the concerned Court, needful be done. Further, the Hon'ble Apex Court also 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 third person. If the Insurance company fails to take possession, the vehicle 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 such vehicle before the Court. It is also directed that before handing over such possession of vehicle, appropriate photographs of the said vehicle should be taken and detailed panchnama should also be prepared. The Hon'ble 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 15 days to one month. It is, therefore directed that this object can also be achieved, however, there should be proper supervision by the Registry of the concerned High Court in seeing that Rules framed by the High Court with regard to such articles are implemented properly.

11. This Court has perused the report of Investigating Officer as submitted by learned APP which is taken on record. The petitioner having no antecedent and his name is not shown in the FIR. Further, it is nobody's case that same vehicle is used in earlier offence, and therefore, the petitioner cannot be denied the interim possession of vehicle on the basis of the judgment of Hon'ble Supreme Court in case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** (Supra), and this Court is inclined to exercise extraordinary powers under Articles 226 and 227 of the Constitution.

12. It is observed by the Hon'ble Apex Court in case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** (Supra), which reads 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.

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."

13. This Court has assistance of orders passed by the co ordinate Bench in case of **Ritesh Bishmber Agrawal vs. State of Gujarat** in Special Criminal Application No. 5533 of 2018 order dated 18.01.2019, (2) in case of **Ganibhai Yusufbhai Jamroth vs. State of Gujarat** in Special Criminal Application No. 2776 of 2020 order dated 07.07.2020, (3) in case of **Ranjitbhai Ishvarbhai Chunara (Vaghela) vs. State of Gujarat** in Special Criminal Application No. 7631 of 2019 order dated 12.06.2020, (4) in case of **Zala Mahendrasinh Kirtisinh vs. State of Gujarat** in Special Criminal Application No. 2717 of 2020 order dated 26.06.2020, and (5) in case of **Prajapati Rajendrakumar Rameshbhai Vs. State of Gujarat** in Special Criminal Application No. 2692 of 2020 order dated 14.07.2020, wherein, muddamal vehicle was used in offences under the Prohibition Act released by this Court at many occasions.

14. Resultantly, ***in-fleri*** this application is allowed. The order dated 01.10.2020 passed by the Magistrate Court, Rajkot and the order dated 20.10.2020 in Criminal Revision Application No. 99 of 2020 passed by the learned 5th Additional Sessions Judge, Rajkot are hereby set aside. The authority concerned is directed to release the vehicle of petitioner **Ashok Leyland Truck-** Model No. Ashok Leyland 3118IL bearing RTO registration **No. GJ-03-BV-5627** in the terms and conditions that the petitioner:

(i) Shall furnish, by way of security, bond as per valued cited in Panchnama or seizure memo 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 an when directed by the trial Court;

(iv) The concerned Trial Court shall verify the ownership of the vehicle before releasing the same.

(v) If the I.O. finds use of vehicle in such illegal activity by the present petitioner then this order shall stand cancel and the vehicle will be seized.

15. 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.

16. If, the I.O. finds it necessary, **VIDEOGRAPHY** of the vehicle also shall be done. Expenses towards the photographs and the videography shall be **BORNE** by the petitioner.

17. This petition is allowed. Rule is made absolute. The Registry is directed to communicate this order by Fax / by E-mail to the concerned Court and Police Station.

(DR. ASHOKKUMAR C. JOSHI,J)

prk