IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 7407 of 2020

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SETA AMINABEN NATHABHAI DECEASED THROUGH LEGAL HEIRS
SETA IMTIYAZ NATHABHAI
Versus
STATE OF GUJARAT

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Appearance:
MR. MAULIK M SONI(7249) for the Applicant(s) No. 1
MS MAITHILI MEHTA, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE A.G.URAIZEE**

Date : 23/12/2020

ORAL ORDER

1. The petitioner has preferred this petition under Article 227 of the Constitution of India to get the custody of muddamal vehicle being Truck (Ashok Leyland Ltd), bearing registration No.GJ-04-U-7839, which is seized by police in connection with FIR being C.R.No.III-159 of 2019 registered with Manavadar Police Station, District Junagadh for offences punishable under sections 65(E), 81 and 98(2) of the Gujarat Prohibition Act.

2. Rule returnable forthwith. Learned APP waives service of notice of rule on behalf of the respondent-State. With consent of the learned advocates for the parties, the matter has taken up for final disposal today.

3. Heard learned advocate appearing for the petitioner and learned APP appearing for the respondent-State.

4. Learned advocate for the petitioner submitted that in view of the embargo contained in section 98(2) of the Gujarat Prohibition Act, the Trial Court is precluded from releasing the custody of muddamal vehicle under section 451 of the Code of Criminal

Procedure to the owner of the vehicle. He further submits that his muddamal vehicle was used for transporting liquor without his knowledge. He submits that if the vehicle is allowed to remain with the police, its condition would deteriorate. Hence, considering the overall facts of the case and considering the value of liquor, the vehicle may be given to the petitioner pending the trial of criminal case.

5. Learned APP has opposed this application. She submits that the provisions of section 98(2) of the Gujarat Prohibition Act contains an embargo against handing over custody of the vehicle involved in prohibition case. She has relied upon the decision of this Court in case of ***Pareshkumar Jaykarbhai Brahmbhatt vs. State of Gujarat*** decided on 15.12.2017 in support of her contention. It is her further contention that the vehicle would be used for similar offence if the custody is given to the petitioner. She therefore, urges that petition may be dismissed.

6. Having heard learned advocate for the parties and having considered the fact that value of liquor seized is small and if the muddamal vehicle is allowed to remain in the custody of the police, the same is likely to deteriorate and reduce to scrap.

7. The Supreme Court in case of **Sunderbhai Ambalal Desai vs. State of Gujarat,** AIR 2003 SC 638 has also considered the aspect of seized vehicles lying in the police station where they remained unattended and by each passing day have become a junk. I am of the opinion that the muddamal vehicle needs to be handed over to the petitioner pending the criminal trial on appropriate terms and conditions.

8. For the foregoing reasons, the petition succeeds and is hereby allowed. The custody of muddamal vehicle Truck (Ashok

Leyland Ltd), bearing registration No.GJ-04-U-7839, which is seized by police in connection with FIR being C.R.No.III-159 of 2019 registered with Manavadar Police Station, District Junagadh , is ordered to be handed over to the petitioner on the following conditions:-

(i) shall furnish, by way of security, bond of Rs. 4,00,000/- (Rs. Four Lakhs Only) and solvent surety of the equivalent amount;

(ii) The petitioner shall file an undertaking on oath before the learned trial Court that he shall not transfer, alienate or part with possession of the vehicle till conclusion of the trial and further, produce the vehicle as and when the Court directs him to do so.

(iii) the muddamal vehicle shall not be used for any illegal activities including transporting live stock

(iv) the petitioner shall not change the colour and scheme of the vehicle.

(v) before release of the vehicle, the police authority shall take photographs of the vehicle at the cost of the petitioner.

9. Rule is made absolute to the aforesaid extent. Registry to communicate this order to the concerned Court/authority through Fax/e-mail.

(A.G.URAIZEE, J)

NAIR SMITA V. / F.S.KAZI