IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 7413 of 2020

==========

KHODABHAI MERABHAI SEFATARA

Versus

STATE OF GUJARAT

==========

Appearance:
A R SHAH(7768) for the Applicant(s) No. 1
NOTICE NOT RECD BACK(3) for the Respondent(s) No. 2
MR.H.K.PATEL, APP,(2) for the Respondent(s) No. 1

==========

CORAM: **HONOURABLE MR. JUSTICE A.Y. KOGJE**

Date : 21/12/2020
ORAL ORDER

1. ***Rule***. Learned APP waives service of rule on behalf of respondent-State.

2. The petitioner has preferred this petition seeking to invoke extraordinary jurisdiction of this Court under Article 226/227 of the Constitution of India so also under Section 482 of the Code of Criminal Procedure, 1973.

3. This application is preferred seeking release of muddamal being Mahindra Bolero Maxi Truck having registration No.GJ-33-T-1268, in connection with complaint being CR No.III-41 of 2019 registered with Chotila Police Station, Surendranagar.

4. It is the case of the petitioner that he is the owner of the aforesaid vehicle. He is, therefore, before this Court.

5. The case of the prosecution is that the vehicle in question was used for transport of prohibited liquor and therefore, FIR being CR No.III-41 of 2019 for offences under Sections 65(a)(e), 116-B, 98(2) and 81 of the Prohibition Act came to be registered with Chotila Police Station, Surendranagar.

6. Learned Advocate for the petitioner has urged that this Court has wide powers, while exercising such powers under Article 226 of the Constitution. It can also take into account the ratio laid down in case of ***SUNDERBHAI AMBALAL DESAI VS. STATE OF GUJARAT***, **AIR 2003 SC 638.**

7. This Court has also heard the learned APP and he has urged this Court that appropriate conditions be imposed, while ordering the release of the vehicle. He further pointed out that this Court (Coram: J.B. Pardiwala, J.) in the case of ***ANILKUMAR RAMLAL @ RAMANLALJI MEHTA VS. STATE OF GUJARAT*** in **Special Criminal Application No. 2185 of 2018, Dated: 05.04.2018** and in the earlier decision in ***PARESHKUMAR JAYKARBHAI BRAHMBHATT VS. STATE OF GUJARAT*** in **Special Criminal Application No. 8521 of 2017 and the allied matters decided on 15.12.2017** has held that the interim powers of the Magistrate to order interim release of the seized vehicle under Section 98(2) of the said Act has been curtailed and therefore, the Courts below have been held to have no jurisdiction to order interim

release of the vehicle, pending trial, where the vehicle is seized in connection with the offence under the Prohibition Act and the quantity of liquor seized exceeds 10 liters. It is further submitted that of course, powers of this Court under Article 226 of the Constitution of India to order release of the vehicle can be exercised at any time whenever the Court deems it appropriate. It is also pointed out that in the recent decision of this Court in Special Criminal Application No.2185 of 2018, this Court, in exercise of powers under Article 226 of the Constitution, has ordered release of vehicle pending trial. It is also pointed out that order passed by this Court in Special Criminal Application No.1126 of 2018 dated 21.06.2018 in case of ***Gujarat State Road Transport Corporation through Depot Manager, Morbi Vs. State of Gujarat***.

8. Having heard learned Advocates for the parties and having perused documents on record, without determining the other issues raised by the learned Advocate for the petitioner, in reference to Sections 98 and 99 and other provisions of the said Act, this Court choses not to enter into that arena in the present matter and instead exercises powers under Articles 226 and 227 of the Constitution of India, as the issue is pending before the Apex Court in SLP (Criminal) No.886 of 2018.

9. This Court (Coram: J.B.Pardiwala, J.), however, in case of

Anilkumar Ramlal @ Ramanlalji Mehta (supra) in Special Criminal Application No.2185 of 2019 dated 05.04.2018 has also returned the vehicle recently exercising powers under Articles 226 and 227 of the Constitution even at an initial stage.

9.1 The Apex Court has directed that within a period of six months from the date of production of the vehicle before the Court concerned, needful be done. It even 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 a third person. If Insurance Company fails to take possession, the vehicles 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 the said vehicle before the Court. It also directed that before handing over possession of such vehicles, appropriate photographs of the said vehicles should be taken and a detailed panchnama should also be prepared. The 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 more than fifteen days to one month. It is therefore directed that

this object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeking that the Rules framed by the High Court with regard to such articles are implemented properly.

10. Resultantly, this petition is ***allowed***. The authority concerned is directed to release the vehicle of the petitioner, i.e. Mahindra Bolero Maxi Truck having registration No.GJ-33-T-1268, on the following terms and conditions:-

I. the petitioner shall furnish, by way of security bond of Rs.1,00,000/- (Rupees One Lakh Only) and solvent surety of the equivalent amount;

II. the petitioner 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. the petitioner shall file an undertaking to produce the vehicle as and when directed by the trial Court;

IV. in the event of any subsequent offence, the vehicle shall stand confiscated.

10.1 Before handing over 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.

10.2 If IO finds it necessary, videography of the vehicle also shall be done. The expenses towards the photographs and the videography shall be borne by the

petitioner.

11. Rule is made absolute to the aforesaid extent.

Direct service is permitted.

(A.Y. KOGJE, J)

CAROLINE/Siddharth