IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 7724 of 2020

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DHULABHAI KADUBHAI PAGI

Versus

STATE OF GUJARAT

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Appearance:
MR IMTIYAZ I MANSURI(9159) for the Applicant(s) No. 1
MR.J.K.SHAH, APP (2) for the Respondent(s) No. 1
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CORAM:**HONOURABLE MR. JUSTICE RAJENDRA M. SAREEN**

Date : 21/12/2020

ORAL ORDER

1. ***Rule***. Mr.J.K.Shah, learned APP waives service of rule for the respondent – State of Gujarat. With consent of the learned advocates for the parties, the matter has taken up for final disposal today.

2. In this petition under Article 226 of the Constitution of India, the petitioner has prayed for appropriate writ, direction and / or order for release of said vehicle – Chevroler Tavera Neo 3T TCD Motor Car bearing registration No. GJ-17-AH-0721, seized as muddamal in respect of FIR being Prohibition C.R.No.11207048200761 of 2020 registered with Morva (Hadaf), Panchmahals under sections 65(A), 65(E), 81, 116(B) and 98(2) of Prohibition Act.

3. Heard the learned advocate for the petitioner and Mr.J.K. Shah, , learned APP for the respondent-State.

4. Learned advocate for the petitioner has 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.

5. Learned advocate for the petitioner has relied upon various orders passed by the coordinate Bench of this Court on the issue of release of vehicles, especially when the vehicle had been detained in connection with the prohibition offences.

6. Learned advocate for the petitioner has further submitted that if the vehicle in question is not released, not only the same would remain in unused position in the police station but the same would be deteriorated to such an extent that after the trial is over, the vehicle will not be in workable position at all. This issue has been dealt with in several orders by the coordinate Benches. Hence, a request is made to release the vehicle in question.

7. Mr.J.K. Shah, learned APP has opposed this application. He has submitted that the provisions of section 98(2) of the Gujarat Prohibition Act contains an embargo against handing over the custody of the vehicle involved in prohibition case. He 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 his contention. He has further submitted that the vehicle would be used for similar offence if the custody is given to the petitioner.

8. To the aforesaid submissions, learned APP Mr. J.K. Shah has submitted that by virtue of the statutory provisions, the detention of the vehicle is thoroughly justified and non-release of the same by the Courts below is also in accordance with law. Hence, no order be passed in favour of the petitioner. It has been submitted that by virtue of Section 98(2) of the Gujarat Prohibition Act, whenever such kind of vehicles are detained as muddamal in connection with the offences and quantity of liquor is found to be 10 Ltrs. and more, the vehicles are not to be released and that the order which has been passed by learned Magistrate is justified. However, on the issue of about exercise of extraordinary jurisdiction and several decisions which have been taken by the coordinate Benches, no comment is offered and learned APP has left the matter to the discretion of this Court.

9. Having heard learned advocates appearing for the parties and having gone through the material on record, it seems that *prima facie*, there is no dispute with regard to the ownership of the vehicle in question, which is undisputedly belonging to the petitioner. Additionally, the

vehicle in question is also detained as a muddamal in connection with the complaint which is lodged for the offences of under the Prohibition Act. However, the Court after perusal of several decisions delivered by various coordinate Benches of this Court, is of the opinion that by imposing appropriate conditions, the vehicle in question be released by exercising the extraordinary jurisdiction. For the purpose of arriving at this conclusion, the Court has taken assistance of the decisions of the coordinate Benches, to which there is no distinguishable view of this Court and since the said decisions have been considered by this Court, few relevant observations contained in one of the decisions, i.e. order dated 12.6.2019 in Special Criminal Application No.7631 of 2019, are reproduced hereinafter:-

> *"9. On thus hearing both the sides, without determining the other issues raised by the petitioner, in reference to Sections 98 and 99 and other provisions of the said Act and reserving that to be determined in future, in an appropriate proceedings being a contentious issue, this Court choses not to enter into that arena in the present matter and instead exercise the powers under Articles 226 and 227 of the Constitution.*
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> *10. This Court (Coram: J.B. Pardiwala, J.) however in the case of in '**ANILKUMAR RAMLAL @ RAMANLALJI MEHTA VS. STATE OF GUJARAT' (Supra) in Special Criminal Application No. 2185 of 2018, Dated: 05.04.2018**, has also returned the vehicle recently under Articles 226 and 227 of the Constitution, exercising its powers to do that even at an initial stage.*

*10.1 It would be worthwhile to refer profitably at this stage to the observations made by the Apex Court in '**SUNDERBHAI AMBALAL DESAI VS. STATE OF GUJARAT**' (Supra), which read 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.*
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> *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.*
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> *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."

10.2 The Apex Court has, thus, 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 vehicle should be taken and a detailed panchnama should also be prepared. The Apex Court also held and specifically directed hat 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 fifteen days to one month. It, therefore, directed that this object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly.

10. In view of the aforesaid observations and the position which has been propounded by various decisions, this Court is inclined to consider the request of the petitioner. As

a result of this, present petition is allowed. The authority concerned is directed to release the vehicle in question belonging to the petitioner, i.e. Chevroler Tavera Neo 3T TCD Motor Car bearing registration No. GJ-17-AH-0721, on the following terms and conditions that petitioner:

(i) shall furnish, by way of security, bond of Rs.3,00,000/- and solvent surety of the equivalent amount.

(ii) shall file an undertaking before the Trial Court that the petitioner shall not transfer, alienate or use the vehicle in question in any manner which would violate the prohibition law till the trial is over and in case of exigency, alienation of transfer shall not be effected without specific prior permission of the concerned Court.

(iii) The petitioner is also directed to file an undertaking to produce the vehicle in question as and when directed by the concerned Trial Court.

(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.

(vi) It is made clear that in the event of any subsequent offence of this nature, the vehicle in question shall stand confiscated forthwith.

(vii) Before handing over the possession of the vehicle in question, necessary photographs shall be taken and detailed panchnama in that regard shall be drawn and to be produced on the record of the case.

(viii) If the I.O. finds it necessary, videography shall also be done at the cost of the petitioner and photograph thereof also to be taken at the cost of the petitioner.

11. With the above-said conditions, the present petition stands allowed. Rule is made absolute to the aforesaid extent.

12. The Registry is directed to communicate this order by fax or e-mail to the concerned authority.

(RAJENDRA M. SAREEN,J)

MOHMMEDSHAHID