IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 8309 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE DR. JUSTICE ASHOKKUMAR C. JOSHI

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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

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MAGAN BHANIBHAI GAMIT
Versus
STATE OF GUJARAT

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Appearance:
JAYDEEP H SINDHI(9585) for the Applicant(s) No. 1
MR LB DABHI, APP (2) for the Respondent(s) No. 1

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

Date : 16/12/2020

ORAL JUDGMENT

1. The petitioner has filed this petition seeking to invoke extra ordinary jurisdiction of this Court under Articles 226 and 227 of the Constitution of India to release the muddamal vehicle – Bajaj Pulsar 220 ES UG 3 AW Motorcycle, bearing RTO registration No. GJ-26-J-5962, in connection with the FIR being III-C.R. No. 249 of 2019, registered before the Songadh Police Station, Dist.: Tapi for

the offence punishable under Sections 65(E), 81 and 98(2) of the Prohibition Act.

2. Heard learned advocate Mr. Jaydeep Sindhi for the petitioner and learned APP Mr. L. B. Dabhi on behalf of the respondent - State through video conference.

2.1 Rule, returnable forthwith. Learned APP waives service for the respondent – State. With the consent of the learned advocates for the respective parties, the matter is taken up for final hearing today.

Factual Matrix of the case:

3. The learned advocate for the petitioner submitted that as per the allegations made in the FIR, there was liquor worth **Rs.26,400/-** found in the muddamal vehicle. It is the case of the petitioner that the petitioner is the owner of the muddamal vehicle. The muddamal vehicle in question is duly registered with the transport department of the government and the petitioner is the only claimant seeking the custody of the said muddamal vehicle.

3.1 It is submitted by the learned advocate for the petitioner that the petitioner has directly approached this Court for release of muddamal i.e. without prior approaching to the learned concerned Court below. It is also submitted that by virtue of provisions of section 98 of the Act, there is clear embargo for handing over the custody of the vehicle used in the offence pending the trial Court, and 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 in the interest of justice. Further, it is submitted that otherwise, the

petitioner is neither named in the FIR nor has any antecedents.

3.2 It is submitted that under the extra ordinary jurisdiction, this Court can very much entertain such petition. In support of such submission, he has relied upon the orders of the Coordinate Benches passed in Special Criminal Application Nos. 3747 of 2020 dated 27.08.2020 and 4204 of 2020 dated 08.09.2020.

3.3 In support of his submissions, the learned advocate for the petitioner has placed reliance upon the judgments of Coordinate 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.

3.4 Accordingly, it is urged that present petition may be allowed and the muddamal vehicle may be released on any suitable conditions.

4. Per contra, learned APP for the respondent - State has vehemently argued that the quantity of liquor is huge and

therefore, 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. 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 exercised by this Court for releasing the vehicle seized by Police in the prohibition Offence. 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 (supra),** the vehicle used in Prohibition, where quantity is more than 10 liters, cannot be released. Further, learned APP also placed reliance upon judgment of Coordinate Bench dated 15.12.2017 in Special Criminal Application No. 8521 of 2017.

5. Having heard the arguments advanced by both the sides, without determining the other issues raised by the learned APP 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.

6. In the case of **Anilkumar Ramlal @ Ramanlaji Mehta Vs. State of Gujarat** in Special Criminal Application No. 2185 of

2018, by order dated 05.04.2018, this Court has also released the vehicle involved in the Prohibition Act under Articles 226 and 227 of the Constitution by exercising its powers even at initial stage.

7. 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 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 a 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 possession of such vehicle, appropriate photographs of the said vehicle should be taken and a detailed panchnama should also be prepared. The Hon'ble Apex Court also held and specifically directed that the 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 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.

7.1 The learned APP has submitted the report of the IO, which has been taken into consideration by this Court. It appears that the petitioner has no antecedents. Further, it is nobody's case that same vehicle is used earlier in any such offence and therefore, the petitioner cannot be denied the interim possession of vehicle and on the basis of the judgment of Hon'ble Supreme Court in case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** (Supra), this Court is inclined to exercise extraordinary powers under Articles 226 and 227 of the Constitution. It is observed by the Hon'ble Apex Court in case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** (Supra), 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."*

7.2 This Court has assistance of orders passed by the Coordinate 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, (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.

8. Resultantly, ***in-fleri*** this petition succeeds and is **allowed**. The authority concerned is directed to release the vehicle of the petitioner i.e. Bajaj Pulsar 220 ES UG 3 AW Motorcycle, bearing RTO registration No. GJ-26-J-5962 in the terms and conditions that the petitioner:

a) shall furnish, by way of security, bond as per valued cited in Panchnama or seizure memo and solvent surety of the equivalent amount;

b) 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;

c) shall also file an undertaking to produce the vehicle as an when directed by the trial Court;

d) if the IO finds use of vehicle in any illegal activity by the present petitioner then this order shall stand cancelled and the vehicle will be seized;

e) shall appear before the IO, as and when called for and cooperate with the investigating agency.

8.1 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.

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

8.3 Prior to release of the muddamal vehicle, the trial Court concerned shall verify the ownership of the same.

9. Rule is made absolute to the aforesaid extent. Direct service is permitted through fax / e-mail / any other electronic mode.

9.1 The Registry shall communicate this order by fax / by e-mail to the concerned Court and police station.

[Dr. Ashokkumar C. Joshi, J.]

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