IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 8596 of 2020

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REKHABEN KAMLESHKUMAR GOLANI

Versus

STATE OF GUJARAT

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Appearance:
MR DARSHAN P DAVE(5928) for the Applicant(s) No. 1
for the Respondent(s) No. 2
MS JIRGA JHAVERI, APP (2) for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE R.P.DHOLARIA**

Date : 21/12/2020

ORAL ORDER

[1] **Rule**. Learned Additional Public Prosecutor waives service of notice of rule on behalf of the respondent State.

[2] By way of present writ petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has sought for a direction to concerned authority to hand over the muddamal vehicle bearing registration No.GJ 01 RA 0765 in connection with the FIR being Prohibition C.R.No.11191011200134 of 2020 registered with DCB Police Station, District Ahmedabad in view of clear embargo under Section 98(2) of the Gujarat Prohibition Act, 1949 (“the Act” for short) the subordinate courts are not granting any relief.

[3] It is contended by learned advocate for the petitioner that by virtue of the provisions of section 98 of the Act, there is a clear embargo for handing over the custody of the vehicle used in the offence pending the trial by learned trial Courts. It is, therefore, requested that appropriate directions should be given to the concerned Magistrate/trial Court who is 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/guarantee/solvent surety for the return of the said vehicles if required by the Court at any point of time.

[4] On the other-hand, learned Additional Public Prosecutor vehemently submitted that there is embargo under section 98 of the Code of Criminal Procedure 1973 to release the muddamal vehicle used in the offence and while interpreting the provisions of law, the coordinate bench of this Court in the case of **Pareshkumar Jaykarbhai Brahmbhatt vs. State of Gujarat** decided on 15.12.2017 held that in view of the embargo, the magisterial courts as well as revisional courts have no jurisdiction to hand over custody of the vehicle used in the offence as per the provisions of section 451 of the Code of Criminal Procedure 1973. Lastly, he requested this Court to dismiss the present petition in limine.

[5] Considering the facts and circumstances of the present case and the arguments advanced by learned advocate for the parties, it can be seen that the present matter is squarely covered by the decision rendered by this Court in **Special Criminal Application No. 7642 of 2018 (Hardikbhai Mukeshbhai Chauhan vs. State of Gujarat)** decided on 05.09.2018.

[6] In the result, this application is allowed. The learned trial Court concerned is directed to immediately release the vehicle in question bearing No.GJ 01 RA 0765 in connection with the FIR being Prohibition C.R.No.11191011200134 of 2020 registered with DCB Police Station, District Ahmedabad after due verification as well as learned Magistrate shall inquire as regards entitlement as to whether he is the owner of vehicle or not and following the procedure as it thinks necessary as provided under section 451 of the Code of Criminal

Procedure 1973 and on the petitioner fulfilling the following conditions:

i The petitioner shall furnish a solvent surety of the amount equivalent to the value of the vehicle in question as per the value disclosed in the seizure memo or panchnama.

ii The petitioner shall file an undertaking on oath before the trial Court that he shall not transfer, alienate, part with the possession of the vehicle or create any charge over the vehicle till the conclusion of the trial.

iii The petitioner shall produce the vehicle as and when the authority or the Court concerned directs him to do so.

[7] With the above, this petition is disposed of. Rule is made absolute. Registry to send copy of this Order to the concerned Court/Authority through Fax and Email.

(R.P.DHOLARIA, J)

MOHMMEDSHAHID/PATHAN