IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 8868 of 2020

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DIPAK RADHESHYAM PARIHAR

Versus

STATE OF GUJARAT

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Appearance:
MR. MAULIK M SONI(7249) for the Applicant(s) No. 1
for the Respondent(s) No. 2
MR PRANAV TRIVEDI, APP (2) for the Respondent(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE GITA GOPI**

Date : 24/12/2020
ORAL ORDER

1. Rule. Learned Additional Public Prosecutor waives service of notice of rule on behalf of the respondent-State. With the consent of learned advocates on both the sides, the matter is heard today finally.

2. This petition has been preferred under Articles 226 and 227 of the Constitution of India essentially seeking the relief to release the muddamal vehicle bearing registration No.GJ-01-HP-0946, which was seized in connection with the offence punishable under the Gujarat Prohibition Act (hereinafter referred to as “the Act”), on suitable terms and conditions.

3. Learned advocate for the petitioner submitted that the petitioner is the owner of the vehicle in question and has not been named in the complaint. The copy of the R.C. Book has been produced on record to prove the aspect of ownership.

3.1 Learned advocate for the petitioner submitted that the muddamal vehicle has been detained by the investigating officer and that if the interim custody of the vehicle is not given, serious prejudice would be caused to the petitioner as the muddamal vehicle would get substantially damaged by the time the trial gets concluded and probably, by that time, the value of the

muddamal vehicle may also become 'Nil' as the vehicle is lying under the open sky in different climatic conditions. It was further submitted that this Court has ordered release of muddamal vehicles even in instances under section 98(2) of the amended Act and hence, the Court may consider the case of the petitioner since this may fall under section 99 of the Act. It was, accordingly, urged that this Court may direct release of the muddamal vehicle in exercise of the extra-ordinary jurisdiction under Article 226 of the Constitution of India on suitable terms and conditions.

3.2 Reliance was placed upon several decisions rendered by the coordinate Benches of this Court to submit that even after considering the rigor of section 99 of the Act, this Court has allowed the muddamal vehicles to be released in favour of the petitioner therein.

3.2 The attention of the Court was invited to the judgment of the Apex Court in the case of **Sunderbhai Ambalal Desai v. State of Gujarat, AIR 2003 SC 638,** wherein the Apex Court ordered release of muddamal vehicle seized under the provisions of the Act while lamenting the scenario of a number of vehicles having been kept unattended and becoming scrap within the police station premises or at any other designated places.

4. Learned Additional Public Prosecutor appearing for the respondent-State vehemently contended that the muddamal vehicle was involved in the offence under the Act and that in view of the embargo contemplated under the provisions of section 98 of the Act, the Courts below are not empowered to release the muddamal vehicle. Reliance has been placed on the judgment of this Court (Coram : J.B. Pardiwala, J.) in the case of Pareshkumar Jaykarbhai Brahmbhatt v. State of Gujarat rendered in *Special Criminal Application No.8521 of 2017 decided on 15.12.2017*, wherein it has been held that the Courts below have no jurisdiction to hand over custody of the muddamal vehicle in view of the embargo under section 98 of the Act. It was submitted that a petition being S.L.P. (Cri.) No. 886 of 2018 is pending before the Apex Court in respect of the said issue and therefore, no powers may be exercised by this Court by releasing the muddamal vehicle seized by the police in

connection with an offence under the Act. It was, however, urged that the powers of this Court under Article 226 of the Constitution to order release of the vehicle can be exercised at any time whenever the Court deems it appropriate. It was, accordingly, urged that the present petition may not be entertained.

5. Heard learned advocates on both the sides and perused the documents on record. In the case of Pareshkumar Jaykarbhai Brahmbhatt v. State of Gujarat rendered in *Special Criminal Application No.8521 of 2017 decided on 15.12.2017,* ***[2018 (1) GLH 558]***, it has been held by the coordinate Bench of this Court that the Courts below have no jurisdiction to hand over custody of the muddamal vehicle in view of the embargo under section 98 of the Act. However, in the subsequent decision in the case of *Anilkumar Ramlal @ Ramanlalji Mehta v. State of Gujarat* passed in Special Criminal Application No.2185 of 2018 decided on 05.04.2018, the coordinate Bench has ordered the release of muddamal vehicle pending trial in exercise of the powers under Article 226 of the Constitution.

6. Considering the facts of the case, it would be beneficial to refer to the decision rendered by the Apex Court in *Sunderbhai Ambalal Desai's* case (supra), the relevant portion of which reads thus;

> *"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 application for return of such vehicles."

7. This Court has also considered the following decisions rendered by the coordinate Benches;

(i) *Gujarat State Road Transport Corporation Through Depot Manager Morbi Vs. State of Gujarat rendered in Special Criminal Application No.1126 of 2018 dated 21.06.2018;*

(ii) Anilkumar Ramlal @ Ramanlalji Mehta Vs. State of Gujarat rendered in Special Criminal Application No.2185 of 2018 dated 05.04.2018;

(iii) Munavarbhai Dadabhai Sandhi Vs. State of Gujarat rendered in Special Criminal Application No.4996 of 2018 dated 19.07.2018;

(iv) Dikulbhai Dineshbhai Patel Vs. State of Gujarat rendered in Special Criminal Application No.10437 of 2018 dated 07.12.2018;

(v) Balvantbhai Jivanbhai Sapra Vs. State of Gujarat rendered in Special Criminal Application No.10835 of 2018 dated 19.12.2018;

(vi) Rathod Gopalbhai Devabhai Vs. State of Gujarat rendered in Special Criminal Application No.10964 of 2018 dated 21.12.2018;

8. Considering the factual aspects of the case and the principle rendered in *Sunderbhai Ambalal Desai's* case (supra), this Court is of the considered opinion that the custody of the vehicle, if granted in favour of the applicant on stringent terms and conditions, no prejudice is likely to be caused to the prosecution. Further, in the decisions referred to herein above, the coordinate Benches have ordered release of the muddamal vehicles on suitable conditions. Except the fact that in view of the embargo provided in section 98 of the Act, nothing adverse has been pointed out by the learned Additional Public Prosecutor for not exercising the powers under Article 226 of the Constitution. Further, this Court has ordered release of muddamal vehicles even in instances under section 98(2) of the amended Act and hence, the Court can consider cases falling under section 99 of the Act as well.

9. In the result, the petition is allowed. The authority concerned is directed to release the vehicle of the petitioner bearing registration No.GJ-01-HP-0946 on the terms and conditions that the petitioner;

(i) shall furnish, by way of security, bond and solvent surety equivalent of the amount as stated in the seizure memo;

(ii) shall file an Undertaking on oath before the trial Court that prior to alienation or transfer of the vehicle in any mode or manner, prior permission of the concerned trial Court shall be taken until the conclusion of trial;

(iii) shall also file an Undertaking on oath 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.

9.1 Before handing over the possession of the vehicle to the petitioner, necessary photographs shall be taken and detailed panchnama in that regard, if not already drawn, shall be drawn for the purpose of trial. If the Investigating Officer finds it necessary, videography / photography of the vehicle shall also be done and the expenses thereof shall be borne by the applicant.

9.2 It is clarified that this order shall be subject to the decision that shall be rendered by the Apex Court in the pending S.L.P. (Cri.) No. 886 of 2018.

9.3 Rule is made absolute. Direct service is permitted. Registry is directed to intimate about this order to the concerned authorities through fax, email and/or any other suitable electronic mode. Learned advocate for the petitioner is also permitted to intimate about this order to the concerned authorities through fax, email and/or any other suitable electronic mode.

(GITA GOPI,J)

DIPTI PATEL