IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION NO. 10558 of 2019

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DHIRAJSINH RAISINH SHARMA

Versus

STATE OF GUJARAT

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Appearance:
MR. RAHUL R DHOLAKIA(6765) for the Applicant(s) No. 1
MS METHLI MEHTA, APP (2) for the Respondent(s) No. 1
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CORAM:**HONOURABLE MR. JUSTICE R.P.DHOLARIA**

Date : 17/12/2020

ORAL ORDER

[1] Rule. Learned APP waives service of notice of rule for the respondent State.

[2] What is challenged in the present writ petition under Articles 226 & 227 of the Constitution of India is the order dated 28.11.2019 passed by learned Principal Sessions Judge, Gandhinagar as well as the order dated 14.11.2019 passed by learned 4th Additional Judicial Magistrate, First Class, Gandhinagar rejecting the prayer of handing over the muddamal vehicle having its registration No. GJ-01 RE 7496 in connection with the FIR being Prohibition C.R.No.180 of 2019 registered with Pethapur Police Station, Gandhinagar for the offence under the provisions of Gujarat Prohibition Act, 1949 (**'the Act'** for short). Being aggrieved by the same, the petitioner has preferred the present petition under Article 227 of the Constitution of India.

[3] It is contended by learned advocate for the petitioner that learned trial Court as well as revisional Court have not handed over interim custody of the vehicle in question in view of the provisions of

Section 98 of the Act which provides embargo for handing over the custody of the vehicle used in the offence pending the trial. 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 vehicle to its owner or to the person from whom the said vehicle is seized by taking appropriate bond/guarantee/solvent surety for the return of the said vehicle if required by the Court at any point of time.

[4] On the other hand, learned APP vehemently submitted that there is embargo under Section 98 of the Act to release the muddamal vehicle used in the offence and while interpreting the provisions of law, the Co-ordinate 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 Court as well as Revisional Court have no jurisdiction to handover 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 as well as that the applicant is the owner of vehicle, who gave the vehicle on rent to the person(s), who are involved in the crime in question 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 RE 7496 in connection with the FIR being Prohibition C.R.No.180 of 2019 registered with Pethapur Police Station, Gandhinagar 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 learned 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 to the aforesaid extent.

[8] Registry to communicate this order to the concerned Court/ authority through Fax and Email.

(R.P.DHOLARIA, J)

MOHMMEDSHAHID/PATHAN