IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (POSSESSION OF MUDDAMAL) NO. 16882 of 2023

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JITENDRA KHICHADU CHAUHAN THROUGH POA JOSEPH ANTHONY DSOUZA

Versus

STATE OF GUJARAT

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Appearance:
MR JAYDEEP H SINDHI(9585) for the Applicant(s) No. 1
MR JAINISH P SHAH(7033) for the Respondent(s) No. 2
MR RONAK RAVAL, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 30/01/2024

ORAL ORDER

RULE. Learned APP waives notice of rule for and on behalf of the respondents.

[1.0] The petitioner, who is the owner of the muddamal vehicle has preferred this petition through his power of attorney holder, seeking to invoke extraordinary jurisdiction of this Court under Article 226 and supervisory jurisdiction under Article 227 of the Constitution of India so also inherent powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 with a prayer to release Muddamal Vehicle i.e. **TATA Truck bearing RTO registration No.MH-47-AS-9181,** which is hypothecated with ICICI Bank Ltd. and has issued no objection certificate if the vehicle is released in favor of the present petitioner**.**

[2.0] The case of the prosecution is that while the police personnel were on patrolling, they received a secret information

of the vehicle in question carrying liquor and when police authorities intercepted the same, on carrying out the search of the said vehicle, its driver was found carrying liquor without any pass or permit. Therefore, an FIR being **C.R. No.11822009231555 of 2023** registered with **Chikhli Police Station, District Navsari** for the offences under the Gujarat Prohibition Act.

[3.0] Heard learned advocate for the petitioner and learned APP for the respondents.

[4.0] Learned Advocate for the petitioner has submitted that present petitioner is the owner of the muddamal vehicle and this Court has wide powers under Article 226 of the Constitution. It can also take into account the ratio laid down in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **AIR 2003 SC 638**, wherein, the Hon'ble Apex Court lamented the scenario of number of vehicles having been kept unattended and becoming junk within the police station premises.

[5.0] Learned APP for the respondents has objected the submissions made by learned advocate for the petitioner and urged that of course, 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 but this is not a fit case to exercise the jurisdiction and hence, requested to dismiss the petition.

[6.0] It would be worthwhile to refer profitably at this stage to the observations made by the Hon'ble Apex Court in the case of ***Sunderbhai Ambalal Desai (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.

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.

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."

[7.0] Resultantly, this petition is allowed.

[8.0] The learned Trial Court / authority concerned is directed to release the vehicle of the petitioner being **TATA Truck bearing RTO registration No.MH-47-AS-9181** on the terms and conditions that the petitioner:

(i) shall furnish a solvent surety of the amount equivalent to the price of the vehicle in question stated in the FIR / panchnama.

(ii) shall file undertaking before the learned Trial Court that he shall not transfer / change the identity, color etc. of the vehicle till final disposal of the trial.

(iii) shall produce the vehicle as and when directed by the learned Trial Court.

(iv) in the event of any subsequent offence, the vehicle shall stand confiscated.

[9.0] Before release of the vehicle, concerned police authority shall take photographs / identity of the vehicle from all sides at the cost of the petitioner and shall draw necessary panchanama to that effect. Said panchanama and photographs shall be part of charge sheet papers for the purpose of trial.

[10.0] Copy of this order be sent to concerned RTO, where the vehicle is registered, for necessary entry in the Register and to take notice that this Court has restrained transfer of vehicle till final disposal of the trial. Such transfer shall be subject to any order that may be passed by the learned Trial Court permitting transfer of vehicle.

[11.0] Rule is made absolute accordingly. Direct service is permitted.

(HASMUKH D. SUTHAR, J.)

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