

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION (POSSESSION OF
MUDDAMAL) NO. 1837 of 2025

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KOTAK MAHINDRA BANK LIMITED THROUGH RAVIKUMAR
 BIPINCHANDRA DESAI

Versus

STATE OF GUJARAT & ORS.

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Appearance:

MR JIMIT P SHAH(9917) for the Applicant(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 2,3

MS SHRUTI PATHAK, APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 01/09/2025

ORAL ORDER

RULE. Learned Additional Public Prosecutor waives service of notice of rule for and on behalf of respondent – State.

[1.0] By way of this petition under Articles 226 and 227 of the Constitution of India and under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, the petitioner has prayed to release/handover of custody of seized muddamal being **TATA Tempo** bearing **RTO Registration No.DD-01-H-9401** which came to be seized by the Investigating Officer in connection with **FIR No.11197025231197 of 2023** registered with **Karjan Police Station, Vadodara Rural** under Prohibition Act, to the petitioner on appropriate conditions as deemed fit by this Court.

[2.0] Though duly served, respondent No.2 has chosen not to appear before this Court.

[3.0] Heard learned Advocates for the respective parties.

[4.0] In support of his arguments, learned advocate for the petitioner has relied upon orders passed by this Court in Special Criminal

Application Nos. 2538 of 2014; 2283 of 2016 and 2300 of 2016.

[5.0] This Court had passed the following order in Special Criminal Application No. 2538 of 2014 which reads as under :-

"16. In such circumstances, I am of the view that the vehicle should be handed over to the finance company and the company should be permitted to sell the vehicle subject to certain terms and conditions. In this context may quote with profit a decision of the Supreme Court in the case of General Assurance Counsel and others v. State of A.P. And others, 2010 AIR SCW 2967. The Supreme Court has made the following observations in paragraph Nos. 14 and 15 which reads as under:-

"14. In our considered opinion, the aforesaid information is required to be utilised and followed scrupulously and has to be given positively as and when asked for by the Insurer. We also feel, it is necessary that in addition to the directions issued by this Court in Sunderbhai Ambalal Desai (Supra) considering the mandate of Section 451 read with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given with Section 457 of the Code, the following further directions with regard to seized vehicles are required to be given.

"(A) Insurer may be permitted to move a separate application for release of the recovered vehicle as soon as it is informed of such recovery before the Jurisdictional Court. Ordinarily, release shall be made within a period of 30 days from the date of the application. The necessary photographs may be taken duly authenticated and certified, and a detailed panchamama may be prepared before such release.

(B) The photographs so taken may be used as secondary evidence during trial. Hence, physical production of the vehicle may be dispensed with. Insurer would submit an undertaking/guarantee to remit the proceeds from the sale/auction of the vehicle conducted by the Insurance Company in the

event that the Magistrate finally adjudicates that the rightful ownership of the vehicle, pursuant to the application for release of the recovered vehicle. Insistence on personal bonds may be dispensed with looking to the corporate structure of the insurer.”

15. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the State Governments/Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district.”

17. The respondent No.2 has not yet become the absolute owner of the property as he is obliged to pay the loan amount. Even as per the RTO records, the ostensible ownership is with the applicant company.”

[6.0] Learned advocate for the petitioner submits that the petitioner is the authorized person of Kotak Mahindra Bank Ltd., who has financed muddamal vehicle **TATA Tempo** bearing **RTO Registration No.DD-01-H-9401** and had provided finance for purchasing the aforementioned Vehicle to the respondent No.3. It is submitted that the original owner had obtained loan from the petitioner financial

institution to purchase the said car. The original owner has filed no claim pursis before the trial Court that if the vehicle is released in favour of the Finance Company he has no objection.

[7.0] It is submitted that one First Information Report being **FIR No.11197025231197 of 2023** registered with **Karjan Police Station, Vadodara Rural** for the offences punishable under the Gujarat Prohibition Act as some quantity of liquor was found in the above said Vehicle and the vehicle came to be seized. As the petitioner is the financier of the seized vehicle, denial of release of the seized vehicle amounts to deprivation of rights of the petitioner and therefore, the present petition is preferred.

[8.0] In the result, this petition is **allowed**. The concerned Police Station shall handover the possession of the vehicle to the petitioner at the earliest on the terms and conditions that the petitioner:

- (i) shall furnish a Bank Guarantee and not 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 the petitioner shall not sell / dispose of the muddamal vehicle till final disposal of the Criminal Case.
- (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.

(v) in the event if finance company wants to initiate the auction proceedings then shall follow the due process of law and initiate the auction proceedings after obtaining permission of the concerned Court and whatever amount is received from the auction of the said muddamal shall have to be deposited to the concerned Court. The

concerned Court shall invest the said amount into FDR subject to final outcome.

[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)

ANKIT

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: ANKIT YOGESHBHAI JANSARI(HCW0109), ENGLISH STENOGRAPHER GRADE I, at High Court of Gujarat on 02/09/2025 10:17:01