IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (POSSESSION OF MUDDAMAL) NO. 11925 of 2025

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RATHWA VIRSING PARIYABHAI

Versus

STATE OF GUJARAT & ANR.

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Appearance:
MS. RESHMA G RAUMA (10143) for the Applicant(s) No. 1
MR. MANAN MAHETA, APP for the Respondent(s) No. 1
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CORAM:**HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR**

Date : 25/09/2025

ORAL ORDER

RULE. Learned APP waives notice of rule for and on behalf of the respondent – State of Gujarat.

[1.0] The petitioner has preferred this petition, 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 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS") [section 482 of the Code of Criminal Procedure, 1973] with a prayer to release Muddamal Vehicle i.e. **EECO 7 STR STD Car bearing RTO registration No.GJ-06-PG-6985.**

[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.11184007241343 of 2024 registered with Naswadi Police Station,**

District Chhota Udepur for the offence punishable under the Prohibition Act.

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

[4.0] Learned Advocate for the petitioner has urged that 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 however, in view of section 98 of the Gujarat Prohibition Act, this is not a fit case to exercise the jurisdiction and hence, requested to dismiss the petition.

[6.0] Heard learned advocates appearing for the respective parties.

[7.0] It is undisputed that the vehicle being seized in connection of the offence registered under the Gujarat Prohibition Act. I have considered the provision of sections 98, 123 and 132(a) of the Gujarat Prohibition Act and section 497 of the BNSS [section 451 of the CrPC].

[7.1] Keeping in mind the law laid down by the Hon'ble Supreme Court in the case of **Khengarbhai Lakhabhai Dambhala vs. The State of Gujarat** reported in **2024 INSC 285** as well as the provision of section 98(2) of the Prohibition Act (amended on 31.07.2024), the respondent – authority failed to show or point out that after the amendment under Section 98(2) of the

Prohibition Act, confiscation of the seized vehicle being done and auction proceedings have been initiated or for the said procedure, authority has approached the learned Magistrate. Further, though as per the regulation, the prohibited goods transported in the muddamal vehicle is more than the permissible limit i.e. exceeding 20 liters, due to this reason the vehicle is liable to be confiscated by the government, both the Courts below have not committed any error in passing the order of denying the interim custody of the vehicle to the petitioner however, till date no confiscation proceedings being initiated and vehicle remained in the police station as it is. In absence of any such material or initiation of confiscation of vehicle, it is expedient to avoid situation of vehicle getting deteriorated pending the trial and hence, keeping in mind the aforesaid peculiar fact and keeping in mind the law laid down by the Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai vs. State of Gujarat** reported in **(2002)10 SCC 283**, with certain stringent conditions, present petition deserves consideration in exercise of powers under Article 226 of the Constitution of India.

[8.0] Resultantly, this petition is allowed.

[9.0] The learned Trial Court / authority concerned is directed to release the vehicle of the petitioner being **EECO 7 STR STD Car bearing RTO registration No.GJ-06-PG-6985** 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) **if in future, any confiscation / auction proceedings under Section 98(2) of the Prohibition Act is initiated by the authority, in that event, the petitioner shall have to hand over / return the possession of the vehicle to the respondent authority and the petitioner shall file an undertaking to the said effect before the learned Magistrate;**

(v) in the event of any subsequent offence, the vehicle shall stand confiscated;

(vi) present order does not preclude the learned Magistrate / Authority from passing any order under Section 98(2) of the Prohibition Act to initiate confiscation proceeding or auction order of vehicle.

[10.0] 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.

[11.0] A copy of this order be send 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.

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

(HASMUKH D. SUTHAR, J.)

Ajay

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: AJAY CHANDRAN MENON(HC00939), PRINCIPAL PRIVATE SECRETARY, at High Court of Gujarat on 25/09/2025 17:54:25