

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
R/SPECIAL CRIMINAL APPLICATION (POSSESSION OF MUDDAMAL)
NO. 16877 of 2024

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DIPAKKUMAR BHARATDAS KUBAVAT
Versus
STATE OF GUJARAT & ANR.

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Appearance:

MR MUNJAL V ACHARYA(10678) for the Applicant(s) No. 1
MS MAITHILI MEHTA, APP for the Respondent(s) No. 1

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CORAM: HONOURABLE MR. JUSTICE SANDEEP N. BHATT

Date : 24/12/2024

ORAL ORDER

1. Rule returnable forthwith. Learned Additional Public Prosecutor waives service of notice of Rule for respondent/s – State.

2. 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 for the release of the muddamal vehicle and to quash and set aside the impugned orders refusing to release the muddamal vehicle.

3. Learned advocate for the petitioner submitted that on registration of the FIR being C.R. No.11189005240935 of

2024 registered with the Morbi Taluka Police Station, Morbi for the offences mentioned therein, the vehicle in question has been seized as muddamal in connection with the aforesaid offence, however, the said vehicle is duly registered with the transport department of the Government and in support of it, RC Book is placed on record.

4. Learned advocate for the petitioner submitted that for the release of the vehicle in question, the petitioner had approached the concerned Magistrate Court, however, the said application came to be rejected and, hence, the petitioner had approached the concerned Sessions Court against the said order, which also came to be rejected and, therefore, the present petition is filed for the release of the vehicle in question. Further, under the instructions, it is submitted that the petitioner is the registered owner of the vehicle in question and till date, the vehicle in question is not involved in any other case and even no one has claimed for the interim custody of the muddamal vehicle and if the interim custody of the said vehicle is handed over to the petitioner, the petitioner will abide by the conditions that may be imposed by this Court while handing over the vehicle. Therefore, it is urged that this petition may be allowed on suitable conditions.

5. Learned advocate for the petitioner has further submitted that this Court has wide powers under Article 226 of the Constitution. Learned advocate for the petitioner has relied upon the ratio laid down in the case of *Sunderbhai Ambalal Desai versus State of Gujarat reported in AIR 2003 SC 638*, wherein, the Apex Court lamented the scenario of number of vehicles having been kept unattended and becoming junk within the police station premises. Learned advocate has also placed reliance upon the orders passed by the Coordinate Bench of this Court.

6. Learned APP for the respondent-State has strongly objected the submissions made by learned advocate for the petitioner and submitted that the vehicle in question was used for transporting liquor by the accused and if this motor vehicle would be released, it will be used for transporting liquor by the petitioner. However after referring to the documents produced on record with regard registration of certification and Identity Card, it is submitted that the petitioner is the owner of the vehicle.

7. Considering the submissions made by the learned advocates for the respective parties, without determining the other issues raised by the petitioner, in reference to Sections 98 and 99 and other provisions of the said Act and reserving that to be determined in future, in an appropriate

proceedings being a contentious issue, this Court chooses not to enter into that arena in the present matter and instead exercise the powers under Articles 226 and 227 of the Constitution.

8. Further, from the submissions canvassed by learned advocate for the petitioner, it is revealed that if the vehicle in question is not released, ultimately it would reduce to scrap; and further the land / space of the campuses of police stations are also reduced to scrapyards. As against this, continuing the vehicle in police custody as muddamal, for various reasons, hardly turns out to be a factor for furtherance of dispensation of justice, on conclusion of the trial, as and when that stage is reached.

9. Further, the Co-ordinate Benches of this Court in number of cases have released such vehicles. Keeping in mind the same, taking any different view would not be proper.

10. Resultantly, this application is allowed. The impugned orders are hereby quashed and set aside. The authority concerned is directed to release the muddamal vehicle of the petitioner i.e.GJ.01.RU.4206, on the terms and conditions that the petitioner shall :

- (i) 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) file an undertaking before the trial Court that prior to alienation or transfer in any mode or manner, prior permission of the concerned Court shall be taken till conclusion of the trial;
- (iii) also file an undertaking to produce the vehicle as and when directed by the trial Court;
- (iv) stand confiscated the vehicle, in the event of any subsequent offence;
- (v) shall not use this vehicle in transporting liquor in future.
- (vi) take necessary photographs before handing over the possession of the vehicle to the petitioner and draw a detailed panchnama in that regard, if not already drawn, for the purpose of trial.

(vii) shall do the videography of the vehicle if the Investigating Officer finds it necessary. Expenses towards the photographs and the videography shall be borne by the petitioner.

11. Rule is made absolute to the aforesaid extent. Direct service is permitted.

12. The Registry to communicate this order to the concerned Court/ RTO / Authority forthwith.

(SANDEEP N. BHATT,J)

SRILATHA