

2023 SCC OnLine Guj 2771

In the High Court of Gujarat at Ahmedabad
(BEFORE SAMIR J. DAVE, J.)

Dabhi Kanchansinh Shivsinh

Versus

State of Gujarat

R/Special Criminal Application No. 10985 of 2023

Decided on September 1, 2023

Advocates who appeared in this case:

Kaash K. Thakkar(7332) for the Applicant(s) No. 1

For the Respondent(s) No. 2

Mr. Bhargav Pandya, App for the Respondent(s) No. 1

The Order of the Court was delivered by

SAMIR J. DAVE, J.:— Rule. Learned APP waives Rule for the Respondent 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 so also inherent powers of this Court under Section 482 of the Criminal Procedure Code, 1973 with a prayer to release Muddamal Vehicle i.e., HYUNDAI I 20 CAR bearing RTO registration No. GJ01RJ2018.

3. 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 Prohibition C.R. No. 11195003230510 came to be lodged with Amirgadh Police Station, Dist. Banaskantha, for the offence punishable under the Prohibition Act.

4. Heard learned advocate for the petitioner and learned APP for the respondent State.

5. Learned Advocate for the petitioner has urged that this Court has wide powers, while exercising such powers under Article 226 of the Constitution. It can also take into account the ratio laid down in the case of '*SUNDERBHAI AMBALAL DESAI v. STATE OF GUJARAT*', (2002) 10 SCC 283 : 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.

6. Learned APP for the respondent - State 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.

7. The coordinate bench of this Court in the case of *Musa Khan Jat v. State of Gujarat* (SCR.A/7190/2017), in an identical case, released the vehicle by exercising the power under Articles 226 and 227 of the Constitution of India.

8. It would be worthwhile to refer profitably at this stage to the observations made by the Apex Court in '*SUNDERBHAI AMBALAL DESAI v. STATE OF GUJARAT*' (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."

9. Resultantly, this petition is allowed. The authority concerned is directed to release the vehicle of the petitioner, being HYUNDAI I20 CAR bearing RTO registration No. GJ01RJ2018 on the terms and conditions that the petitioner:

- (i) 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) shall 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) shall also file an undertaking to produce the vehicle as and when directed by the trial Court;

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

10. Before handing over the possession of the vehicle to the petitioner, necessary photographs shall be taken and a detailed panchnama in that regard, if not already drawn, shall also be drawn for the purpose of trial.

11. Rule is made absolute, accordingly. Direct service permitted.

—————
Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.