

HIGH COURT OF GUJARAT

DATE OF DECISION: FEBRUARY 15, 2024.

CORAM: HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

**SPECIAL CRIMINAL APPLICATION (POSSESSION OF MUDDAMAL) NO.
2145 of 2024**

BABITADEVI RANJITKUMAR SINGH

VERSUS

STATE OF GUJARAT

Legislation and Rules:

Article 226 and Article 227 of the Constitution of India
Section 482 of the Code of Criminal Procedure, 1973
Gujarat Prohibition Act

Subject: Petition for the release of a vehicle (Eicher Pro CNG Vehicle, Registration No. DD-01-G-9168) seized in connection with FIR for transporting liquor without a permit, invoking extraordinary jurisdiction under Article 226, supervisory jurisdiction under Article 227, and inherent powers under Section 482 of Cr.P.C.

Headnotes:

Special Criminal Application – Release of Muddamal Vehicle – Petitioner seeks release of vehicle detained by police in a prohibition case – Invoking extraordinary jurisdiction under Article 226 and supervisory jurisdiction under Article 227 of the Constitution, and Section 482 of the CrPC. [Para 1.0]

Prosecution Case – Vehicle seized for carrying liquor without permit – FIR registered under the Gujarat Prohibition Act – Police patrolling leads to interception and seizure of the vehicle. [Para 2.0]

Legal Arguments – Petitioner's advocate emphasizes owner's rights and precedents for release of seized vehicles – Respondent's advocate opposes release, acknowledging the court's discretionary power but deems this case inappropriate for such an exercise. [Para 3.0-5.0]

Reference to Sunderbhai Case – Apex Court's observations on the impracticality of keeping seized vehicles at police stations – Magistrate's role in ordering the release of such vehicles emphasized. [Para 6.0]

Decision – Petition allowed – Vehicle to be released subject to conditions including furnishing solvent surety, undertaking not to alter the vehicle, and producing the vehicle as directed by the Trial Court. [Para 7.0-8.0]

Referred Cases:

- Sunderbhai Ambalal Desai Vs. State of Gujarat (AIR 2003 SC 638)

Representing Advocates:

Ms Bhoomi Patel for the Petitioner

Mr Tirthraj Pandya, Additional Public Prosecutor for the Respondent

Date : 15/02/2024 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, 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. **Eicher Pro CNG Vehicle bearing RTO registration No.DD-01-G-9168**, which is hypothecated with Federal Bank 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.11200038240325 of 2024** registered with **Pardi Police Station, District Valsad** 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 **Eicher Pro CNG Vehicle bearing RTO registration No.DD-01-G-9168** 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.

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