
Umeshbhai Punabhai Patel Vs State Of Gujarat

R/Special Criminal Application No. 1907 Of 2023

Court: Gujarat High Court

Date of Decision: Feb. 27, 2023

Acts Referred:

Constitution Of India, 1950 " Article 226, 227#Code Of Criminal Procedure, 1973 " Section 482#Gujarat Prohibition Act, 1949 " Section 98(2)

Hon'ble Judges: Ilesh J. Vora, J

Bench: Single Bench

Advocate: Adilhushain M Saiyedm, Mahamedjunedkhan M Pathan, Vrunda Shah

Final Decision: Allowed

Judgement

Ilesh J. Vora, J

1. Perused the Speaking to minutes filed by learned counsel for the Petitioner.

In order dated 10.02.2023 passed by this Court in the captioned petition, vehicle number and Petitioner's name are hereby corrected and now to

be read as under:

"Vehicle bearing RTO registration No. GJ -23-CB-5692. Name of the Petitioner is "Umeshbhai Punambhai Patel."

Rest of the order remains unaltered.

Fresh writ if required be issued. Note stands disposed of accordingly.

1. Rule. Learned APP waives Rule for the Respondent State. 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 Code of Criminal Procedure, 1973 with a prayer to release Muddamal Vehicle i.e Mahindra & Mahindra Ltd Marazzo 8 STR M2

pearl

White Hard Top bearing RTO registration No. GJ-23-CB-5692.

2. 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. 11215002221362 of 2022 came to be lodged with Anand Town Police

Station, Dist. Anand, for the offence punishable under the Prohibition Act.

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

4. 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 VS. STATE OF GUJARAT', 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.

5. Learned APP for the respondent - State has objected the submissions made by learned advocate for the petitioner and pointed out that this Court

(Coram: J.B. Pardiwala, J.) in the case of 'ANILKUMAR RAMLAL @ RAMANLALJI MEHTA VS. STATE OF GUJARAT' in Special Criminal

Application No. 2185 of 2018, Dated: 05.04.2018, and in the earlier decision in 'PARESHKUMAR JAYKARBHAI BRAHMBHATT VS. STATE

OF GUJARAT' in Special Criminal Application No. 8521 of 2017 and the allied matters decided on 15.12.2017, has held that the powers of the

Magistrate to order interim release of the seized vehicle under Section 98(2) of the said Act has been curtailed, and therefore, the Courts below have

been held to have no jurisdiction to order interim release of the vehicle, pending trial, where, the vehicle is seized in connection with the offence under

the Prohibition Act and the quantity of the liquor seized exceeds 10 liters. Learned APP further, 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.

6. The coordinate bench of this Court in the case of Musa Khan Jat Vs. 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.

7. It would be worthwhile to refer profitably at this stage to the observations made by the Apex Court in 'SUNDERBHAI AMBALAL DESAI VS.

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.

8. Resultantly, this petition is allowed. The authority concerned is directed to release the vehicle of the petitioner, being Mahindra & Mahindra Ltd

Marazzo 8 STR M2 pearl White Hard Top bearing RTO registration No. GJ-23-CB-569 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.

(v) 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.

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