

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1310 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE AKSHAY H.MEHTA

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals?

RANA GURVINDERSINGH AJEBSINGH SAT KHATAR TRANSPORT

Versus

STATE OF GUJARAT

Appearance:

1. Special Criminal Application No. 1310 of 2003
MR MUKESH R SHAH for Petitioner
MR KT DAVE A.P.P. for Respondent
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CORAM : HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 26/12/2003

ORAL JUDGEMENT

Rule. Mr. K.T. Dave learned A.P.P. waives
service of rule on behalf of respondent - State.

1.1. At the request of the learned counsel for the respective parties, the matter is taken up for hearing today.

1.2. This petition is filed under Article 227 of the Constitution of India, wherein a grievance is made that while passing the order with regard to handing over the possession of the mudammal truck of Criminal Case No. 420 of 2002, pending on the file of learned Judicial Magistrate, First Class, Halol, certain conditions have been imposed which are to the effect that the applicant is required to give solvent surety for a sum of Rupees Nine Lakhs and further condition that the surety should be of a local resident i.e. a person residing within the jurisdiction of the said Court. The truck in question is seized by the Police in connection with the offence under the provisions of Bombay Prohibition Act.

2. Mr.M.R. Shah learned advocate appearing for the applicant submits that the value of the truck is much less than the amount of surety directed by the learned Magistrate. He, further submits that the applicant being a resident of Indore, M.P., it is very difficult for him to find the surety who resides within the jurisdiction of the learned Magistrate.

3. Mr.K.T. Dave learned A.P.P. however submits that if the possession is required by the applicant, he may abide by the conditions which have been imposed by the learned Magistrate and confirmed by the learned Additional Sessions Judge, Fast Track Court, Godhra in Criminal Revision Application No. 49 of 2003.

4. Considering the facts and circumstances of the case and in particular, when the learned Magistrate has found it proper to hand over the custody of the truck in question to the applicant, the conditions which have been imposed, can be said to be causing hardship to the applicant inasmuch as the amount for solvent surety directed by the learned Magistrate, far exceeds the value of the truck and further that the applicant being resident of Indore would naturally find it difficult to have surety staying within the local limits of the learned Magistrate's jurisdiction. Such hardship would ultimately, result into denying the handing over the possession to the applicant.

In that view of the matter, the aforesaid conditions are to be modified as under :-

- (i) instead of surety for a sum of Rs. Nine Lakhs, the applicant will be required to furnish solvent surety of Rs. Six Lakhs;
- (ii) instead of surety residing within the jurisdiction of learned Magistrate, he may be permitted to furnish the solvent surety from Indore, M.P. Rest of the conditions remain the same.

With these directions, the petition is disposed of. Rule is made absolute to the aforesaid extent. Direct Service is permitted.

[AKSHAY H. MEHTA, J.]

/phalguni/