

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CRIMINAL APPLICATION No. 1815 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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RAMDEVSINH BALDEVSINH JADEJA - Applicant(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :

MR PP MAJMUDAR for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 28/09/2007

ORAL JUDGMENT

By way of this petition under Article 227 of the Constitution of India r/w section 482 of Criminal Procedure Code, the petitioner has prayed for an appropriate order quashing and setting aside the order dated 30-6-07

passed by the Id. District and Sessions Judge, Anand as well as the order dated 26-2-07 passed by the Id. JMFC, Borsad in rejecting the application of the petitioner for handing over the possession of muddamal tanker No.GJ 12 U 8423.

2. An FIR being C.R. No. II 3117/05 came to be filed with the Borsad Police Station against the petitioner for the offence u/s 420, 467, 468 and 120-B of the IPC as well as u/s 3 and 7 of the Essential Commodities Act. During the course of the investigation, the muddamal being tanker which was of the ownership of the petitioner came to be seized. The petitioner submitted an application before the Id. JMFC, Borsad u/s 451 of Criminal Procedure Code for releasing and/or handing over the muddamal tanker in favour of the petitioner on 9-6-06. The Id. Magistrate passed an order in the said application, whereby it was ordered that the Collector has jurisdiction for disposing of the muddamal since the alleged offence was also under the provisions of the Essential Commodities Act and hence, it was ordered that the petitioner shall make an application before the Collector. That thereafter, the petitioner submitted an application before the Collector, Anand for taking back the muddamal tanker and in the meantime, the Id. JMFC vide order dated 6-1-07 passed an order to release muddamal being Tempo No.GJ 7Y 1330 which was seized in connection with the aforesaid case in an application made by one Sunilbhai Vijaybhai Sharma. It appears that thereafter, the petitioner withdrew the

application before the Collector since the charge sheet came to be filed in the aforesaid criminal case. That thereafter, by application dated 8-1-07, an application was preferred by the petitioner before the Id. JMFC for handing over the muddamal tanker and by order dated 26-2-07, the Id. JMFC rejected the said application. Being aggrieved by the order passed by the Id. JMFC, Borsad dated 26-2-07 in rejecting the application of the petitioner for handing over the muddamal tanker, the petitioner preferred revision application before the Id. District & Sessions Judge, Anand and the Id. Presiding Officer, Fast Track Court No.4 and Addl. Sessions Judge, Anand by its judgment and order dated 30-6-07 dismissed the said revision application. Being aggrieved by the aforesaid judgment and order passed by the Id. Revisional Court, the petitioner has preferred the present petition under Article 227 of the Constitution of India r/w 482 of Criminal Procedure Code.

3. Shri PP Majmudar, learned advocate appearing on behalf of the petitioner has vehemently submitted that both the Courts below have materially erred in not releasing and/or handing over the muddamal tanker to the petitioner. He has submitted that by keeping the vehicle in idle condition will not be in the interest of anybody and therefore, on suitable condition like the conditions which are imposed while releasing the muddamal tempo, the muddamal vehicle could have been handed over to the petitioner. He has relied upon the decision of the Hon'ble

Supreme Court in the case of **Sunderlal Ambalal V. State of Gujarat reported in AIR 2003 SC 638**. Shri Majmudar has also further submitted that the petitioner is ready and willing to abide by any condition that may be imposed by this Court while handing over the possession of muddamal/ vehicle tanker to the petitioner.

4. Shri Mengdey, Id. APP while opposing the present petition has submitted that in the facts and circumstances of the case, both the Courts below have rightly rejected the application of the petitioner for handing over the possession of the muddamal tanker to the petitioner and therefore, the same is not required to be interfered with by this Court in exercise of powers under Article 227 of the Constitution of India.

5. Heard the learned advocates appearing on behalf of the parties.

6. At the outset, it is required to be noted that the investigation is already concluded and the charge sheet is already filed for the aforesaid complaint. The muddamal tanker is lying at the police station and even one muddamal tempo which was also seized during the investigation of the criminal case has been released by the Id. JMFC by its order dated 6-1-07 in an application submitted by one Sunilbhai Sharma. In the case of Sundarlal Ambalal (supra), the Hon'ble Supreme Court while considering the release of muddamal vehicle has

made observation at para 15, 16, 17 and 18 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 handover 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.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

7. Now considering the fact of the case on hand and examining the matter in light of the observation made by the Hon'ble Supreme Court in the aforesaid decision, it appears that the petitioner is the owner of the tanker as per the RTO record and that there is no other claim made before the Id. Magistrate for custody of the said vehicle.

The Id. APP might be justified in raising the grievance that the vehicle may be used for other illegal activities and therefore, with a view to see that the vehicle may not be used for any other illegal activities and if used, immediately action can be taken by the police. Considering the above, it appears to the Court that if suitable condition are imposed, the same would meet with the ends of justice. The petitioner in capacity as the owner of the vehicle would be entitled to use the vehicle for lawful purpose. The value of the vehicle as on today can be considered approximately Rs.4 lacs. With a view to see that the vehicle is produced by the petitioner as and when desired by the trial Court or the Police, appropriate conditions deserve to be issued for furnishing surety bond by the petitioner of the amount equivalent to Rs.4 lacs and the petitioner would also be required to give undertaking to the trial Court that the vehicle shall only be used for lawful purposes and shall not be used for any unlawful purposes and shall be produced before the trial Court as and when ordered.

8. For the reasons stated above and the directions, the impugned orders passed by the learned Magistrate and the Id. Revisional Court are hereby quashed and set aside with further direction as stated hereinafter. The vehicle of the petitioner bearing RTO Registration No.GJ.12 U 8423 shall be released immediately on compliance of the following conditions by the petitioner:

- 1) The petitioner shall not transfer the vehicle in question to any other person in any manner whatsoever.
- 2) The petitioner shall execute a personal bond as well as a bond of surety for the amount of Rs.4 lacs to the satisfaction of the trial Court;
- 3) The petitioner shall give undertaking to the trial Court to the effect that the vehicle shall be produce as and when ordered by the Court or Police and shall be used only for lawful purposes and shall not be used for any unlawful purposes;
- 4) The petitioner shall produce the vehicle before the concerned Police Station at the interval of every two months, i.e. on the 1st Sunday between 11 a.m. to 2 p.m., for inspection;
- 5) The petitioner shall use the vehicle as per the undertaking and if it is found by the Police Officer that the vehicle is used for any unlawful purposes, it would be open to the Police to seize the vehicle immediately and it may also invite further consequences for breach of undertaking.

9. With this, the present petition is allowed. Rule is made absolute to the aforesaid extent. DS permitted.

(M.R. Shah, J.)

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