

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CRIMINAL APPLICATION NO. 8401 of 2018**

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JAGDISHKUMAR SAMDAJI VANZARA

Versus

STATE OF GUJARAT

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Appearance:

MS GAYATRIBA B JADEJA(5152) for the PETITIONER(s) No. 1

MR. L.B.DABHI APP for the RESPONDENT(s) No. 1

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CORAM: HONOURABLE MR.JUSTICE R.P.DHOLARIA

Date : 28/09/2018**ORAL ORDER**

[1] **Rule.** Learned APP waives service of notice of rule for and on behalf of respondent-State.

[2] By way of the present writ petition the petitioner challenges the order dated 17.07.2018 passed by learned Principal Sessions Judge, Gandhinagar in Criminal Revision Application No.83 of 2018 refusing to grant interim custody of tractor bearing Registration No.GJ-18-BH-5036 and Engine No.33108/SYK.05108 in connection with FIR being C.R. No.I-28 of 2018 registered with Chiloda Police Station, Gandhinagar for the offence punishable under Sections 379 and 114 of the Indian Penal Code and Section 3(2)(d) of The Prevention of Damage to Public Property Act, 1984.

[3] Heard learned counsel for the respective

parties.

[4] On going through the impugned order passed by the learned Magistrate, it appears that learned Magistrate failed to appreciate the principle laid down in the celebrated decision in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **AIR 2003 SC 638**. Afterall the vehicle is a national property, though it could have been owned by a particular person but if the vehicle remains idle in society at a large, for the larger benefit of the society and when it belongs to the nation and if it remains idle for a long period, its value will diminish as well as it if highly depreciable.

[5] In that view of the matter, the possession of any vehicle involved in the offence either be kept at the Police Station or even at any other place would render useless for the society at large and there would be a virtual loss to the public exchequer. In that view of the matter, while considering all these factors, the Honourable Supreme Court in the aforesaid decision issued the guidelines though the special provisions are there in the Act under which the offence alleged to have been committed by the present petitioner, this Court is duty bound to exercise its judicial discretion to handover the possession of tractor bearing Registration No.GJ-18-BH-5036 and Engine No.33108/SYK.05108 in connection with FIR being C.R. No.I-28 of 2018 to the petitioner upon his furnishing

solvent surety of **Rs.2,50,000/- (Rupees Two Lacs Fifty Thousands Only)** as well as **Bank guarantee of Rs.10,000/- (Rupees Ten Thousand Only)** and further petitioner-owner shall not transfer or alienate tractor till final disposal of the present proceeding by way of selling or mortgaging or by any other manner and he shall make available the possession of said muddamal as and when the officials of Mining Department or the Judicial Magistrate directs to do so, on that condition only, the order passed by the learned Magistrate shall stand modified to the aforesaid extent. Rule is made absolute to the absolute extent.

Direct service is permitted.

(R.P.DHOLARIA, J)

MANOJ KUMAR