

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****R/SPECIAL CRIMINAL APPLICATION NO. 3058 of 2020**

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BHATT DUSHIYANT BHARATBHAI

Versus

STATE OF GUJARAT & 1 other(s)

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Appearance:

MR. KISHAN H DAIYA(6929) for the Applicant(s) No. 1

NOTICE NOT RECD BACK(3) for the Respondent(s) No. 2

MS NISHA THAKORE, APP for the Respondent(s) No. 1

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CORAM: **HONOURABLE MS. JUSTICE GITA GOPI**

**Date : 31/08/2020**

**ORAL ORDER**

1. **Rule.** Learned Additional Public Prosecutor waives service on behalf of the respondent State.

2. By way of this petition, the petitioner has prayed to quash and set aside the order dated 27.01.2020 passed by the learned 7th Additional Sessions Judge, Surat in Criminal Revision Application No.22 of 2020 as well as the order dated 06.01.2020 passed by the 12th (Ad-hoc), Additional ACJ & JMFC, Surat, and to issue direction for the release of the Two Wheeler Honda Activa 5G bearing registration No. GJ-05-SC-4999.

2.1 The facts in brief are that the petitioner is owner of Two Wheeler Honda Activa 5G bearing registration No. GJ-05-SC-4999 and the same is registered in the name of the petitioner in the RTO Office. One criminal complaint being C.R. No. III – 19 of 2019 came to be registered at DCB Police Station, Surat for the offences punishable under section 65(a) and 65(e) of the Gujarat Prohibition Act. It is alleged in the FIR that on 10.10.2019, the police has arrested one lady – Niruben Ramashre Chuhan,

sitting on the Two Wheeler Honda Activa 5G bearing registration No. GJ-05-SC-4999. It is further alleged that the muddamaal liquor is found in the vehicle Two Wheeler Honda Activa 5G, bearing registration No. GJ-05-SC-4999 and the said vehicle is seized by the investigating officer.

2.2 It appears that the applicant moved one application under section 451 of the Cr. PC before the learned 12th (Ad-hoc) Additional ACJ & JMFC, Surat for releasing the vehicle Two wheeler Honda Activa 5G, bearing registration No. GJ-05-SC-4999, which was rejected vide order dated 06.01.2020. Against the said order, applicant preferred revision application before the learned 7th Additional Sessions Judge, Surat, with a prayer to release the Two Wheeler Honda Activa 5G, bearing registration No.GJ-05-SC-4999, which was also rejected vide order dated 27.01.2020. Thus, being aggrieved by both the said orders, applicant has preferred present application before this Court.

3. Mr. Kishan H. Daiya, learned advocate for the applicant, referring to the facts of the FIR, had submitted that total 14 bottles of illicit liquor were found from the vehicle and each bottle contains 180 ml. He further submitted that the total quantity of the illicit liquor was less than 10 liters.

4. Mr. Pranav Trivedi, learned Additional Public Prosecutor, drew attention of the Court to the reasons assigned by both the Courts below in the impugned judgment and orders. It was submitted that the Courts below were completely justified in rejecting the applications filed by the petitioner since chargesheet was yet to be filed. It was, therefore, prayed that the present petition deserves to be rejected.

5. Heard learned advocates on both the sides and perused the documents on record. The FIR reflects that there were total 14 bottles of illicit liquor found in Two Wheeler Honda Activa 5G bearing registration No. GJ-05-SC-4999, and each bottle contains 180 ml of liquor.

6. Considering the facts of the case, a reference to the provisions of Section 451 Cr.P.C. would be apposite:

***“451. Order for custody and disposal of property pending trial in certain cases:***

*When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.*

*Explanation—For the purposes of this section, “property” includes —*

*(a) property of any kind or document which is produced before the Court or which is in its custody.*

*(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.”*

7. Sec. 451 Cr.P.C. mandates that when any property is produced before any criminal Court during the trial, the Court may make order for the proper custody of such property pending the conclusion of the trial. The object of Section 451 Cr.P.C. Is well defined by the Hon'ble Supreme Court in the case of ***Sunderbhai Ambalal Desai vs. State of Gujarat, 2003(1) G.L.H. 307***, wherein the Hon'ble Apex Court have extracted Para – 4 of the judgment delivered in the case of Smt. Basava Kom Dyamangouda Patil vs. State of Mysore and Another [ (1977) 4

SCC 358] , as under:

*“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police, it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place, it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance.*

*The court further observed that where the property is stolen, lost or destroyed and there is no prima facie defence made out that the state or its officers had taken due care and caution to protect the property, the magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property.*

*To avoid such a situation, in our view, powers under Section 451 Cr.P.C. should be exercised promptly and at the earliest.”*

7.1. Further, in the case of Sunderbhai Ambalal Desai (supra), in

respect of motor-vehicles, it has been observed as under:

“Vehicles :

*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.*

*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.*

*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. 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.”*

8. In the present case, it is an admitted position that the Two Wheeler Honda Activa 5G in question stands registered in the

name of the petitioner herein. The Certificate of Registration of the vehicle in question in the RTO records is in the name of the petitioner herein. Now, when the RTO records reveal that the petitioner herein is the registered owner of the vehicle in question, there does not arise any question for any dispute to the ownership of the vehicle in question since the person in whose name the vehicle stands registered is to be treated as the owner of the vehicle. Considering the facts and circumstances of the case and in view of the principle laid down by the Apex Court in Sunderbhai Ambalal Desai's case, this Court is of the opinion that both the Courts below have seriously erred in not releasing the vehicle in question in favour of the petitioner, when no prohibited article found from the petitioner's vehicle was less than 10 liters, to be precise 2520 ml liquor was seized.

9. In the result, the petition is allowed. The impugned order dated 06.01.2020 passed by the learned 12th (Ad-hoc) Additional ACJ & JMFC, Surat as well as order dated 27.01.2020 passed by the learned 7th Additional Sessions Judge, Surat in Criminal Revision Application No. 22 of 2020 in connection with criminal complaint being C.R. No. III- 19 of 2019, registered with DCB Police Station, Surat, are quashed and set aside. The following further order is passed;

(A) The authority concerned is directed to forthwith release the Two Wheeler Honda Activa, bearing registration No. GJ-05-SC-4999 in favour of the petitioner on executing a Bond of Rs.35,000/- (Rupees Thirty Five Thousand Only), which shall remain till the disposal of the trial.

(B) The DCB Police Station, Surat, shall draw Panchnama of the vehicle and to take the photographs in presence of the petitioner

before handing over the same to the petitioner. The said panchnama and photographs shall be produced by the police on record of the trial.

(C) The petitioner shall not use the vehicle for any criminal activity or sell / transfer the muddamal vehicle or change the identity of the motorcycle till the disposal of trial. The Bond to be executed before the trial Court concerned.

The petition stands disposed of accordingly. Rule is made absolute.

**(GITA GOPI,J)**

NEHA / NEHA GUPTA