

**IN THE 5th ADDITIONAL SESSIONS JUDGE COURT,
AT SURAT.**

CRIMINAL MISC. APPLICATION - NO. 6137 of 2023.

Applicant/s :

MOHMADALI HASIM ISMAIL MAMJI

Age- 38 years, Occ. Driving,

Residing at : Masjid Street, New Kosadi,
Velanja, Surat.

VERSUS

Opponent/Complainant :

The State of Gujarat

to be served through

Learned Public Prosecutor

office at District & Sessions Court,
Surat.

Appearance :-

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Learned Advocate **Mr. M.M. Mulla** for the applicant.

Ld. A.P.P. **Mr. M.K. Brhambhatt** for the
opponent/State.

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O R D E R

- 1) The applicant has preferred the present application u/s.451 of the Cr.P.C for release of Muddamal being one Bolero Pickup *vide* Chasis No. 91E31224 & Engine No. GG91D50941 (hereinafter referred as "Bolero Pickup") to the present applicant i.e., **MOHMADALI HASIM ISMAIL MAMJI**.
- 2) Ld. Advocate for the applicant has submitted that the aforesaid vehicle was taken into custody as muddamal in one offence bearing Cr.No.26/2019 lodged with Mangrol Police Station Surat for the offence punishable u/s 5,6,8 of The Gujarat (BOMBAY) Animal Preservation Act, 1954 and Section 6(A)(B), 11 of The Gujarat Animal Preservation (amendment) Act, 2017. It is submitted by the applicant that vehicle of the applicant is only basis for earning money because, he used to supply goods from here to there through this vehicle. It is submitted that Bolero Pickup being a movable property and susceptible to easy decay and volatile and if the such Bolero Pickup is kept in police station for a longer period then, there is all likelihood that the said it will become obsolete. Under the circumstances, it is prayed that the Muddamal Bolero Pickup be released in favor of the applicant.
- 3) Ld. A.P.P. has submitted that the aforesaid Bolero Pickup was seized during the course of investigation which is actually used in the commission of the aforesaid offence. It is further submitted that if the present muddamal vehicle be released then, the applicant will use it again in another commission of

the offence. Hence, it is prayed that Muddamal Vehicle should not be released at this stage.

- 4) I have heard the Ld. Advocate for the parties, perused the entire case record.
- 5) At this stage, useful reference can be made of the Judgment of the Hon'ble Apex Court in case of *Sunderbhai Ambalal Desai*¹ as well as observations made by our own Gujarat High Court in case of *Rameshbhai Dhulabhai Katara Versus State Of Gujarat* :

[10.] The Apex Court has, thus, directed that within a period of six months from the date of production of the vehicle before the Court concerned, needful be done. It even went to the extent of directing

1Sunderbhai Ambalal Desai v. State of Gujarat, AIR 2003 SC 638In our view, the powers under [Section 451](#) Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.
2. Court or the police would not be required to keep the article in safe custody;
3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

(Also See Smt. Basawa Kom Dyanmangouda Patil v. State of Mysore and Anr., [1977] 4 SCC 358)

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.

that where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle 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. It also directed that before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and a detailed panchnama should also be prepared. The Apex Court also held and specifically directed that concerned Magistrate would take immediate action for seeing that powers under Section 451 of the Code are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. It, therefore, directed that this object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly.

- 6) Thus, upon perusal of both the above mentioned judgments, it is clear that vehicle should not be kept indefinitely in the police custody. It further appears that the applicant has produced his certificate of registration of the said Vehicle i.e., Bolero Pickup, which shows that the said vehicle is of the ownership of the present applicant and there is no difficulty to release the present Muddamal Vehicle i.e., Bolero Pickup in favor of the applicant. Hence, I find the request of the applicant be absolutely justified.
- 7) Applicant has also produced R.C. Book, along with the application. Upon perusal of the same it appears that muddamal vehicle is registered in the name of **“MOHMADALI HASIM ISMAIL MAMJI”** i.e., present

applicant. Thus, considering that R.C. Book of the muddamal vehicle is in the name of the present applicant and considering that there are no conflicting claim filed by any other person. Hence, in view of the aforesaid observations, I am of the view that there is no purpose of keeping the vehicle ideal at the police station and letting the vehicle junked, rather the said Vehicle can be released in favor of the applicant.

- 8) Hence, in view of the aforesaid facts and circumstances, I pass the following order:-

-:: O R D E R ::-

- A) The present Application is hereby **ALLOWED**.
- B) Interim custody of Muddamal Bolero Pickup *vide* Chasis No. 91E31224 & Engine No. GG91D50941 is hereby ordered to be handed over to the Applicant namely “ **MOHMADALI HASIM ISMAIL MAMJI**”, on the following conditions: -

Conditions : -

- A. The Applicant shall furnish by way of security bond of Rs. 50,000/- (Rupees Fifty Thousand);
- B. The vehicle shall not be used for any illegal activities;
- C. The applicant is directed to file an undertaking on oath on the above terms, and on filing such an undertaking and production of bond as aforesaid, the vehicle shall be released and handed over to the Applicant.

D. Before releasing the Muddamal vehicle i.e., Bolero Pickup a detail Panchnama and entire videography of the Muddamal vehicle be done by the Police.

E. Police shall verify the original bill before release of the mobile.

C) Yadi be sent to concern court and Police Station

Signed & Pronounced in the open Court on this 9th of August, 2023.

Date : 09/08/2023

2. (**ASHISH J.S. MALHOTRA**)
5th Additional Sessions Judge,
District & Sessions Court, Surat
(Unique ID Code: GJ01504)