

**IN THE COURT OF 8th ADDITIONAL SESSIONS JUDGE,
at SURAT.**

**Criminal Revision (Muddamal) Application
No. 101 of 2023**

APPLICANT:

RAKESH UTTAMBHAI PATEL,

Aged about: 44 years, Occupation: Business,
Residing at: Demani Canal Faliya, Selvasa,
Dadra and Nagar Haveli-396193

Versus

OPPONENT:

THE STATE OF GUJARAT,

(through the office of DGP, Surat)

**Criminal Revision Application under Section- 397 of
Code of Criminal Procedure, 1973**

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Appearance:

Learned Advocate Mr. K. S. Patel, for the applicant.

Learned APP Mr. U.A. Patil, for the State.

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:: J U D G M E N T ::

[1] By way of this revision application under Section-397 of CrPC, the applicant has challenged the legality, propriety and maintainability of the order passed by Ld. J.M.F.C, Kathor, rejecting the application under Section- 451 of CrPC preferred by the present applicant for getting the

interim custody of muddamal vehicle which was seized in connection with offence registered before the Kadodara Police Station vide Cr. Reg. No. B 11214023230161 of 2023 for offences under Section 25(1) of The Fertilizer (Control) Order, 1985 and Section 465, 468, 471 and 120(b) of Indian Penal Code and Section 3 and 7(1)(a)(2) of Essential Goods and Commodities Act.

[2] Upon the presentment of the application, notice has been issued to the Respondent and the same has been duly served upon the Respondent. Ld. APP is heard on the issue and with the consent of both the parties, the present Revision Application is taken up for final disposal on merits.

[3] Before discussing the merits of the application, it will be worth to narrate the relevant facts of the case in brief and the same are discussed as under :

a. The present applicant is the owner of the Truck being Eicher Motors Model No. Pro 2114, bearing registration no. DD-01-E-9328. The said vehicle is alleged to have been seized by the police from the accused in respect of offence registered before the Kadodara Police Station C.R. No. B 11214023230161 of 2023 for offences under Section 25(1) of The Fertilizer (Control) Order, 1985 and Section 465, 468, 471 and 120(b) of Indian Penal Code and Section 3 and 7(1)(a)(2) of Essential Goods and Commodities Act.

b. The applicant then had moved an application for interim custody of the vehicle u/s. 451 of the Criminal Procedure Code on 20.03.2023 before the Ld. Judicial

Magistrate First Class and Ld. Magistrate rejected the application by referring Section 6E of the Essential Commodities Act, 1955 and held that as the Trial Court has no jurisdiction to release the muddamal vehicle, order for custody under Section- 451 cannot be granted.

c. Being aggrieved with the above order, the applicant has preferred the present revision application.

[4] Ld. Advocate Mr. K. S. Patel, is present for the Applicant. Ld. APP Mr. U. A. Patil is present for Respondent State of Gujarat.

[5] Heard Ld. Advocates appearing for parties. Perused the record.

[6] Ld. Advocate for the applicant has submitted that the impugned muddamal vehicle is absolutely owned by the applicant and necessary documentary evidences in form of RC Book has been produced before the Ld. Judicial Magistrate, however the Ld. Trial Court has rejected the application without going into merits of the case only on the ground that the Court has no power / authority to release the muddamal vehicle as the issue is covered u/s. 6E of the Essential Commodities Act. The Ld. Trial Court has misinterpreted Section- 6E of the Essential Commodities Act. It is submitted that the applicant is in very much requirement of vehicle as he is involved in business of transportation and in the event the vehicle remains unused for long period, the condition of the vehicle may get deteriorate as result of which the applicant may have to suffer economical loss and hence, the Ld. Trial

Judge was supposed to grant the application. But, instead Ld. Trial Judge rejected the application of the applicant only on the ground that the Court has no authority to release the muddamal vehicle. It is submitted by Ld. Advocate for the applicant that as per the judgment of the Hon'ble Apex Court in the case of Sundarbhai Ambalal Desai v. State of Gujarat reported in 2003 (1) GLH 307, Magistrate has to see that the articles are not kept for long time at the police station, in any case for not more than 15 days to one month. It is further, observed in the said decision that, it is of no use to keep the seized vehicle in the police station for long period and it is up to Magistrate to pass the proper order immediately by issuing bonds and guaranty as well as security for return of vehicles and hence it is submitted by Ld. Advocate for the applicant that considering the ratio laid down by Hon'ble Apex Court in the decision of Sunarbhai Ambalal Desai (supra) and circumstances of the case, the present application needs to be allowed.

[7] Ld. APP has objected the revision application and submitted that the order of Ld. Trial Court is just and proper and the same does not need any interference or modification and accordingly the present revision application needs to be dismissed.

[8] From the above discussions following issues / points arise for adjudication of this revision.

ISSUES

1. Whether the order passed by Ld. Judicial Magistrate First Class, Surat in Muddamal Application preferred by the

applicant u/s 451, Cr.P.C. in connection with an offence registered before Kadodara Police Station vide Cr. Reg. No. B 11214023230161 of 2023 for offences under Section 25(1) of The Fertilizer (Control) Order, 1985 and Section 465, 468, 471 and 120(b) of Indian Penal Code and Section 3 and 7(1)(a)(2) of Essential Goods and Commodities Act rejecting application of the applicant for interim custody of seized muddamal vehicle, needs any modification, reversal or intervention ?

2. What order ?

[9] My FINDINGS to above issues are as under :

1. In Affirmative.
2. As per final order.

REASONS

Issue No. 1 & 2 :-

[10] Perusing the impugned order, it transpires that the Ld. Magistrate by considering the Section- 6E of the Essential Commodities Act had rejected the application filed by the applicant u/s 451 of the Code of Criminal Procedure for getting custody of the muddamal vehicle Truck. Therefore, firstly it would be relevant to refer the Section- 6E of the Essential Commodities Act which reads as under :

“6E. Bar of jurisdiction in certain cases -

Whenever any essential commodity is seized in pursuance of an order made under Section- 3 in relation thereto, or any package, covering or receptacle in which such essential commodity is found, or any animal, vehicle, vessel or other

conveyance used in carrying such essential commodity is seized pending confiscation under Section- 6A, the Collector, or, as the case may be, the State Government concerned under Section- 6C shall have, and, notwithstanding anything to the contrary contained in any other law for the time being in force, any court, tribunal or other authority shall not have, jurisdiction to make orders with regard to the possession, delivery, disposal, release or distribution of such essential commodity, package, covering, receptacle, animal, vehicle, vessel or other conveyance.”

[11] As per Section- 6E of the Essential Commodities Act, if any essential commodity is seized in pursuance of an order made u/s 3, then only there would be a bar of jurisdiction of the concerned Court to make order with regard to handing over the possession of vehicle. Therefore, the Court has to see that, whether there is any order made u/s.3 is in existence or not?

[12] It reveals that in the FIR filed before the Kadodara Police Station vide Cr. Reg. No. B 11214023230161 of 2023 for offences under Section 25(1) of The Fertilizer (Control) Order, 1985 and Section 465, 468, 471 and 120(b) of Indian Penal Code and Section 3 and 7(1)(a)(2) of Essential Goods and Commodities Act have been registered. Even going through the affidavit Exh.4, there is nothing on record which would show that the muddamal vehicle was seized in pursuance to order passed u/s. 3 of the Essential Commodities Act. Hence, the Ld. Magistrate has committed error by considering Section

6E of the Essential Commodities Act, especially when there was no order passed u/s 3 of the said Act. It seems that merely the FIR is registered for said provision, Ld. Magistrate has dismissed the application.

[13] At this juncture, it would be relevant to prefer the Judgment of Hon'ble Gujarat High Court in case of **Shaileshbhai Kritbhai Doshi Vs. State of Gujarat in Special Cri. Application No.821 of 2014** decided on 18/3/2014, wherein it is observed as under:

"2. Having considered the arguments advanced by the parties it is an undisputed position that no proceedings under the Essential Commodities Act have been initiated against the petitioner. It is also not in dispute that the food grains were not seized by competent authority under the Essential Commodities Act but by the Police Inspector as above. Thus, it can be said that the custody of the food grains was that of the Police Inspector and it is he who has produced it in the trial court. It is a misconception to say that because the provisions of Essential Commodities Act were invokable, which in fact were not invoked and because the incompetent criminal proceedings were initiated at the hands of the police officer, the petitioner shall have to get the foodgrains from the competent authority under the Essential Commodities Act. In fact the very finding by the Revisional Court that no proceedings under the Essential Commodities Act were initiated and incompetent proceedings under the Cr.PC were

initiated indicate that the food grains seized were within the reach of the Court trying the offence. Further, if ultimately the registration of the offences is found to be incompetent, it is obvious that the trial court will have to deal with the situation. In absence of any proceedings under the Essential Commodities Act, it will be incompetent for the petitioner to apply for release of the food grains to the authority concerned under that Act."

[14] Further, if the muddamal vehicle is kept for longer period at police station, then the parts and machinery, tyres etc. would be damaged and the applicant would have to bear monetary loss. Further, the applicant has also produced copy of RC Book of the said muddamal vehicle from which it appears that the applicant is the owner of the vehicle and hence, it is just and proper to provide the interim custody of muddamal vehicle in favour of the applicant by imposing specific conditions and accordingly the order of rejecting application of the applicant for interim custody needs to be quashed and set aside as a result of which, I decide Issue No.1 in "Affirmative" and for Issue No.2, the following order is passed.

:: O R D E R ::

- a. This revision is allowed.
- b. The impugned order dated 20.03.2023 passed by the Ld. J.M.F.C, Kathor is quashed and set aside.

c. The interim custody of muddamal vehicle Truck being Eicher Motors Model No. Pro 2114, bearing registration no. DD-01-E-9328, seized in respect of offence registered before the Kadodara Police Station vide Cr. Reg. No. B 11214023230161 of 2023 for offences under Section 25(1) of The Fertilizer (Control) Order, 1985 and Section 465, 468, 471 and 120(b) of Indian Penal Code and Section 3 and 7(1)(a)(2) of Essential Goods and Commodities Act, is directed to be handed over to the applicant on furnishing personal bond amounting to **twice** the value (as mentioned in the panchnama) of the vehicle, subject to following conditions:

Conditions :

1. The applicant shall file an undertaking on oath before the Ld. Trial Court and the concerned police station to the effect that henceforth the said muddamal vehicle shall not be used to facilitate the commission of any crime/s.
2. The applicant shall not sell, transfer or alienate the vehicle in any manner, pending the confiscation proceedings, and shall produce the vehicle before the authorized officer, as and when call upon to produce the same for the purpose of further proceedings in the matter.
3. It is made clear that the order is passed only for handing over the vehicle on interim basis and if the

vehicle contains the bags of Urea then the applicant shall get the vehicle vacated and arrange to keep these bags of Urea.

4. The investigation officer shall, at the time of handing over of the custody of vehicle, shall prepare detailed panchnama; take photographs of the vehicle; and also get the photographs attested and countersigned by the complainant, accused as well as by the person to whom the custody is handed over And shall scrupulously adhere to the guidelines issued by the Hon'ble High Court and Supreme Court referred to in this order.

Copy of this order be sent to the concerned Court and Police Station

Signed & Pronounced in open Court today on this 20th day of April, 2023.

Date : 20/04/2023.
Place: Surat.

(Robin P. Mogera)
8th Additional Sessions Judge,
Surat
(Unique ID Code: GJ01539)