

CRIMINAL CASE NO. 5752 OF 2018**ORDER BELOW EXHIBIT 1**

1. In the present case upon perusal of chargesheet, FIR and investigation papers it is evident that the accused has been charged with offence under Section 66 (1) (b) of the Gujarat Prohibition Act and under Section 85 of the Gujarat Prohibition (Amendment) Act and it has been alleged that the accused has consumed liquor and was found drunk without any licence, permit, pass or authorisation. But as per the provisions of law the said act of the accused falls within the purview of Section 66 (1) (b) of the Gujarat Prohibition Act. Though, Section 85 of the Gujarat Prohibition (Amendment) Act has been mentioned in the chargesheet by the Police, but, it has nowhere been stated that as to how due to his drunk condition the accused has created any nuisance or taken up quarrel with any person or used foul or abusive language or indulged in fight with others, misbehaved with any women or behaved obscenely. It has prima facie not been brought on record that the act of the accused does falls within the purview of Section 85 of The Gujarat Prohibition (Amendment) Act. Hence, looking to the provisions of Section 239 of Cr.P.C. & upon considering the Police report & documents sent with it under Section 173 of Cr.P.C. & after giving the prosecution (Ld. APP) an opportunity of being heard the Court considers that the charge alleged by the Police under Section 85 of the Gujarat Prohibition (Amendment) Act is groundless for the aforesaid reasons. Hence, the Court drops the proceedings against the accused for the offence under Section 85 of the Gujarat Prohibition (Amendment) Act.

But, as per Section 240 of Cr.P.C. upon consideration of facts as narrated in the Police papers and hearing the prosecution and considering the aspect of the accused the Court opines that the responsibility of framing the charge is that of the Court and it has to judicially consider the question of doing so and without fully adverting the material on record the Court must not blindly adopt the decision of the prosecution. The Court has to sift through the evidence in order to find out whether there are sufficient grounds to try the suspect

[Sanjaykumar Rai v. State of Uttar Pradesh & Anr (Criminal Appeal No.472 of 2021)].

But, upon perusal of the record of the case including the FIR, other Police papers and the chargesheet its prima facie apparent that the facts as stated narrate that the accused was found drunk without any licence, permit, pass or authorisation and that there are grounds to presume that the accused has committed an offence triable and punishable under Section 66 (1) (b) of the Gujarat Prohibition Act. Moreover, the chargesheet has been submitted with incomplete papers of Police investigation. It is also evident that the Police papers merely include the complaint, panchnama and statements of merely other Police witnesses and panch as named in the chargesheet.

As per the chargesheet, the two other independent witnesses shown are the Medical Officer and the officer of the FSL. But, the medical papers/reports or FSL Certificate/reports were not produced with the chargesheet. Therefore, a notice was issued to the PSI/PI of the concerned Police Station directing him to submit the necessary documents. But, in reply to such notice dated 19/02/2022 bearing Outward No.Rubru/2022 (64A/22); the PI/PSI of the Nikol Police Station has replied in writing by Outward No. Nikol/927/2022 dated 28/02/2022 that the Medical records & FSL reports/certificate are not traceable and there is no possibility that they can be traced in the near future.

It is important to note that the medical examination papers, blood sample reports and FSL report are the very important prima facie independent evidence in cases where it has been alleged that the accused has consumed liquor so as to ascertain that the concentration of alcohol in the blood of the accused person is not less than the prescribed quantity percent weight in volume. Because, only if the concentration of alcohol in blood is greater than such percent weight in volume and if FSL report suggest that the substance consumed by the accused falls within the category specified as intoxicant prohibited by the Gujarat Prohibition Act then only a prima facie case is made out.

But in absence of such important medical papers & FSL reports, there remains no such independent prima facie evidence which could be relied upon to initiate a trial against the accused.

Same is the situation in the present case also as it is clearly evident that no such medical report of blood sample or FSL reports have been produced till date in the present case inspite of being notified by this Court. Rather the PI/PSI of the concerned Police Station has submitted in writing that such medical papers/reports or FSL reports can't be traced out.

The Ld. APP Mr.Sandeep Gautam has been informed and heard upon the said matter and he has submitted that the reports must have been submitted but have not been submitted in the present case and therefore the Court may proceed as it deems just.

Looking to the aforesaid reasons the Court opines that in absence of primary independent evidence, it is not appropriate to proceed with trial against the accused as the medical report of blood sample or FSL report of sample of Muddamal has not till date been submitted in the present case and in absence of the same it cannot be prima facie believed that the substance consumed by the accused was a prohibited intoxicant and that he was in the influence of such prohibited intoxicant. The Police witnesses or the panch witnesses are not experts to certify the same as against the accused. Nor their ability of smelling and identifying the substance as prohibited intoxicant or the accused being in intoxicated state, can be relied upon to hold the accused guilty beyond doubt. Therefore even if the trial proceeds, it would be adversely effected for want of such cogent evidence.

Not only this, inspite of issuing Non-bailable warrant upon the accused time and again, the NBW could not be served as the accused was not found. Even the surety is not traceable. The present case is pending for more than 4 years and inspite of been given ample opportunities the prosecution shows no possibility that the accused could be traced out in near future.

Following guidelines have also been laid down in the case of **P. Ramchandra v. State of Karnataka** [2002 (2) G.L.R. Page No.1549] that the Criminal Court should exercise their available powers such as those under Section 309, 311, 258 of the Code of Criminal Procedure, 1973 to effectuate the right to speedy trial.

Thereafter, considering the circular/letter No. 2917/2006, dated 17/10/2006 of the Hon'ble Gujarat High Court wherein, it has been stated that in cases where sufficient opportunities have been given to the Police to bring the accused before the Court, but, still the presence of the accused could not be secured, then in such cases the Court can exercise its powers under Section 258 of Cr.P.C.

Hence, for all aforesaid reasons as stated in aforesaid paragraphs the Court pronounces the final order as follows ***ex-debito justitiae***:

ORDER

1. The proceedings against the accused under Section 85 of the Gujarat Prohibition (Amendment) Act are dropped and for Section 66 (1) (b) of the Gujarat Prohibition Act the Court hereby orders to stop proceeding of this case as per Section 258 of Cr.P.C. and release the accused as discharged subject to provisions of Section 300 (5) of Cr.P.C.
2. Personal Bond & Surety as produced for bail shall stand cancelled. Cash surety, if any, shall be deposited to Government as per rules after appeal period.
3. The interim order relating to Muddamal shall stand confirmed subject to any final order. For any valuable or non-valuable Muddamal, where no order has been passed earlier; the same shall be disposed as per the provisions of law after expiry of period of appeal.

Signed and pronounced in the special sitting of the Magistrate today i.e., on 12th day of March, 2022.

(Malvika Purohit)
UIC NO GJ01351
Addl. JMFC, Ahmedabad (R)