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 Duration : D : M : Y

**IN THE COURT OF 4TH ADDITIONAL SESSIONS JUDGE
 AHMEDABAD(RURAL)**

CRIMINAL REVISION APPLICATION NO.38 OF 2026

Exh.

Revisionist/Applicant.

Mahipalsinh Chelsinh

Age : 31 Years, Occupation : Business,
 Residing at – Rauta, Jalor, Rajasthan.

V E R S U S

Respondent:

State of Gujarat

Application under Section 438 of the B.N.S.S.

APPEARANCE:

Mr. H. S. Parmar, Learned advocate for the applicant.
 Mr. A. M. Gulabani, Ld. APP for the respondent.

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

[1.0] The present revision application has been preferred under provisions of Section 438 of B.N.S.S. against order dated 18.02.2026 (herein after referred as “impugned order”) passed by the Ld. 2nd Additional Judicial Magistrate First Class, Sanand in Criminal Misc. Application No.46 of 2026, whereby, the Ld. Trial Court has refused to give interim custody of Mahindra Scorpio Car bearing registration no.GJ-12-DG-2677 (hereinafter referred to as “the muddamal”), which was seized in connection with FIR bearing C. R. No.11192011250420/2025 registered with Bopal Police Station for the

offences punishable under Sections 65(a), 65(e), 81, 98(2), 116(b) of the Prohibition Act.

[2.0] The case of the applicant in brief is that the the police apprehended accused persons while they were transporting 677 bottles of Indian Made Foreign Liquor amounting to Rs.2,03,000/- in Muddamal Vehicle and accordingly, an FIR was registered and Muddamal vehicle was seized by the police. That, the applicant filed an application vide Criminal Misc. Application No.46 of 2026 before the Ld. Trial Court seeking interim custody of the muddamal, however, the Ld. Trial Court was pleased to reject the same vide impugned order dated 18.02.2026. That, being aggrieved with that order the applicant has preferred the present revision application with a prayer to allow the revision application and to be given him the interim custody of the vehicle.

[3.0] Ld. Advocate for the applicant has reiterated the contents of present application under order and further assailed the impugned order mainly on the grounds that the applicant is the owner of the said vehicle. It is further submitted that the said vehicle is the only source of income of the applicant and the applicant is in need of the vehicle in question for his work. It is further submitted that keeping the vehicle idle in police custody would turn it into waste and render it useless, causing sever hardship to the applicant and that according to Section 503 of BNSS, the muddamal ought to have been released. That, the applicant is ready and willing to abide by all conditions imposed and hence he has prayed that the impugned order be quashed and set aside by allowing the present Revision Application.

[4.0] In pursuance of service of notice, Ld.P.P. appeared on behalf of the respondent – State and submitted that the impugned order passed by the Trial court is legal, valid and as per the settled

preposition of law and there is no illegality or irregularity in the order of Ld. Trial court. Ld. PP has relied upon the Government Notification No.GG/64/2019/VDR/10/2009/2061/E-1 dated 02nd July, 2019 and submitted that when ever the muddamal liquor found is above 20 litres then the vehicle from which the same has been seized can not be released on even interim basis. Therefore, it is submitted that present application deserves to be dismissed as the same is not maintainable.

[5.0] I have heard Ld advocates for both the parties and have perused the entire judicial record including revision application, and documents relied upon by both the parties. After perusal of records following points emerge before this court for the determination of present Criminal Revision Application.

- (1) Whether the impugned order dated 18.02.2026 passed by the Ld. 2nd Additional Judicial Magistrate First Class, Sanand in Criminal Misc. Application No.46 of 2026 is illegal, perverse, arbitrary, capricious, erroneous and against the settled principles of law ?
- (2) Whether the interference in the impugned order is required by this Court?
- (3) What order ?

[6.0] Reply of the above points for the reasons recorded herein are as under:

1. In the Negative.
2. In the Negative.
3. As per final order.

:: REASONS ::

[7.0] **POINT NOS. 1 & 2**

As the point No.1 & 2 are interconnected and interwoven hence, to avoid repetition, reasons for both are taken together herein.

[7.1] The applicant approached this court under the provisions of Section 438 of B.N.S.S. (old section 397 of Cr.P.C.) to invoke the revisional powers of this Court. Relevant provisions of Section 438 of B.N.S.S. is reproduced as under:

“438. Calling for records to exercise powers of revision. - (1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling, for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement that he be released on his own bond or bail bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 439.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

[8.0] Keeping the above scope in mind if we examine the material on record it is apparent that 677 bottles of Indian Made Foreign Liquor were seized and recovered from the muddamal vehicle and the Liquor along with the vehicle were seized by the IO as per provisions of Section 98(1) and Section 98(2) of Gujarat Prohibition Act. Therefore, this Court considers it appropriate to discuss the relevant provisions of law and judgements of Hon'ble High Court in this regard before proceeding further.

[8.1] Section 98(2) of the Gujarat Prohibition Act, 1949, which is regarding the things liable to be confiscated reads as under:

98. Things liable to confiscation :

(1). XXX

(2). Any receptacle, package or covering in which any of the articles liable to confiscation under sub-Section (1) is found and the other contents of such receptacle, package or covering and the animals, carts, vessels or other conveyances used in carrying any such article shall likewise be liable to confiscation by the order of the Court [but it shall not be released on bond or surety till the final judgment of the Court where the quantity of the seized liquor is exceeding the quantity as may be prescribed by the rules].

Rule-9 of Gujarat Prohibition (Liquor Samples & Determination of Quantity Seized Liquor) Rules, 2012 prescribe the quantity ,which reads as under:-

Rule-9 Seizure of vehicles when quantity more than 10 liters:-

Where the quantity of liquor seized is more than 10 liters in respect of any offence punishable under the Act, the vehicle or conveyance carrying such liquor shall be liable to confiscated in accordance with the provisions of subsection (2) of Section 98 of the Act.

As per Notification No.GG/64/2019/VDR/10/2009/ 2061/ E-1 dated 02nd July, 2019 , the words “ 10 litres” are proposed to be substituted with words “20 Litres”.

[8.2] Further, the issue regarding interim custody of muddamal Vehicle in Prohibition Act cases is no longer res integra. Hon'ble High Court of Gujarat in the matter titled as "**Pareshkumar Jaikarbhai Brahmbhatt V/s. State of Gujarat**" in Special Criminal Application (Possession of Muddamal) No.8521 of 2017 and further in the matter titled as "**State of Gujarat V/s. Iskan Navinbhai Dund**" in Special Criminal Application No.2469 of 2018 has held that ;

"Section 98(2) of the Act, 1949 curtails the power of the Magistrate to order interim release of the seized vehicle under Sections 451 or 457 of the CrPC, as the case may be. The Courts below will have no jurisdiction to order interim release pending the trial of the seized vehicle in connection with the offence under the Act, 1949, if the quantity of the liquor recovered exceeds 10 liters in quantity."

[8.3] Moreover, even if we consider the Notification No.GG/64/2019/VDR/ 10/2009/2061/E-1 dated 02nd July, 2019, the proposed words are "20 liters" whereas in the case in hand the muddamal Vehicle was found loaded with 677 bottles of Indian Made Foreign Liquor i.e. much higher than 20 liters and comes under the category of articles liable to be confiscated. Therefore, the Defence of the applicant that he is not responsible for the liquor found/seized from the vehicle, could be considered by the Trial Court at the time of conclusion of trial and not before that stage.

[8.4] Further on perusal of the impugned order, it is apparent that the Ld. Trial Court has in its judgement discuss the relevant provisions of the Act and discussing the materials on record (contents of the FIR, Panchnama and the police report) and clearly observed that the prohibited muddamal beyond the prescribed quantity was found in conscious possession of the occupants of the said vehicle and therefore, considering the amended provisions of the Prohibition Act, the said muddamal vehicle is liable to confiscation and interim custody thereof cannot be handed over till final disposal of the case. Further, the guidelines laid down by the Hon'ble supreme Court in the case of "**Sundarbhai Ambalal Desai V/s. State of Gujarat**" JT (2002) 10 SC 80, could not be applicable in the present matter regarding muddamal vehicle, considering the Special provisions provided under Section 98(2) of the Gujarat Prohibition Act.

[8.5] Hence, considering the settled legal preposition in this regard, facts and circumstances of the present matter and discussions held herein above this Court finds no illegality, irregularity in the impugned order of Ld. Trial Court while rejecting the application preferred by the present applicant. Therefore, this Court is of the view that the order of Ld. Trial court is correct, legal, and within the

purview of law and hence needs no interference by this court. Hence, point No.1 & 2 are decided in negative for above stated reasons, and while deciding point no.3, I pass the following final order in the interest of justice:-

:-FINAL ORDER :-

- This Criminal Revision Application is hereby **dismissed**.
- A copy of this order be sent to the learned trial Court along with record and proceedings, if any called for.

It is being clarified herein that any observations touching the merits of the case are purely for deciding the present application and shall have no bearing on the hearing of the matter by the Ld. Trial court.

File of Revision application be consigned to record room after compliance of due procedure.

Pronounced today in open Court on this 11th day of March, 2026.

Date : 11/03/2026.
Place: Ahmedabad

[Dipen Dilipkumar Buddhdev]
4th Additional Sessions Judge,
Ahmedabad (Rural) at Navrangpura.
UIC No.GJ00612.