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:-Order below Muddamal Application under Section 497 of BNSS:-

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- 1] The applicant i.e. **Kagthala Sumitbhai Rameshbhai** has filed the present application praying this Court to release his muddamal I-tel A-70 mobile phone bearing IMEI No. (1) 352344674792029 which was seized in connection with the offence registered vide FIR No. 11192003260112/2026 registered at Sanand GIDC Police Station, Ahmedabad (Rural) for the offence punishable u/s. 303 (2) of the B.N.S.
- 2] Heard Ld. Advocate appearing on behalf of the applicant and Ld. Asst. Public Prosecutor for the State.
- 3] The Ld. Advocate for the applicant has submitted that the applicant is totally innocent and the I.O has seized his mobile phone in the present offence. It is also submitted that the major investigation has been completed now. Moreover, if the custody of the mobile phone is not given to the applicant, then it may be damaged, and in future, it may not be in a position for use, and also he will abide by all the conditions imposed by this Hon'ble Court, if the Hon'ble Court Grants interim custody to the applicant, hence prayed to allow the application of the applicant.
- 4] The Ld. A.P.P has submitted that the said muddamal i.e. mobile phone is very important evidence in this case, and it is a digital evidence, however, he has not been named in the present FIR and hence he has prayed that the order may be passed accordingly and as per Rules.
- 5] In the leading decision of **Sunderbhai Ambalal Desai vs. State of Gujarat, [AIR 2003 SC 638]**, it has been held by the Hon'ble S.C. as under :-
“Powers under section 451 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 panchnama 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”.

Hence, considering the facts of the present case, and the principle rendered in **Sunderbhai Ambalal Desai** (supra), as aforesaid, if the interim custody of the muddamal article is handed over to the applicant on certain terms and conditions, no prejudice would be caused to the prosecution.

- 6] I have perused the entire record as well as the reply filed by the I.O at Exh.4. Considering the rival submissions of both the parties and looking to the facts and circumstances of this case, it is not in dispute that as per the Retail Invoice produced, the applicant is shown as owner of the muddamal mobile and the applicant has produced copy of tax invoice for purchasing the said mobile phone to show the ownership. Also, the muddamal mobile phone is an electronic device, hence if it is continued to be kept in the police station, it may be of no use & may get damaged. Moreover, in view of the decision of the Hon'ble Apex Court in case of **Sunderbhai Ambalal Desai vs. State of Gujarat, reported in 2003(2) GLR 1337** wherein Hon'ble Supreme Court has passed the order to give the muddamal back to the applicant on suitable conditions.

Considering the facts of this case and as per the law laid down by the Hon'ble Apex Court in case of **Sunderbhai (supra)**, when the applicant is shown as registered owner of the muddamal, this Court is inclined to release the muddamal in favour of the applicant.

In view of the above discussions, the present application filed by the applicant for releasing his muddamal mobile phone deserves to be allowed by imposing suitable conditions. Hence, I pass following order:-

-:: ORDER ::-

1. The present muddamal application is hereby **conditionally allowed**.
2. The muddamal I-tel A 70 mobile phone bearing IMEI No. (1) 352344674792029 which was seized in connection with the offence registered vide FIR No. 11192003260112/2026 registered at Sanand G.I.D.C Police Station, Ahmedabad (Rural) for the offence punishable u/s. 303 (2) of the B.N.S. is hereby ordered to be returned to the applicant viz. **Kagthala Sumitbhai Rameshbhai** by way of interim custody pending the trial on the following conditions:-
 - (a) The applicant shall furnish the bond of one and half amount of the value of the muddamal before the concerned Police Station.
 - (b) The applicant shall produce the said phone as and when called for by the Court.
 - (c) The applicant shall not change the physical condition of the muddamal phone except carrying-out the necessary repairs as and when required.
 - (d) The muddamal mobile phone shall be returned to the applicant after taking the photographs of the said phone by Investigating Officer of concerned Police Station.
 - (e) Yadi of this order be sent to the concerned police station.

Signed and Pronounced in open Court on the 5th day of June, 2026.

Date: 05-06-2026.
Place: Sanand.

(Ashadullakhan Rahimkhan Ghori)
Additional Chief Judicial Magistrate
Sanand, Ahmedabad (Rural).