

Received on : 22.05.2026
Registered on: 22.05.2026
Decided on : 02.07.2026
Duration : Ys. - Ms. - Ds.
00 01 09

**IN THE COURT OF 2nd ADDITIONAL DISTRICT
AND SESSIONS JUDGE, AT RAJULA.**

CRIMINAL REVISION APPLICATION NO. 07 OF 2026

Exh. :

APPLICANT / REVISIONIST :

Makwana Ketanbhai Jinabhai,

Aged about: 26 years, Occupation: Agriculture & Business,
R/o. Kadiyali, Tal. Jafrabad, Dist. : Amreli.

Versus

OPPONENT :

THE STATE OF GUJARAT.

Jafrabad Marine Police Station, at Jafrabad, Tal. Jafrabad, Dist. Amreli.

APPEARANCES:

Mr. M.R. Joshi, L.A. for the Applicant - Revisionist.

Mr. B. M. Shiyal, Ld. A.P.P. for the State.

CRIMINAL REVISION APPLICATION UNDER SECTION 497 OF BNSS

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

1. Present revision application emanates from the order dated 15/05/2026, passed by **Ld. Principal Civil Judge and Judicial Magistrate First Class, Jafrabad** (hereinafter referred to as 'Ld. Trial Court'), whereby an application preferred by the present

applicant u/s. 497 of BNSS for getting interim custody of vehicle **VOLKS WAGEN POLO 1-2 COMFO FOURWHEELER** having registration No. **GJ-06-HD-1097** (herein after referred as Muddamal vehicle) is rejected.

2. To eschew prolixity, I may recite the relevant facts which are relevant for the disposal of the present application.

2.1 An F.I.R. being C.R. No. **11193002260015/2026** came to registered before the Jafrabad Marine Police Station for the offences punishable under Section **65(a), 65(e), 116(b), 81, 98(2)** of the Prohibition Act.

2.2 As per the allegations leveled in the F.I.R., Muddamal vehicle, is alleged to be used by the accused in the commission of above referred crime and, therefore, same was seized by the Investigation Officer and lying before the Jafrabad Marine Police Station as Muddamal Article.

2.3 It is the case of the present applicant that he is the owner of the Muddamal vehicle. The present applicant moved an application under Section 497 of BNSS before the Ld. Trial Court on 15/05/2026 for getting interim custody Muddamal vehicle. After hearing the advocates for the respective parties, the Ld. Trial Court was pleased to reject the said application vide order dated 15/05/2026 on the ground that the prohibited Muddamal exceeds the limit of 20 ltrs. which is in violation of the provisions of the Gujarat Prohibition Act and the Muddamal in question will not naturally get damaged also not loose its face value and there is strong apprehension that the applicant will use this for the transportation of such prohibited liquor.

2.4 Therefore, being aggrieved and dissatisfied with the said order, the revisionist has filed the present Revision Application u/s. 497 of the BNSS so as to get interim custody of the vehicle; **VOLKS WAGEN POLO 1-2 COMFO FOURWHEELER** having registration No. **GJ-06-HD-1097** so also prayed to reject the order dtd. 15/05/2026 passed by the Ld. Trial Court.

3. *Learned Advocate appeared on behalf of the applicant and submitted that the applicant is the original owner of the said Muddamal vehicle and he also produced the documentary evidence in support of the same and he is in extreme need of the vehicle for his livelihood and if the same is lying in the police custody for a long time then it may lose its face value, subject to depreciation which ultimately, result into loss to the applicant. The applicant is ready and willingly to remain present with the Muddamal whenever, the Court thinks fit or requires. He has further submitted that, the present case does not fall under Section 98(2) of the Gujarat Prohibition Act and as per the proposition laid down in the case of **Sunderbhai Ambalal Desai vs. State of Gujarat** by the Hon'ble High Court of Gujarat, the interim custody of Muddamal should be released and prayed to set-aside the order passed by the Ld. Trial Court.*
4. *On the other hand, Ld. A.P.P. has vehemently opposed the said application and submitted that, the order passed by the Ld. Trial Court is just and proper, does not require any interference and the present application is required to be rejected. Perused the opinion regarding Muddamal submitted by the Investigating Officer at **Exh.***
- 4.
5. *After hearing oral submissions of both the parties and perusing the order passed by the Ld. Trial Court and perusing the records of the Ld. Trial Court, following points come before this Court for Consideration :~*
 1. *Whether the applicant proves that, the order passed by the Ld. Trial Court is exfacie, illegal and requires to be set-aside?*
 2. *What order?*
6. *My findings to above Points are as under:~*
 1. *In negative.*
 2. *As per the final order.*

R E A S O N S

Point No. 1:~

7. *The learned trial Court, has rejected the application as per Section-98 (2) of the Gujarat Prohibition Act, that the Court cannot release the vehicle on bond or surety because the seized prohibited liquor exceed the limit i.e. 20 Ltrs., as may be prescribed under the Gujarat Prohibition (Liquor Samples and Determination of Quantity Seized Liquor) Rules, 2012, Rule 9 :*

'Seizure of vehicle when quantity more than ten liters:- Where the quantity of liquor seized is more than ten liters in respect of any offence under the Act the vehicle or conveyance carrying such liquor shall be liable to be confiscated in accordance with the provisions of Sub-section (2) of Section-98 of the Act'.

And by the Gujarat Prohibition (Liquor Samples and Determination of Quantity Seized Liquor) (Amendment) Rules, 2019, the words "ten liters" were substituted by "twenty liters".

8. *On this above mentioned grounds the application for Muddamal was rejected by the Ld. Trial Court. Now, on perusal of the record, it appears that the Muddamal vehicle was used for transportation of contraband liquor total costing of Rs. 28,384/- by the applicant / revisionist.*
9. *In this regard it is profitable to peruse the judgment passed by the Hon'ble High Court in the Special Criminal Application (Possession of Muddamal) No.8521 of 2017 in the case of **Pareshkumar Jaykarbhai Brahmbhatt v/s. State of Gujarat**, in which, the Hon'ble High Court has held that :~*

"65.My final conclusion is 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 Cr. P.C., 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, is the quantity of the liquor recovered exceeds 10 liters in quantity.

*66. The legislature in its wisdom has prescribed a methodology to deal with the prohibition offences, seizure, confiscation, release etc. Once such a procedure is prescribed, the Courts have to examine the rights of the parties in accordance with the procedure so prescribed. I am unable to hold that the Magistrate and Revisional Court have committed any error in rejecting the applications preferred by the respective applicants under Section 451 or 457 of the Cr.P.C. In view of the provisions of Section 98(2) of the Act, 1949, the general provisions laid down in *Sunderbhai Ambalal Desai Vs. State of Gujarat* [JT(200) 10 SC 80] cannot be pressed into service for release of vehicle from the Court of Magistrate”*

- 10.** *Thus, considering the ratio laid down by the Hon'ble High Court in the case of Pareshkumar(supra) and considering the fact that the illegal liquor exceeds 20 liters, as amended as per amendment of 2019, in quantity Section-98(2) comes into play and further considering the fact that this court does not have power to exercise writ jurisdiction. I do not find any reason to interfere with the order passed by the Ld. Trial Court and do not find any merits in the present application. Hence I give my findings for the Point No.1 in negative, and I pass the following order:*

-: ORDER :-

- 1.** *The present revision application is hereby dismissed.*
- 2.** *The order passed by the Ld. Principal Civil Judge and Judicial Magistrate First Class, Jafrabad in Muddamal Application No. 04/2026 dtd. 15/05/2026 rejecting the application, in connection with Jafrabad Marine Police Station CR. No. 11193002260015/2026, is hereby confirmed.*

- 3.** *Record and proceedings be sent back to the concerned Ld. Trial Court along with the copy of this order.*

*Signed and pronounced in the open Court on this **02nd** day of **July**, **2026**.*

Date : 02/07/2026

Place : Rajula

***Divyang C. Trivedi
2nd Additional District
and Sessions Judge,
UIC No.GJ00583***