

RECEIVED ON : 25.05.2026  
REGISTERED ON : 25.05.2026  
DECIDED ON : 02.06.2026  
DURATION : 08 00 00  
DAYS MONTHS YEARS

---

---

IN THE COURT OF HON'BLE PRINCIPAL DISTRICT &  
SESSIONS JUDGE,DISTRICT ARVALLI AT MODASA.

---

---

*Criminal Revi. Appli.No.108 of 2026*  
*Exh.*

**APPLICANT :**

Mahemudshah Amhmadshah Divan

Age: 55, Occupation: Labour

Residing at: Krushnanagar society, Savgadh, Tal.Himmatnagar,  
Dist.Sabarkantha.

**VERSUS**

**OPPONENT/RESPONDENT:**

The state of Gujarat,

Notice be serve to Ld.P.P, Modasa.

**APPEARANCE:**

1. MR.S.G.PRAJAPATI, LD. ADVOCATE FOR THE APPLICANT/APELLANT.
2. MR.T.K.RATHOD, LD.Ad.P.P. FOR THE STATE.

**Criminal Revision Application under Section-438 of Code the  
Bharatiya Nagrik Suraksha Sanhita-2023.**

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

- 1 Present revision application emanates from the order dated 6.04.2026, passed by Ld.Judicial Magistrate First Class, Meghraj (hereinafter referred to as 'Ld.Magistrate'), whereby an application preferred by the present applicant for getting custody of motorcycle bearing registration GJ.9.EB.1817 (herein after referred as *Muddamaal* 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 part-C C.R.No.0054/2026 came to be registered before the Isri Police Station for the offences punishable under Sections 65AE and 81 of the Prohibition Act.
- 2.2 As per the allegations leveled in the F.I.R., *Muddamaal* 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 Police Station as muddamal Article.
- 2.3 It is the case of the present applicant that he is the owner of the *Muddamaal* vehicle. The present applicant moved an application under Section 497 of BNSS-2023 before the Ld.Magistrate, Meghraj for getting custody of *Muddamaal*. After hearing the advocates for the respective parties, the learned Magistrate was pleased to reject the said application vide order dated 6.04.2026 and, therefore the present applicant has preferred the present Revision Application u/s 438 of the BNSS.
- 3 Learned Advocate appeared on behalf of the applicant and submitted that present applicant is the owner of the *Muddamaal* vehicle and same is lying in the police station since long time. He further contended that, the order passed by the Ld. magistrate is exfacie illegal and requires to be set-aside. It is also contended that, the said vehicle as seized by the police, pertaining to the offence registered before the Isri Police Station for the offences punishable u/s 65AE and 81 of the Prohibition Act. Further, the Ld.Advocate has contended that, if the *Muddamaal* has been kept idle in the Police Station, which will reduce the life of the vehicle and as the present applicant is the owner of the *Muddamaal*, the

present Criminal Revision Application is required to be allowed.

- 4 Ld.Ad.PP, representing the State, has appeared before the Court and filed detailed opinion of Investigating Officer vide Ex.5 to resist the present application and submitted that in the present case, the Police have recovered exceeding 20 liters Indian made foreign liquor from the motorcycle. Ld.Ad.PP therefore submitted that considering the provision of section 98(2) the Court cannot release the vehicle on bond or surety till the final judgment of the Court. Ld.Ad.PP therefore 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.
- 5 After hearing oral submissions of both the parties 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.

### **REASONS**

#### **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 till the final

judgment of the Court where the seized liquor is exceeding 20 liters in quantity, as prescribed in the Gujarat Prohibition (Liquor Samples and Determination of Quantity Seized Liquor) Rules 2012, Rule 9: Which is reproduced herein.

***9. 'Seizure of vehicle when quantity more than twenty liters:- Where the quantity of liquor seized is more than twenty 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'.***

On this ground the application for *Muddamal* was Rejected.

- 8 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.8221 of 2017 in the case of Pareshkumar Jaykarbhai Brahmabhatt 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.***

- 9 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 in quantity has been recovered from the motorcycle, Section-98(2) comes into play and further considering the fact that this court does not have power to exercise writ jurisdiction. Considering the aforesaid facts, circumstances, the opinion of the investigation officer, 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 Criminal Revision Application No.108 of 2026 is hereby dismissed.
- 2 The Order dated 6.04.2026 passed by the Ld. Judicial Magistrate First Class, Meghraj below *Muddamal* application, is hereby confirmed.
- 3 Copy of this order and R & P if any, be sent to the Trial Court forthwith.
- 4 Signed and pronounced in the open Court today.

DATE: 2/06/2026

PLACE: MODASA

**(Rajkumar Ramsinh Chaudhary)**

Sessions Judge

Arvalli at Modasa

CODE NO.GJ01512

MMK