

GJBH010014282026



Filing No.: CRMA/438/2026

Filed On: 04/06/2026

Decided On : 23/06/2026

Duration: 0Y-0M-19D

**IN THE COURT OF SESSIONS JUDGE,
AT BHARUCH**

**Criminal Misc. Application (for Muddamal) No.438/2026
Exh. _____**

Applicant : Sarfaraz Kadar Memon
R/o. A-21, Madina Park,
Nr. Dungri, Sherpura Road,
Bharuch.

VERSUS

Opponent: The State of Gujarat

Appearance:

Ld. Advocate Mr. F. F. Meman, for the applicant.

Ld. APP Ms. N. M. Mistry, for the opponent - State.

JUDGMENT

1. The applicant has preferred this application u/s 503 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS' for short), claiming interim custody of Apple iPhone 15 Pro (Blue Color) Mobile bearing IMEI No.1:354070962384686 and IMEI No.2 : 354070962467903, which came to be seized by Bharuch City 'B' Division Police in the offence registered vide FIR being CR No.11199012250839/2025, committed u/s

317(4) of Bharatiya Nyaya Sanhita, 2023.

2. It is stated in the application that, the said mobile is used for his personal contacts, banking applications, business records, family photographs as well as in routine telephonic talks and for sending messages, and if, the same would lie unattended in the police station, damage would be caused. It is further stated that, the ownership of the mobile phone can be verified through its IMEI numbers and evidentiary value of the device which can be protected through photographs, panchnama, extraction & forensic reports or any other record which were collected during the investigation. It is also stated that the applicant undertakes that he shall neither dispose of, transfer, sell, alter nor tamper with the mobile phone during the pendency of the proceedings. It is further stated that, he will abide by all the conditions that will be imposed at the time of releasing his mobile phone. Hence, he has prayed that this application may be allowed and the interim custody of his mobile phone is required to be handed over to him.
3. On behalf of the opponent – State, Ld. APP has appeared and filed reply at **Exh.6** contending that the muddamal phone was sent to RFSL, Surat and the requisite procedure for data extraction has been completed. It is contended that the WhatsApp call logs, chats, Binance Crypto Application data along with the password have already been copied into DVD together with a certificate issued u/s 63(4)(c) of

the Bharatiya Sakshya Adhiniyam, 2023. It is further contended that the forensic data has been successfully extracted from the said mobile phone, and if the mobile phone is allowed to remain unattended in the police station, damage would be caused. Therefore, it is prayed that the custody of the said mobile phone be handed over to the applicant, subject to terms and conditions as may be deemed fit and proper by the court.

4. Ld. Advocate for the applicant has reiterated the contents of this application and submitted that, the applicant had not used the said mobile phone in the commission of the said offence and he will not use the mobile phone for illegal activities in future. It is further submitted that the investigation has been completed and charge-sheet has been filed, therefore, there is no need to retain the mobile phone in the police custody. It is also stated by the applicant in his affidavit that the mobile phone in question was being used by him which was gifted to him by his relatives. Therefore, the applicant is not in possession of the original purchase invoice or bill pertaining to the said mobile phone. Thus, the interim custody of mobile phone be handed over to the applicant. It is therefore prayed to allow this application.
5. On behalf of the opponent – State, Learned APP has submitted to pass appropriate order.

6. Upon going through the record of this application, the applicant has produced copy of FIR at mark-3/2. It appears from FIR that Bharuch City 'B' Division Police has seized Apple iPhone 15 Pro (Blue Color) Mobile bearing IMEI No.1:354070962384686 and IMEI No.2 : 354070962467903, in the offence committed u/s 317(4) of Bharatiya Nyaya Sanhita, 2023, registered vide FIR being CR No.11199012250839/2025. It is pertinent to note that the charge-sheet in the said matter has already been filed, and the proceedings have culminated into Sessions Case No.32/2026, which is presently pending before this court. Upon perusal of the affidavit at Mark-3/4, it appears that the mobile phone in question was being used by the applicant and had been gifted to him by his relatives. Therefore, the applicant is not in possession of the original purchase invoice or bill pertaining to the said mobile phone.

7. Investigation of the offence has already been completed and charge-sheet has been filed. Therefore, there is no necessity to further retain the mobile phone in police custody. As per the opinion of the I.O. dtd. 08.06.2026, he has objected for the release of mobile phone. However, learned APP has clearly stated that the muddamal phone was sent to RFSL, Surat and the requisite procedure for data extraction has been completed. It is further stated that the WhatsApp call logs, chats, Binance Crypto Application data along with the password have already been copied

into DVD and the forensic data has successfully been extracted from the said mobile phone. Therefore, if the mobile phone is allowed to remain unattended in the police station, there is a likelihood of damage or deterioration. Thus, considering the facts and circumstances of the present case and considering the ratio laid down by the Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai vs. State of Gujarat** reported in **2002 Supp (3) SCR 39**, it deems fit to this court to exercise discretion in favour of the applicant and release the mobile phone, subject to certain conditions. Hence, the following final order is passed in the interest of justice.

ORDER

1. CRMA No.438/2026 preferred by the applicant is hereby allowed.
2. The custody of muddamal Apple iPhone 15 Pro (Blue Color) Mobile bearing IMEI No.1:354070962384686 and IMEI No.2 : 354070962467903 is ordered to be handed over to the applicant on furnishing a surety of Rs.50,000/- with a personal bond of like amount before the concerned police station, subject to following conditions :-
 - (i) The applicant shall neither sell the muddamal mobile phone nor shall transfer the same to any other person in any manner, nor shall create any encumbrance on it.
 - (ii) The applicant is hereby directed to produce the said muddamal mobile phone as and when called for, by this court.

- (iii) The applicant shall not format or change the physical condition of the said mobile phone, except carrying out the necessary repairs as and when required, for which he shall intimate the Court.
 - (iv) The applicant shall neither transfer nor alienate the said Muddamal mobile phone by any mode of convenience to any third party, pending trial (Sessions Case No.32/2026) in connection with which, the said mobile phone has been seized.
 - (v) The applicant shall give an undertaking on oath before this court that he shall not raise any dispute regarding the legal or technical authenticity of the DVD during the course of trial and containing the digital data obtained by the RFSL, Surat or its hash value.
3. Yadi be sent to the concerned court and concerned police station accordingly.

Pronounced in the open Court today on 23rd June, 2026.

Date: 23/06/2026

(Rajesh Karmarsinh Desai)
Sessions Judge, Bharuch
Code No.GJ00912