

GJBH010017262026



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Decided on:	16/07/2026		
Duration:	Y 00	M 00	D 17

IN THE COURT OF 2ND ADDITIONAL DISTRICT AND
SESSIONS JUDGE, AT BHARUCH.



Criminal Revision Application No.74 of 2026

Exh._____

Hanubhai Dhudabhai Bharvad.

Age: 38, Occupation: Business.

R/o: 515, Satyam Nagar Society,

Nansad Road,

Kamrej, Nava gaam,

Surat.

(Appellant)

Versus

THE STATE OF GUJARAT

(Respondent)

Appearance:-

Ld. advocate for the appellant: V.N.Bharvad.

Ld. advocate for the respondent: M.G.Rathod.

**CRIMINAL REVISION APPLICATION UNDER SECTION
438 OF BNSS**

J U D G E M E N T

Details of order of the Ld. Magistrate Court...

(1) The present revision application is filed by the applicant as per Section 438 of the BNSS against the order of Ld. 2nd Additional Judicial Magistrate F.C. Bharuch dated 22/06/2026 wherein the application filed by the applicant under Section 497 of the BNSS for getting interim custody of the vehicle (Highway Dumper) was rejected.

Details of Registration of case & vehicle...

(2) As per the contentions raised, the applicant- Hanubhai Dhudabhai Bharvad is the registered owner of Highway Dumper Tata Motors Ltd. Company SIGNA 3532 TK 8X4 BSVI HD 23BX Registration No.GJ-16-AY-5185, Chassis No.MAT569059SAJ15080 and Engine No.52J95531337. The above vehicle of the applicant was seized by the police in connection with the FIR registered at Nabipur Police Station vide Crime Registration No.11199038260381 of 2026 for the offence under Sections 281, 324(3), 221, 224, 351(3), 352, 132, 54 & 238(a) of the BNS and Section 21 of the Mines and Minerals

(Regulation and Development) Act- 1957 and Sections 177 & 184 of the Motor Vehicle Act.

Findings of Ld. Magistrate Court.....

(2.1) After hearing the parties, the Ld. Magistrate has rejected the application filed by the applicant under Section 497 of the BNSS by passing order dated 22/06/2026, which is now under challenge by the applicant.

Report of Police Officer....

(3) On filing of this application, notice was issued to the State, the Ld. APP had appeared and the concerned Police Officer and the royalty Inspector had submitted their written objection wherein it is mainly stated that if the interim custody of the vehicle is handed over this applicant then it may again be used in the illegal activities of the mines and the applicant would be encouraged, the applicant has tried to assault the officials and which could have adverse effect on the concerned officer if the application is allowed.

Submission of Ld. Advocate on behalf of the applicant.....

(4) The Ld. advocate appearing for the applicant has mainly submitted as per his application and it is submitted that the order passed by the Ld. Magistrate is against the provisions of law. It is submitted that the application filed before the Ld. Magistrate was only for interim possession of the vehicle, pending the trial. It is

further submitted that since the vehicle is seized, is kept in open at the police station and as monsoon is in existence if the vehicle is further kept in such position it will reduce the vehicle to a scrap. It is further submitted that the order of Ld. Magistrate is based on mere presumption without considering the submission made on behalf of application and only considering the report of the police officer the order has been passed and the application of the applicant was rejected. It is further submitted that as the applicant had overtake the vehicle of police, the false complaint has been filed. It is further submitted that the vehicle mentioned in the application is the only source of income for the applicant and his family. It is lastly submitted that any conditions imposed by this Court is strictly be complied.

Submission of Ld. App.....

(4a) The submission of Ld. App has is based on the objections filed by the Police Officer and the royalty Inspector. Referring the objections, it is mainly submitted that if the interim custody of the vehicle is handed over this applicant then it may again be used in the illegal activities of the mines and the applicant would be encouraged, the applicant has tried to assault the officials and the Ld. Magistrate court has rightly dismissed the application.

Conclusion.....

(5) This Court has heard both the side, considering the documents and record, it is an undisputed fact on record that the applicant is the registered owner of the vehicle mentioned in the

application vide Mark 3/3, the copy of the registration book of the said vehicle is produced which appears to be in the name of the present applicant.

(5.1) It is to be noted that this revision application is filed against the order of the Ld. Magistrate wherein the application for interim custody of the vehicle which was only meant for interim possession of the vehicle during the pendency of the trial was dismissed. At this stage, **Section 497 of the BNSS** (Section 451 of the Cr. PC) is to be referred, the same is reiterated below....

497. Order for custody and disposal of property pending trial in certain cases.—(1) When any property is produced before any Criminal Court or the Magistrate empowered to take cognizance or commit the case for trial during any investigation, inquiry or trial, the Court or the Magistrate may make such order as it thinks fit for the proper custody of such property pending the conclusion of the investigation, inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court or the Magistrate may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.—For the purposes of this section, “property” includes—

(a) property of any kind or document which is produced before the Court or which is in its custody;

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

(2) The Court or the Magistrate shall, within a period of fourteen days from the production of the property referred to in sub-section (1) before it, prepare a statement of such property containing its description in such form and manner as the State Government may, by rules, provide.

(3) The Court or the Magistrate shall cause to be taken the photograph and if necessary, videograph on mobile phone or any electronic media, of the property referred to in sub-section (1).

(4) The statement prepared under sub-section (2) and the photograph or the videography taken under sub-section (3) shall be used as evidence in any inquiry, trial or other proceeding under the Sanhita.

(5) The Court or the Magistrate shall, within a period of thirty days after the statement has been prepared under sub-section (2) and the photograph or the videography has been taken under sub-section (3), order the disposal, destruction, confiscation or delivery

of the property in the manner specified hereinafter.

(5.2) Considering the above provision, it is to be noted that at this stage this Court has not to enter into the detail discussion or merits of any evidence, the same will be considered during the trial. This is a stage wherein, whether the interim possession of the vehicle is to be given to the applicant or not during the pendency of trial is only to be decided.

(6) At this stage, the judgment of Hon'ble Supreme Court reported in AIR 2003 Supreme Court page No.638 Sunderbhai Ambalal Desai Versus State of Gujarat has been considered. Para Nos.7 & 21 of the said judgement is reproduced below :

Para 7. In our view, the powers under Section 451 Cr.P.C. 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 panchanama 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.

Para 21. However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under Section 451 Cr.P.C. are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly.

(7) In the present case, as per facts on record, the vehicle of the applicant, after being seized is lying at police station without any use and definitely if it is kept under the same position it can not be denied that the same may turned into scrap.

(7a) This Court has also considered the judgement of Honourable Gujarat High Court i.e., Bapalalsinh Dolatsinh Jadeja Versus State of Gujarat, 2017(0) AIJEL-HC 23855, Special Criminal Application No.8892 of 2017 wherein in para 36 & 42 are reproduced below :

Para-36:

The power of Court under sec.451, as regards custody of movable property, is not arbitrary. Even though, such power is discretionary, it has to be exercised in a judicial manner. Under this section, the Magistrate has no jurisdiction to investigate and decide the question of title or ownership of the rival claimants to the property. Only the question of possession of the property at the time of case started, has to be gone into and decided before passing an order for the custody under this section. Sec.452 deals with order for disposal of property at conclusion of trial. Sec.457 deals with procedure by police, upon seizure of property....

Para-42 :

The sum total of the aforesaid discussion is that if a special Act embodies elaborate provisions about dealing with the seized articles including the confiscation and such special provisions are independent of the provisions of the CrPC., as the case may be, would not apply in case of seizure and confiscation. For the purpose of explaining this, I have also taken note of the provisions of the Forest Act and Essential Commodities Act. Both are the Special Acts. However the fact that the Mines and

Minerals Act is a Special Act, by itself, is not sufficient to exclude the applicability of the provisions of Section 451 of the CrPC. There is no provisions in the Mines and Minerals Act, 1957 or the Rules, 2017 which are in conflict in any manner with the provisions of the CrPC. I have discussed this aspect at length in para-20 to 25 of this judgement in details.

In the above judgment it is held that there are no provision in the Mines & Minerals Act, 1957 or the Rules 2017 which are in conflict in any manner with the provision of Cr.P.C. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security in return of the vehicle, if required at any point of time.

(8) This Court has gone through the order passed by the Ld. Magistrate and it appears that the Ld. Magistrate has rejected the application on presumption that if the vehicle is released, it may again be used in illegal mining activities. It is to be noted that if again the vehicle is used for any illegal activities law would take its own course. This Court has also considered that submission made by the Ld. Advocate for the applicant that, at the time when the vehicle were seized, there was no sand in the vehicle but as discussed above this is not a stage for discussing any evidence hence this Court does not go into detail in that issue.

(9) At this stage, the judgment of **Amit Kapoor and Ramesh Chander and Another**, (2012) 9 SCC 460, where scope of Section

397 Cr.P.C. have been succinctly considered and explained. Para 12 is as follows:

12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinize the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits."

Section 397 aims to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in the proceeding.

(10) Hence considering the facts and circumstances of the present case the judgements discussed above and considering the

fact that after seizing of the vehicle, the same is lying unused in open for a long time, its not a case that the vehicle is required for investigation and hence no purpose would be served by keeping it at police station in open this Court pass following order:

ORDER

1. This revision application is allowed.
2. The order passed by the 2nd Additional Judicial Magistrate First Class Court, Bharuch dated 22/06/2026 is hereby quashed & set aside.
3. The respondent (Concerened Police Officer) is directed to release the vehicle of the applicant I.e **Highway Dumper Tata Motor Ltd. Company SIGNA 3532 TK 8X4 BSVI HD 23BX Registration No.GJ-16-AY-5185, ChassisNo.MAT569059SAJ15080 and Engine No.52J95531337** on furnishing a bond double then the market value of the vehicle and surety of Rs.15,000/- on a condition that the vehicle be produced whenever required for either for investigation purpose or during trial.
4. Bond to be furnished, before Ld. Magistrate Court, Bharuch.
5. The applicant shall produce the documents showing his ownership of the vehicle.
6. The vehicle be not used in any type of illegal activities.

7. The vehicle shall not be transferred by any means or mortgage to another persons.
8. Yadi be send to concerned police station as well as the Magistrate Court, Bharuch.

Signed and pronounced in the open Court today on 16th July 2026.

Date : 16/07/2026. Place:Bharuch (KKC)	Ejaz Mohsinali Shaikh. 2 nd Additional District & Sessions Judge Bharuch(GJ00627)
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