

GJBK010008252026



Received on : 06.03.2026
Registered on : 06.03.2026
Decided on : **30.03.2026**
Duration : 24 -- --
D M Y

**IN THE SESSIONS COURT,
BANASKANTHA AT PALANPUR**

Exh. _____

Criminal Revision Application No.31/2026

Applicant: **Anilbhai Bhanubhai Bhatt**
Age: 56 Years, Occu.: Business,
R/o Bhairavnath Road, Katrodiya Street,
Gariyadhar, Tal. Dist. Bhavnagar.

V E R S U S

Opponent: **The State of Gujarat**

Appearance:

Mr. N. R. Goyal, Learned Advocate for the applicant.
Mr. R. P. Vaishnav, Learned Public Prosecutor for the
opponent-State.

**CRIMINAL REVISION APPLICATION UNDER SECTION
438 OF BHARTIYA NAGARIK SURAKSHA SANHITA**

J U D G M E N T

- 1) Present applicant has preferred present revision application under Section 438 of Bhartiya Nagarik Suraksha Sanhita against the order dated 13.02.2026 passed by learned J.M.F.C., Amirgadh below application filed by the present applicant, under section 497 of Bhartiya Nagarik Suraksha

Sanhita to get back his Mahindra Max Pick-up Vehicle No. GJ-04-AW-7384 seized as muddamal in respect of complaint registered with Amirgadh Police Station C.R. No. 11195003240925/2024 for the offence punishable under section 65-A-E, 116(B), 98(2), 81, 83 & 99 of Prohibition Act.

- 2) Notice was issued. Learned Public Prosecutor Mr. R. P. Vaishnav appeared for the opponent-State.
- 3) Learned Advocate Mr. N. R. Goyal, appearing for the applicant has submitted that in this case the seized muddamal vehicle is registered in the name of applicant in R.T.O. and as such applicant is owner and occupant of the said vehicle. It is also submitted that muddamal vehicle has been used by the applicant for his business purpose. It is also submitted that no muddamal had been recovered from the muddamal vehicle. It is also submitted that as per settled law, possession of the muddamal vehicle should be handed over to its owner. It is also submitted that learned Trial Court had not taken into consideration the documentary evidence produced on record. The matter is time consuming and if the vehicle is lying for long time in untidy and idle condition, in that case its spare-parts will be damaged. Moreover, it is further contended that applicant is ready and willing to furnish all surety as per the order of the Hon'ble Court and applicant is also ready and willing to follow all the conditions which will be imposed by the Hon'ble Court and will also give co-operation in the matter. Hence, he has prayed to allow the

application of the applicant and to hand over the possession of the seized Muddamal vehicle to the applicant.

- 4) Learned Public Prosecutor Mr. R. P. Vaishnav, appearing for the opponent State has mainly contended that in this case the seized muddamal vehicle is involved in the transportation of Foreign made liquor more than 20 litres and if the possession of the vehicle is handed over to the applicant then applicant will again use the same in such type of illegal activity and hence, opposed the present application. It is further submitted that impugned order passed by the learned Magistrate is just and proper hence, no interference is required hence, it is requested to reject the present application.
- 5) Investigating Officer has submitted his opinion vide Exh. 5 wherein it is stated that applicant had used the muddamal vehicle in transportation of muddamal liquor hence, if the possession of the vehicle is handed over to the applicant then applicant will again use the same in such type of illegal activity hence, it is opined not to hand over the muddamal vehicle to the applicant. It appears from the record that total 287 bottle of Indian made Foreign liquor worth Rs.4,34,276/- had been seized in the alleged offence.
- 6) Having heard learned advocates for both the sides, following issues emerge for determination of present revision application:

ISSUES

- (1) Whether learned Magistrate has committed any error of law and in appreciating the fact and evidence produced on record, which call for any interference?
 - (2) What order ?
- 7) My findings to the above issues, for the reasons given below, are as under:

FINDINGS

- (1) In negative.
- (2) As per final order.

REASONS

Issue Nos. 1 and 2:

- 8) Perused the present revision application and also perused the impugned order passed by the learned Magistrate. Upon going through the documentary evidence available on record, it apparently appears that the seized Muddamal vehicle is registered in the name of the present applicant hence, as such prima facie, it appears that present applicant is owner and occupant of the said vehicle. It appears that total 287 bottle of Indian made Foreign liquor worth Rs.4,34,276/- had been seized as muddamal from the alleged vehicle.
- 9) In this connection, this Revisional Court would like to refer a **judgment of the Honourable High Court of Gujarat in the case of Pareshkumar Jaykarbhai Brahmbhatt Vs. State of Gujarat, in Special Criminal Application No. 8521 of 2017, delivered on 15.12.2017,**

wherein the Honourable High Court of Gujarat has in para -65 of its judgment laid down that Section 98(2) of the Act, 1949 curtails the power of the Magistrate to order interim release of the seized vehicle under Section 451 of 457 of the Cr.P.C., as the case may be and 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 if the quantity of liquor recovered exceeds 10 litres (After amendment, now it is 20 litres) in quantity. As such, while taking into consideration the ratio laid down by the Honourable High Court of Gujarat, as above, it appears that learned Magistrate does not have jurisdiction to entertain application made under Section 451 or section 457 of Cr.P.C., As such, it appears that learned Magistrate has not made any mistake of fact and law.

- 10) In this connection, after taking into consideration the provision of Section 98(2) of the Gujarat Prohibition Act as well as Rule 9 of the Gujarat Prohibition (Liquor Samples and Determination of Quantity Seized Liquor) Rules, 2012, while applying **ratio laid down by the Honourable High Court, in the case of Pareshkumar Jaykarbhai Brahmhatt (Supra)**, this Revisional Court also does not seem just and proper to release the muddamal vehicle to the applicant.
- 11) In view of the above circumstances, it appears that the learned Magistrate had considered the facts and the records of the case and had passed the impugned order,

which does not appear at all ex-facie illegal. It further appears that Magistrate had also considered the facts and provisions of law and ratio of the judgment while passing the impugned order and therefore, there does not appear any necessity to interfere in the order passed by the learned Magistrate. Therefore, when the learned Magistrate had not committed any kind of mistake while passing order below the application to hand over possession of Muddamal vehicle and it is also clear that the learned Magistrate had not erred in rejecting the application of the applicant and therefore the order passed by learned Magistrate is not required to be disturbed and accordingly, the present Revision application is required to be rejected. Therefore, this Court has answered the Point No.1 in negative, and for the Point No.2, following final order is passed :-

ORDER

1. Present Criminal Revision Application is hereby rejected.
2. The order dated 13.02.2026 passed by learned J.M.F.C., Amirgadh rejecting the application filed by the present applicant, under section 497 of Bhartiya Nagarik Suraksha Sanhita to get back his Mahindra Max Pick-up Vehicle No. GJ-04-AW-7384 seized as muddamal in respect of complaint registered with Amirgadh Police Station C.R. No. 11195003240925/2024 for the offence punishable under section 65-A-E, 116(B), 98(2), 81, 83 & 99 of Prohibition Act, is hereby confirmed and upheld.

- 3 A Copy of this order be sent to the Court of learned J.M.F.C., Amirgadh.

Pronounced in open Court today this 30th day of March, 2026.

PALANPUR

Date: 30/03/2026

Vishal

(Shubhada Krishnakant Baxi)
**SESSIONS JUDGE,
B.K. DISTRICT, PALANPUR
(Code-GJ00377)**