

 	Presented on : 15-04-2026 Registered on : 15-04-2026 Decided on : 25-06-2026 Duration : Y M D 00 02 10
---	--

**IN THE 3RD ADDITIONAL SESSIONS COURT,
PALANPUR, AT - BANASKANTHA**

Criminal Revision Application No. **46** of **2026**

Exhibit No. ____

Applicant :- **Dudhsinh Rangatsinh Dabhi**
Age:- 52 Years, Occupation - Agriculture,
R/o. Kidotar, Taluka : Amirgadh,
District : Banaskantha

Versus

Opponent :- **The State of Gujarat**

Appearance:-

Ld. Advocate **Mr. S. M. Chauhan** for Applicant.

Ld. APP **Mr. D. H. Chappiya** for the Opponent State.

Criminal Revision Application u/s. 438 of B.N.S.S., 2023

J U D G M E N T

1] By way of filing this revision application u/s. 438 of Bharatiya Nagrik Suraksha Sanhita, 2023, the applicant has prayed to pass an order to quash and set aside the impugned order dated 02.04.2026 passed by the Learned

Principal Civil Judge & JMFC, Amirgadh rejecting the muddamal return application in connection with the offence registered as **C.R. No. 11195003251053 / 2025** before **Amirgadh Police Station** for the offences punishable u/s. 65(a), 65(e), 116(b), 98(2) of The Prohibition Act and has further prayed to release muddamal.

- 2] The present applicant being owner of the vehicle **Hero Splendor Motorcycle bearing registration no.GJ-08-BP-8438** filed an application under Section-451 of Cr.P.C. before the Learned Trial Court for the interim custody of Muddamal Vehicle which was seized during the investigation of **C.R. No. 11195003251053 / 2025** before **Amirgadh Police Station** for the offences punishable u/s. 65(a), 65(e), 116(b), 98(2) of The Prohibition Act and pursuant to a complaint filed by Police officer. After hearing both the parties, the Learned Trial Court has passed an impugned order dated 02.04.2026 rejecting the application of present applicant, hence, applicant has filed present Revision Application.

- 3] Heard the Ld. Advocates for both the sides.
- 4] For the just decision of this Criminal Revision, following points arise for my consideration :
1. Whether impugned order dated 02.04.2026 passed by the Learned Principal Civil Judge & JMFC, Amirgadh is legal, correct and proper?
 2. Whether the order dated 02.04.2026 passed by the Learned Trial Court is required any interference in context of prayer of this Revision?
 3. What order ?

Findings.

5] My findings regarding above mentioned points are as under:-

1. In the Affirmative.
2. In the Negative.
3. As per final order.

: REASONS :

POINT NOS.1 & 2:

- 6] Before advertng the merits and demerits of the case, it is pertinent to note that this is a revision application preferred U/s. 438 of Bharatiya Nagrik Suraksha Sanhita, 2023. As per the settled preposition of the law the revisional Jurisdiction conferred under this provision is to be exercised sparingly and only in exceptional case, when there is a glaring defect in the proceedings or where there is a manifest error on point of law and as a result thereby, there is a miscarriage of Justice. According to the provisions of Section 438 of Bharatiya Nagrik Suraksha Sanhita, 2023, the Court has discretion to interfere in revision in any case, for examining as to whether the Order is correct, legal and proper. A perverse finding can always be corrected by revisional Courts. But, unless and until, the illegality, misleading or perversity is successfully pointed out, the Court should be slower in interfering the order sought to be revised.
- 7] Now coming to the submission made by the parties, Ld. Advocate for the applicant has submitted that the impugned

order passed by the Ld. Magistrate is contrary to the provisions and settled principles of the Law. The Ld. Magistrate has not applied her mind while passing an impugned order and passed it mechanically. Moreover, considering the facts of muddamal application also, it is very much clear that applicant is the registered owner of the property.

- 8] Ld. APP for the State-opponent has strongly submitted that, considering the amendment taken place under Section of 98 of Prohibition Act the learned Trial Judge has rightly rejected the application of the present applicant. He further submitted that in view of the provision contained under Rule 9 of Gujarat Prohibition Rule 2012 and further considering muddamal seized from the vehicle is more than 20 liters and thus, Ld. trial Court has rightly rejected the muddamal application. Therefore, order of the learned Judicial Magistrate is the correct and proper order and the same does not require any interference with the said order. In concluding arguments, Ld. A.P.P. has strongly submitted

that, there is no merit in the revision and deserves to be rejected.

- 9] Having heard the learned advocates for the respective parties and having gone through the record and proceedings, it clearly transpires that large quantity of muddamal IMFL was allegedly recovered from the accused and it is the case of prosecution that the muddamal vehicle is seized for prohibition case. Looking to the FIR and Panchnama, it clearly appears that the muddamal Vehicle **Hero Splendor Motorcycle bearing registration no.GJ-08-BP-8438**, is seized by the police in prohibition case. Consequently, an offence was registered under various sections of the Prohibition Act.

Now, with profit it is required to go through Section 98(2) of the Gujarat Prohibition Act, 1949 as well as Rule 9 of Gujarat Prohibition (Liquor Samples & Determination of Quantity Seized Liquor) Rules, 2012, which reads as under;

-98. Things liable to confiscation :

(1). XXX

(2). Any receptacle, package or covering in which any of the articles liable to confiscation under sub Section (1) is found and the other contents of such receptacle, package or covering and the animals, carts, vessels or other conveyances used in carrying any such article shall likewise be liable to confiscation by the order of the Court [but it Court where the quantity of the seized liquor is exceeding the quantity as may be prescribed by the rules].

-Rule-9. Seizure of vehicles when quantity more than 10 liters:~ Where the quantity of liquor seized is more than 10 liters in respect of any offence punishable under the Act, the vehicle or conveyance carrying such liquor shall be liable to confiscated in accordance with the provisions of Section 65AA of the Gujarat Prohibition Act, 1949.

9.1] Further Government of Gujarat has further notified by its notification dtd.02/07/2019 that 10 liters be substituted by 20 liters in Gujarat Prohibition (Liquor Sample and Determination Quantity Seized Liquor) Rules, 2012.

10] Considering the aforesaid provisions and further considering the involvement of vehicle in question and seizure of the

muddamal, the above mentioned vehicle has been seized in connection with the offence punishable under various Sections of the Prohibition Act and as mentioned above, the quantity of liquor is more than 20 liters. Creeping through the impugned order, it appears that, Ld. Trial Court has rightly come to the conclusion that since the quantity of liquor is more than 20 liters, muddamal vehicle can not be released. I have taken into consideration the observations made in **R/Special Criminal Application No. 8521 of 2017 -Pareshkumar Jaykarbhai Brahmbhatt V/s State of Gujarat, Hon'ble Gujarat High Court**, wherein Hon'ble H. C. has observed as under;-

"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, if the quantity of the liquor recovered exceeds 20 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 Sections 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 (2002) 10 SC 80] cannot be pressed into service for release of vehicle from the Court of Magistrate. 67. In the result, all the applications fail and are hereby reject."

- 11] Learned Advocate appearing for the revisionist has relied on the judgment of Hon'ble Supreme Court of India in the case of **Khengarbhai Lakhabhai Dambhala Vs. State of Gujarat in Criminal Appeal No. 1547 of 2024**. Further on above discussion the case relied by the learned advocate of the revisionist is on different footing and it is not helpful to the present revision on hand as the facts are completely different and therefore the above citation is not applicable in the present case on hand.

12] Therefore, it clearly appears from the above observations as well as the police opinion produced vide Exh.5 and documents produced on record that, the Court below will have no jurisdiction to order interim release pending the trial of the seized vehicle in connection with the offence under the Prohibition Act, if the quantity of the liquor recovered exceeds 20 liters. Therefore, it aptly clear that, as per provision contained under section 98 of the Prohibition Act and observations of the Hon'ble Gujarat High Court in Pareshkumar Brahmbhatt's case, applicant is not entitled to get the interim custody of the said vehicle. Hence, in view of the above discussion and in view of the ratio laid down by our own Hon'ble High Court, the learned Trial Judge in the impugned order has rightly denied the interim custody of the vehicle. Therefore, there is no substance in the present application and deserves to be rejected. In the circumstances, I inclined to answer the point No.1 & 2 accordingly and in reply to point No.3, I pass the following final order.

: O R D E R :

1. Present Revision Application No. 46/2026 is hereby rejected.
2. The impugned order dated 02.04.2026 passed by the Learned Trial Court rejecting the muddamal return application is hereby confirmed.
3. R&P be sent back to Ld. Trial court.
4. No order as to cost.

Pronounced in the open Court today on this **25th day of June, 2026.**

Date :- 25-06-2025
Place:- Palanpur.

[Amitkumar J. Kanani]
3rd Additional Sessions Judge,
Palanpur, At - Banaskantha
(Unique I.D. Code No.GJ00662)

// K.A. //