

GJBK180005092026



Presented on : 05-03-2026  
Registered on : 05-03-2026  
Decided on : 10-03-2026  
Duration : 0 years, 0 months, 5 days

**IN THE COURT OF 6<sup>th</sup> ADDL DISTRICT JUDGE  
AT DEESA, BANASKANTHA  
(Presided Over by S.M.KANABAR)**

**CR RA/36/2026**

**Exhibit No.6**

**Applicant :**

DIPAK NARESHBHAI THAKKAR  
Through Police Station Officer DEESA RURAL POLICE STATION -  
BANASKANTHA DISTRICT  
11195019251120, THAKKARVASH,SAHESHA,PATAN,  
DEESABANASKANTHA

**VERSUS**

**Opponent:**

Government of Gujarat  
Age: 0 Occupation :  
AGP OFFICE DEESATA-DEESA

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Advocate for Applicant : D J TIWARI,  
**APP for State S K JOSHI**  
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**Offence punishable under : 438, of THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023, 65(a) (e),116(b),98(2), of GUJARAT (BOMBAY) PROHIBITION ACT, 1949.**

**JUDGMENT  
(Delivered on 10-03-2026)**

1. This Criminal Revision Application has been filed by the applicant U/Sec. 438 of the BHARATIYA NAGARIK SURAKSHA SANHITA challenging the order dated 10/2/2026 passed in C.R.No. 11195019251120 of 2025 registered at DEESA RURAL POLICE STATION for release of vehicle by the learned 3rd Additional Senior Civil Judge and Additional Chief Judicial Magistrate, Deesa, rejecting the interim custody of muddamal VEHICLE NO. GJ 01 RW 7551 seized by the police in connection with the C.R. No.11195019251120/2025 registered at DEESA RURAL POLICE STATION, registered for the offence punishable U/Sec. **65(a) (e),116(b),98(2), of GUJARAT (BOMBAY) PROHIBITION ACT, 1949.**
2. The application was registered and notice was issued to the Opponent-State. On service of the notice, the Ld. A.P.P. for the State had appeared and strongly objected the grant of applicant. IO filed reported stated that vehicle would be used in repeated crime.

3. The arguments of both learned advocates were heard at length. The careful perusal made for the records filed before this court. Read the order passed by the learned trial court and the relevant papers on record. Having gone through the papers, following facts emerges as under.
  - A. The vehicle was seized for the offence punishable under Prohibition Act.
  - B. The Police filed reported before this court stating that vehicle was used in crime.
  
4. Learned advocate of applicant, argued that learned trial court has denied the custody merely observing involvement in crime as well as bar on interim release as well as vehicle has evidentiary value and liable to confiscate.
  
5. Issue for determination of this petition.
  - A. **Whether this revision application challenging the order with regard to muddamal passed under Section 497 of BNNS (Old Sec.451 of the Criminal Procedure Code) is maintainable or not?**
  - B. **Whether the order passed by the learned trial court rejecting the said muddamal application is totally perverse and contrary in the eyes of law?**
  - C. **What is order?**
  
6. **Decisions there on :-**

- A. In affirmative.
- B. In affirmative.
- C. As per final order.

**- : Reasons :-**

**Issue No.1 :-**

- 7.1 In the case of **Satpalsingh Ajitsingh Bajaj V/s. Kalyan Trading Co. reported in 2001(3) GLR page-2243**, the Hon'ble High Court of Gujarat has held that *“Order under Sec.451 of the Criminal Procedure Code for interim custody of the muddamal article cannot be said to be an interlocutory order, and therefore, revision application against such an order is maintainable.”*
- 7.2 *Now after implication of Bharatiya Nagarik Suraksha Sanhita 2023, the old Section 451 of Cr.P.C. was now changed as Section 497 of BNSS. Therefore, the decision given regarding old provision is also applicable to new law, when there is not higher change in the provision.*
- 7.3 Hence, from the above ratio, it is clear that, this revision application is legally maintainable. It is settled principle of Law that, the Revisional Court has very limited powers, and the order under challenge should not be reversed, modified or set aside by Revisional Court, unless it is found to be totally perverse and bad in Law. Thus, decision on issue No.1 is given in affirmative.

**Issue No. 2 :-**

- 8.1 The learned trial court has rejected the custody mere on the ground that interim custody is barred and evidentiary value of vehicle.

- 8.2** This court has called for the report of IO whether he has not intended any confiscation of the vehicle.
- 8.3** The offence was alleged to be registered on Dtd.12/10/2025. Today is the 10/3/2026. During the lapse of almost 149 days, this court has not a single record that IO has initiated any procedure of confiscation or not. Merely he reported to this court that vehicle is liable for confiscation but what stapes he has been taken during these days is not narrated anywhere.
- 8.4** **It is also observed the Judgment of the Hon'ble High Court of Gujarat in Pancham Logistic Thro Sahdevsingh Manisinh Jadeja V/s. State of Gujarat & Anr. In R/Special Criminal Application No.7253 of 2025, dtd: 30.06.2025 now there is no obstruction in deciding the matters as per the Order of Hon'ble High Court passed in case of Sundarbhai Ambalal.**
- 8.5** **Recently, Hon'ble High Court of Gujarat has allowed such kind of release of vehicle in case of Bhingabhai Guribhai Bhil vs State of Gujarat on Dtd.26/6/2025 in CRMA No.6291 of 2025.**
- 8.6** In ISHVARSINH DASHARATHSINH ZALA Versus STATE OF GUJARAT & ANR. Decided on Date : 26/06/2025 Hon'ble High Court of Gujarat held that "Keeping in mind the law laid down by the Hon'ble Supreme Court in the case of Khengarbhai Lakhabhai Dambhala vs. The State of Gujarat reported in 2024 INSC 285 as well as the provision of section 98(2) of the Prohibition Act (amended on 31.07.2024), the respondent – authority failed to show or point out that after the amendment under Section 98(2) of the Prohibition Act, confiscation of the seized vehicle being done and auction proceedings

have been initiated or for the said procedure, authority has approached the learned Magistrate. Further, though as per the regulation, the prohibited goods transported in the muddamal vehicle is more than the permissible limit i.e. exceeding 20 liters, due to this reason the vehicle is liable to be confiscated by the government, both the Courts below have not committed any error in passing the order of denying the interim custody of the vehicle to the petitioner however, till date no confiscation proceedings being initiated and vehicle remained in the police station as it is. In absence of any such material or initiation of confiscation of vehicle, it is expedient to avoid situation of vehicle getting deteriorated pending the trial and hence, keeping in mind the aforesaid peculiar fact and keeping in mind the law laid down by the Hon'ble Apex Court in the case of Sunderbhai Ambalal Desai vs. State of Gujarat reported in (2002)10 SCC 283, with certain stringent conditions, present petition deserves consideration in exercise of powers under Article 226 of the Constitution of India.”

- 8.7** Same order has been passed by the Gujarat High Court in case of Ganesh Dilip Aher vs State Of Gujarat on 11 September, 2025  
NEUTRAL CITATION R/SCR.A/12516/2025
- 8.8** Same order has been passed by the Gujarat High Court in Hemusinh Munnisinh Bhadoriya vs State Of Gujarat on 12 September, 2025  
NEUTRAL CITATION R/SCR.A/12549/2025
- 8.9** Same order has been passed by the Gujarat High Court in Lalabhai Somabhai Vahoniya vs State Of Gujarat on 15 September, 2025  
NEUTRAL CITATION R/SCR.A/12623/2025

**8.10. Same order has been passed by Gujarat High Court in Rameshbhai Musabhai Sarpot vs State Of Gujarat on 14 November, 2025 NEUTRAL CITATION R/SCR.A/11013/2025 ORDER DATED: 14/11/2025.**

**8.11** Same order has been passed by the Gujarat High Court in Mahipalsinh Keharsinh Rathod vs State Of Gujarat on 11 December, 2025 NEUTRAL CITATION R/SCR.A/16394/2025

**8.12 Even IO has not stated his intention for confiscation. The bar of section 98 (2) was removed. Police does not want confiscation of the vehicle, even though, learned trial court is not willing to release the vehicles, therefore, decision on issue No.2 is given in affirmative with following final order on issue No. 3.**

**:: ORDER ::**

1. This application is hereby allowed.
2. The order passed on dated 10/2/2026 by the learned 3rd Additional Senior Civil Judge and Additional Chief Judicial Magistrate, Deesa, **for** interim custody of muddamal VEHICLE NO. GJ 01 RW 7551 seized by the police in connection with the C.R. No. 11195019251120 /2025 registered at DEESA RURAL POLICE STATION, registered for the offence punishable U/Sec. **65(A), 65(E), 98(2), 116(B) of GUJARAT (BOMBAY) PROHIBITION ACT, 1949** is hereby set-aside.
3. Concerned authority is ordered to release vehicle of the applicant NO. GJ 01 RW 7551 on the terms and conditions that the applicant:

- (i) shall furnish a solvent surety of the amount equivalent to the price of the vehicle in question stated in the FIR / panchnama.
- (ii) shall file undertaking before the learned Trial Court that he shall not transfer / change the identity, color etc. Of the vehicle till final disposal of the trial.
- (iii) shall produce the vehicle as and when directed by the learned Trial Court.
- (iv) if in future, any confiscation / auction proceedings under Section 98(2) of the Prohibition Act is initiated by the authority, in that event, the petitioner shall have to hand over / return the possession of the vehicle to the respondent authority and the petitioner shall file an undertaking to the said effect before the learned Magistrate;
- (v) in the event of any subsequent offence, the vehicle shall stand confiscated;
- (vi) present order does not preclude the learned Magistrate / Authority from passing any order under Section 98(2) of the Prohibition Act to initiate confiscation proceeding or auction order of vehicle.
- (vii) Before release of the vehicle, concerned police authority shall take photographs / identity of the vehicle from all sides at the cost of the petitioner and shall draw necessary panchanama to that effect. Said panchanama and photographs shall be part of charge sheet papers for the purpose of trial.
- (viii) A copy of this order be send to concerned RTO, where the vehicle is registered, for necessary entry in the Register and to

take notice that this Court has restrained transfer of vehicle till final disposal of the trial. Such transfer shall be subject to any order that may be passed by the learned Trial Court permitting transfer of vehicle.

4. Registry is directed to send certified copy of this order to the learned trial court as well as concerned police station for information and necessary action on immediate bases.

*Signed and Pronounced in open Court today on this 10<sup>th</sup> day of March 2026*

Date: 10/3/2026  
Place – Deesa

(Shilpa Mansukhlal Kanabar)  
6<sup>th</sup> Additional Session Judge,  
Banaskantha at Deesa  
Code: GJ00814

**PROCEEDINGS**

10/3/2026	Matter is listed
6	Order passed
	Disposed of accordingly

(Shilpa Mansukhlal Kanabar)  
6<sup>th</sup> Additional Session Judge,  
Banaskantha at Deesa  
Code: GJ00814