

Date of institution : 10/02/2026
Date of decision : 02/05/2026
Remained pending for :
Days Months Years.
18 02 00

**BEFORE THE COURT OF ADDITIONAL JUDICIAL MAGISTRATE
FIRST CLASS, TALAJA @ BHAVNAGAR.**

CC NO: 264/2026

Ex:12

Complainant: The State of Gujarat.

Versus

Accused: Sureshbhai Nanjibhai Zala

Resident of Mathavada, Nayapura Vistar,
Ta. Talaja

Appearance : APP. Ms. F. M. Shekh for Prosecution.

Ad. Mr. B.K. Pathak or Accused.

**Offence:- Under Section 65AA of
Gujarat Prohibition Act**

-: JUDGMENT :-

1. BRIEF FACTS OF THE CASE:-

The facts in nutshell giving rise to this litigation is that on 10/01/2026 the accused was found possessing the Contraband liquor and he was not able to shown any pass or permit authorising him to carry the liquor. It is further the case of the prosecution that the contraband liquor was seizes in presence of panchas and therefore, the complainant has filed the FIR before Alang Police Station vide Prohi Cr. No.

0005/2026 alleging commission of offence of Possessing Contraband Liquor which is prohibited under the Gujarat Prohibition Act. Upon investigation by the Police Officers the Charge sheet has been presented before this court against accused alleging the commission of offence under section 65AA of The Gujarat Prohibition Act.

2. TAKING COGNIZANCE:-

Upon institution of charge-sheet this court has passed order to issue summons to the accused under Section 227 of BNSS. When the accused remain present before this court, the copies of case papers has been served to the accused as per mandate of section 230 of BNSS. The court has framed the charge against the accused and plea was also recorded in response to which the accused has pleaded not guilty therefore, the prosecution has been given opportunity to prove the case against the accused by leading the evidence.

3. EVIDENCE OF PROSECUTION :-

Documentary evidence

Documents	Descriptions
Exh.07	Complaint
Exh.08	Panchnama for Crime Scene
Exh.09	FSL Ravangi

Oral Evidence

Exhibit	Deposition of witness
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Exh.06	Mr. Surpalsinh Sujansinh Sarvaiya
Exh.10	Mr. Hareshbhai Jerambhai Dihora
Exh.11	Mr. Bholabhai Jagdishbhai Dabhi

4. MARSHALING OF FACTS AND APPRECIATION OF EVIDENCE:-

- 4.1 This court has perused the entire record and the deposition of the witness are worth reading at this juncture.
- 4.2 To prove the case of the prosecution, the complainant has been examined before this court who has deposed before this court that he was on duty and raided the crime scene whereby the accused was caught possessing the contraband liquor therefore, he executed the panchnama, drawn necessary samples from the contraband liquor and as the accused was not able to show any pass or permit to possess such contraband liquor, he filed complaint before the concerned police station. During the cross examination, the complainant has admitted that he is the complainant and the investigation is also carried on by him in this case. The complainant has admitted that he has not examined any independent witness in this case. The complainant has denied the assertion that he has filed false complaint against the accused and carried out investigation to substantiate the proceedings initiated by him.

4.3 This court has perused the deposition of panchas who have deposed that no panchnama was executed in their presence. They have also deposed that they had put signatures as and when instructed by the police therefore, they do not know any fact as to physical appearance of the accused and no person was found having consumed the liquor in their presence. Learned APP has declared the panchas Hostile and in the cross examination, the panchas have admitted that they do not know anything about the alleged offence and thus, the contents of Panchanama has remained not proved.

4.4 At this juncture, it would be appropriate to look in the provisions enshrined under Section 65AA of the Prohibition Act.

65AA. Punishment for possession etc. of lesser quantity of intoxicant -

Notwithstanding anything contained in section 65, whoever sells, buys, possesses or transports any intoxicant which is less than the quantity as specified by the State Government by notification in the Official Gazette, shall, on conviction, be punished, for each such offence with imprisonment for a term which may extend to three years and also with fine.

4.5 The bare reading of section 65AA makes it clear that the activity of Buying, selling, possessing and transportation

are being punished if the quantity of the contraband is lessor than as notified by the state government. Hence, for application of punitive provision, the conscious possession of the contraband with the accused has to be proved. But, in this case, the panchas in presence of whom the contraband liquor was recovered from the accused have turned hostile and submitted that the panchanama was signed by them in the police station. This court firmly believe that the recovery of contraband liquor from accused has thus not proved by the evidence of the independent witnesses.

4.6 This court also has noted the ration laid down in the case of ***Shanvar Manu Kolio vb. Emperior*** where in it has been held that Where the law makes it obligatory for a search to take place in presence of panchas and a search has not taken place in presence of panchas and the only evidence on which the prosecution ask for a conviction of the accused is police evidence, then certainly the Court should not ordinarily act on that evidence. Because the law has provided a certain safeguard by way of a panchnama being made and a search taking place in presence of panchas, and, in the absence of that safeguard, it would generally not be safe to convict an accused person. The absence of that safeguard would be prejudicial to the accused, and in most cases that prejudice is apparent in the very fact of doing away with the safeguard provided by the law.

4.7 Upon examining the witness of prosecution, this court was of the opinion that no evidence against the accused has been brought on the record therefore, Further statement of the accused has not been recorded and both the APP and learned advocate of accused have been given ample opportunity of being heard and the matter is kept for its final decision.

4.8 This court firmly believes that there is settled principle of criminal jurisprudence that the prosecution has to prove the case beyond reasonable doubt. If the entire evidence on the record is taken into consideration and read minutely this court is of the opinion that the prosecution has miserably failed in discharging the onus he has on his head. Therefore in severe lack of any evidence, documentary or oral, direct or circumstantial against the accused this court passes following order in the wider interest of justice.

ORDER

- i. The accused **Sureshbhai Nanjibhai Zala** Resident of Mathavada, Nayapura Vistar, Ta. Talaja held not guilty and acquitted under Section 271(1) of the BNSS, 2023 from the allegation of commission of offence under Section 65AA of The Prohibition Act.

- II. The accused shall present fresh bonds for the period of six months as per section 485 of BNSS.
- III. Any interim order passed for Muddamal is made final and absolute with this order.

Pronounced and signed on 02nd day of May, 2026 in the open court.

Dt: 02/05/2026.

Talaja.

(Ms. M. J. Kikani)

GJ01549

Additional Judicial Magistrate First Class

Talaja.