

Exhibit -

Received on	09/04/2025		
Registered on	09/04/2025		
Decided on	16/07/2026		
Duration	Year	Months	Days

IN THE COURT OF ADDL. CHIEF JUDICIAL MAGISTRATE
AT JHALOD, DAHOD.

Criminal Case No. 1154/2025

FIR No. II/1241/2024

Police Station: Chakaliya

U/S: 185 of the M.V. Act

and U/s. 66(1)(b) of The

Gujarat Prohibition Act.

State of Gujarat

.....Prosecution

Versus

Remanbhai Varsingbhai Bhuriya

Age: 45; Occupation: Agriculture

R/o Vakhatpura, Nishal Faliyu,

Ta. Jhalod, Dist. Dahod.

.....Accused

JUDGMENT

1. The prosecution case in brief is that, the accused, on 31/12/2024, was driving his two wheeler motor cycle bearing

registration number GJ-05-KP-4529 in drunken condition and the complainant filed the complaint at the Jhalod Police Station. On completion of investigation, charge-sheet was filed U/s 185 of the MV Act and 66(1)(b) of the Gujarat Prohibition Act.

2. Process was issued to the accused. However, despite due service of summons and issuance of warrants, the accused failed to appear before this Court. Thereafter, the Court, being satisfied that the accused had absconded or was deliberately evading the proceedings, ordered that the trial be conducted in his absence in accordance with the provisions of Section 335 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Accordingly, the particulars of the offences punishable under Section 66(1)(b) of the Gujarat Prohibition Act and Section 185 of the motor Vehicles Act were recorded in absentia, and the matter was thereafter fixed for recording the prosecution evidence.

3. In order to prove the charge against the accused, prosecution examined 03 witnesses. i.e. Complainant, Pravinbhai Ketanbhai vide Exh. 02, and the complaint produced at Exh. 03. The panch witnesses Udesingbhai Sardarbhai Damor and Jitendrabhai Deepsingbhai Damor examined vide Exh. 04 and Exh. 06 respectively. The panchnama produced vide Exh. 05.

4. In absence of anything incriminating against the accused on the record, the further statement of the accused under section 351 of BNSS was not recorded.

5. In the given circumstances following point of determination emerged:

1) Whether the prosecution proves beyond reasonable doubt

that the accused, 31/12/2024, was driving his two wheeler motor cycle bearing registration number GJ-05-KP-4529 in drunken condition and thereby accused have committed the offence punishable under Section 185 of MV Act and 66(1)(b) of Gujarat Prohibition Act?

2) What order?

6. My finding to the above points of determination are as following:

- a) In Negative
- b) As per final order

7. My reasons for the above finding are as following:

7.1 Before moving to appreciation of the facts, the core ingredients of the provisions for which the accused has been tried needs to be looked into. The accused has been tried under Section 185 of MVA and 66(1)(b) of Gujarat Prohibition Act. Section 185 of MV Act which read as:

185. Driving by a drunken person or by a person under the influence of drugs. - Whoever, while driving, or attempting to drive, a motor vehicle,

[(a) has, in his blood, alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser, [or in any other test including a laboratory test,] or

(b) is under the influence of a drug to such an extent as to be incapable of exercising proper control over the vehicle, shall be punishable for the first offence with imprisonment for a term which may extend to six months, or with fine [of ten thousand rupees], or with both; and for a second or subsequent offence, [***], with imprisonment for a term which may extend to two years, or with fine [of fifteen thousand rupees], or with both. [Explanation. - For the purposes of this section, the expression "drug" means any intoxicant other than alcohol, natural or synthetic, or any natural material or any salt, or preparation of such substance or material as may be

notified by the Central Government under this Act and includes a narcotic drug and psychotropic substance as defined in clause (xiv) and clause (xxiii) of section 2 of the Narcotic Drugs and Psychotropic Substances Act, 1985.]

Thus, in section 185 of MVA, the essential things required to be proved is that the accused was driving the vehicle while he was in a drunken codition.

Section 66(1)(b) of Gujarat Prohibition Act which read as:

66. Penalty for illegal cultivation and collection hemp and other matters:

(1) Whoever in contravention of the provision of this Act, or of any rule, regulation or order made or of any licence, permit, pass or authorization issued, thereunder—

- (b) consumes or uses any intoxication other than opium or hemp,
- (c) *****

Shall on conviction, be punished -\

- (i) For a first offence, with imprisonment for a term which may extend to six months and with fine which may be extend to one thousand rupees:
- (ii) For a second or subsequent offence, with imprisonment for a term which may extend to two years but which shall not be less than six months and with fine which may extend to two thousand rupees.

Thus, in section 66(1)(b) of Gujarat Prohibition Act, the essential things required to be proved is that the accused was in a drunken condition.

7.2 PW 1 i.e Pravinbhai Ketanbhai is the de facto complainant. He in his examination in chief stated that accused was driving his vehicle in drunken condition and complaint was registered against him under section 185MVA and 66(1)(b) of Gujarat Prohibition Act. He identified his signature in the complaint.

7.3 Thereafter, the panch witnesses PW 2 i.e. Udesingbhai

Sardarbhai Damor and PW 3 - Jitendrabhai Deepsingbhai Damor were examined vide Exh. 04 and 06 respectively. They have not supported the panchnama produced vide Exh. 5 and stated that they passed their signatures on prepared panchnama and they have no knowledge of the panchnama.

7.4 Here to prove the expression "drunkenness" or "intoxication" is not incorporated or engrafted under Section 185 of the motor vehicles Act. It only deals with the question of driving by a drunken person and the test to be applied is on the basis of clauses (a) and (b) of Section 185, which requires the presence of alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser or he should be under the influence of a drug to such an extent he is incapable of exercising proper control over the vehicle. The expression "alcohol" is conspicuously absent in clause (b). In other words, clause (a) deals with drunkenness on account of alcohol and clause (b) deals with the influence of a drug. In so far as the influence of alcohol is concerned, a person is said to be drunken only when he is having alcohol exceeding 30 mg. per 100 ml. of blood detected in a test by a breath analyser. The expression "drunkenness" and "intoxication" are really different. The former one is lesser in gravity and the latter one is greater in gravity as to both the extent of alcohol present in blood and its influence on the person concerned. In order to bring a person under the expression "drunkenness", going by Section 185 of the motor vehicles Act, at least there should be presence of exceeding 30 mg. of alcohol per 100 ml. of blood detected in a test by a breath analyser. This would show that a mere consumption of alcohol or alcohol

contained drink alone will not bring a person within the sweep of Section 185 of the motor vehicles act or within the expression "drunkenness". Only those persons who had consumed alcohol to the extent of making its presence exceeding 30 mg. per 100 ml. of blood detectable in a test by a breath analyser alone would come under the purview of the expression "drunkenness", going by Section 185 of the motor vehicles Act.

7.5. From the evidence left by the prosecution, there is nothing on record which suggests that the present accused was driving in drunken condition. No Breath analyser report is produced. Nothing has come on record that the accused was in drunken condition as there is neither any medical report nor any substantial independent witness to prove that accused was driving vehicle while he was drunken. Further, no Form "C" required as per the rules of Gujarat Prohibition Act is been produced so as to prove that accused was in drunken condition.

7.6 Therefore, in absence of any evidence against the accused, the case against the accused could not be considered as proved beyond reasonable doubt. None of the ingredients laid down in Section 185 of MV Act and 66(1)(b) of Gujarat Prohibition Act. It has been held in plethora of cases by the Hon'ble Supreme Court of India that the prosecution must prove his case beyond reasonable doubt and it is also a fundamental principle of criminal jurisprudence, too. The prosecution for most subtle reasons has failed in proving their case beyond reasonable doubt. Therefore, this Court is inclined to pass the following order:

FINAL ORDER

- I. The accused is hereby ordered to be acquitted under Section 278 of Bharatiya Nagarik Suraksha Sanhita, 2023, from the alleged offences punishable under Section 185 of The Motor Vehicle Act and 66(1)(b) of Gujarat Prohibition Act, as the prosecution has failed to prove its case beyond reasonable doubt.
- II. No order as to Muddamal.
- III. The bail bonds given by accused to be continue till appeal period in compliance of Section 481, BNSS.

Signed, pronounced and declared in the open court on
16/07/2026.

Date: 16/07/2026
Place: Jhalod

(Dr. Inderjeet Singh Bhati)
Addl. Chief Judicial Magistrate,
Jhalod
GJ 01334