



<u>CRIMINAL REVISION</u> <u>APPLICATION NO.45/2026</u>	
RECEIVED ON	22-05-2026
REGISTERED ON	22-05-2026
DECIDED ON	03-06-2026
DURATION	DYS - MTS - YRS
	12 - 00 - 00

IN THE COURT OF 2ND ADDITIONAL SESSIONS JUDGE
DAHOD, AT LIMKHEDA.

CRIMINAL REVISION APPLICATION NO.45/2026

EXH.05

BARIA SURESHKUMAR KANTIBHAI,
AGE - 27 YEARS,
OCCUPATION - AGRICULTURE,
RESIDENT OF HIGH SCHOOL FALIYA,
KUVA, TAL.DEVGADH-BARIYA,
DIST.DAHOD.

..... APPLICANT

VERSUS

STATE OF GUJARAT,

..... OPPONENT

SUBJECT : CRIMINAL REVISION APPLICATION
FILED UNDER SECTION - 438 & 440 OF
THE BHARTIYA NAGARIK SURKSHA
SANHITA, 2023

MR. V.S.BARIA
LEARNED ADVOCATE FOR THE APPLICANT

MR. S.V.TADVI
LEARNED A. P. P. FOR THE STATE

-: J U D G M E N T :-

(1) By filing this criminal revision application the aggrieved applicant has challenged the correctness, propriety and legality of the order, passed by the learned Judicial Magistrate First Class, Devgadh-bariya in Criminal Misc. Application No.300/2026, dtd.18-05-2026, rejected the application for releasing the muddamal, seized under the provisions of the Prohibition Act.

(2) To appreciate the merits of this criminal revision application and challenge against it, few material facts of the Criminal Misc. Application No.300/2026, filed by applicant - before the learned Judicial Magistrate First Class, Devgadh-bariya requires brief notice, which are as under ;

(3) Applicant has filed an application under Section - 497 & 503 of the Bhartiya Nagarik Surksha Sanhita before the learned Judicial Magistrate First Class, Devgadh-bariya. It is contended that, Devgadh-bariya Police has seized his **Trax Cruzer** bearing Registration No.**GJ.01.HX.5233** (Here-in-after referred as the Muddamal Vehicle) in connection with the **Davgadh-baria** Police Station **C.R.No.11821005260652/25** - Section- **65(E), 116(B), 98(2)**, of the Prohibition Act. He is the owner of this vehicle. His

vehicle is not involved in this crime. If his vehicle has been lying unused in police station, its spare parts as well as tyre-tubes will be damaged and machinery will be damaged. Trial is likely to take time. Hence, it is requested to hand over interim possession of the **Muddamal Vehicle** to applicant with the conditions.

(4) The learned Judicial Magistrate First Class, Devgadhi-bariya has called for Muddamal Pavati, Panchnama and Report of Investigating Officer.

(5) The learned Judicial Magistrate First Class, Devgadhi-bariya has perused the muddamal application. He has perused the Report submitted by the investigating officer. He has heard the learned Advocate for the applicant and learned A.P.P. and dismissed the Criminal Misc. Application No.300/2026 on 18.05.2026, filed by the applicant.

(6) Being aggrieved and dis-satisfied with the above order, passed by the learned Judicial Magistrate First Class, Devgadhi-bariya, applicant - revisioner has filed this criminal revision application before this Court. The order under-challenge has been assailed on the ground that, the learned Judicial Magistrate First Class, Devgadhi-bariya in erred in considering that, applicant is a owner of the seized vehicle, therefore, in such a given case, the trial Court ought to have exercise its powers under Section 497 of BNSS. It is also submitted that, the applicant was using the Muddamal Vehicle for his daily use in

business and for the livelihood of his family. Moreover, if the muddamal is lying at the police station, then, it will deteriorate and parts of the vehicle would also not be working in future and it would be direct monetary loss to the present applicant and he has requested to release the muddamal vehicle. The order under-challenge is illegal, improper and incorrect. Hence, it is requested to set-aside the order, passed by the learned Judicial Magistrate First Class, Devgadhi-bariya and to hand over the interim custody of muddamal vehicle to the applicant on conditions.

(7) Notice of this criminal revision application has been duly served on the opponent - State.

(8) Following points arise for determination of this Court in this criminal revision application.

:- P O I N T S :-

1. Whether the applicant - revisioner proves that, the order, passed by the learned Judicial Magistrate First Class, Devgadhi-bariya in Criminal Misc. Application No.300/2026, dtd.18.05-2026 dismissing the application, filed by the applicant for interim custody of Muddamal vehicle **Trax Cruiser** bearing Registration No.**GJ.01.HX.5233** is incorrect, improper and illegal ?
2. What Order ?

(9) Findings of this Court on the above points are as under with following reasons.

1. In negative. No interference is required in the order passed by learned Judicial Magistrate First Class, Devgadh-baria in Criminal Misc. (Muddamal) Application No.300/2026.
2. As per final order.

:- REASONS :-

POINT NO.1

(10) Powers of Revisional Court under Section 438, 440 Bharatiya Nagarik Surksha Sanhita - 2023. As per Section 438, 440 Bharatiya Nagarik Surksha Sanhita - 2023, the impugned order of the Trial Court should not be interfered with by the Revisional Court ordinarily. If the order of the Trial Court appears to be improper, unjust and arbitrary then such order can be interfered with in the interest of justice.

(11) On perusal of revision application and the application for interim custody of the muddamal vehicle submitted before the Trial Court and order passed below the said application, offence registered in **Devgadh-baria** Police Station C.R.No.11821005260652/26 - Section- 65(E), 98(2), 116-B of the Prohibition Act and in the said offence vehicle seized by the investigating officer and applicant filed the Criminal Misc.

Application No.300/26 before the learned Trial Court to hand over the interim custody of the muddamal vehicle and the said application has been rejected by way of an order dtd. 18.05.2026.

(12) Learned Judicial Magistrate First Class, Devgadh-bariya has dismissed the application of interim custody of the muddamal vehicle by mainly cited the provisions of Section 98(2) of the Gujarat Prohibition Act and Gujarat Prohibition (Liquor Sample and Determination of Contened of Liquor), Rules 2012 based on the notification dtd. 08.08.2012. Section - 98(2) of the Gujarat Prohibition Act, 1949 is reproduced as under ;

1. xxxxx
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 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 shall not be released on bond or surety till the final judgment of the Court where the quantity of the seized liquor is exceeding quantity as may be prescribed by the rues.]

(13) Thus, in view of the above proviso in the rules, when the quantity of the seized liquor is more than that, the vehicle cannot be released until the final judgment of the Court. This Act is hereby amended with effect from 13.12.2011 and the notification issued and notification issued pursuant to the rules made in relation thereto is dtd 08.08.2012 and as decided therein that according to Section 98 of the this Act, the quantity of liquor more than 10 ltrs. has to counted and also the quantity of liquor

notified by Government Notification No. GG/65/2019/VDR/10/2009/2061/E-1 dtd. 02.07.2019 it used to be counted as 10 ltrs. and its limit has been revised to 20 ltrs. Thus, looking at the legal situation, if more than 20 ltrs. of liquor is found in the vehicle, the custody of the vehicle cannot be handed over until the final judgment of the Court.

(14) Present applicant has filed the application before the learned Judicial Magistrate First Class, Devgadhi-bariya for interim custody of the Muddamal Vehicle under Section 497 of the Bhartiya Nagarik Surksha Sanhita, 2023 and learned Trial Judge has rejected the said application considering the provision of Section 98(2) of the Prohibition Act, and considering the fact that other accused was transported the 624 bottles prohibited liquor worth Rs.85,920/-, in collusion of the other accused, and police has caught it during the raid and muddammal liquor found more than restricted quantity.

(15) The our Hon'ble High Court has settled down the law in clear terms in **Special Criminal Application (Possession of Muddamal) No.8521 of 2017** in the case of Pareshkumar Jaykarbhai Brahmabhatt V/s. State of Gujarat (Coram : Honourable Mr. Justice J. B. Pardiwala), dt.15.12.2017 that the courts will have no jurisdiction to order interim relief pending the trial of the seized vehicle in connection with the offence under the Prohibition Act for the quantity of liquor exceeds 10 liters,

Ld. Magistrate committed no error while passing impugned order.

(16) On Perusal of the judgment of Hon'ble Supreme Court delivered in the **Criminal Appeal NO.1547 of 2024 - Khengarbhai Lakhabhai Dambhla Vs. State of Gujarat**, it appears that applicant has filed the Special Criminal Application under Art. 226 & 227 of the Constitution of India and same has been rejected by the Hon'ble Gujarat High Court and being aggrieved and dissatisfied with the order applicant filed the this Criminal Appeal before the Hon'ble Apex Court of India and Hon'ble Supreme Court held that in the instant case, the appellant without approaching the concerned court under Section 451 of Cr.P.C. directly approached the High Court by filing Special Criminal Application under Article 226 / 227 of the Constitution of India, which could not be said to be the proper course of action for getting the custody of the property i.e. the vehicle in question in this case. It is further held by the Hon'ble Apex Court considering Section 132 of the Gujarat Prohibition Act that prohibition officer or police officer after such inquiry as may be deemed necessary that ;

- (a) *if it appears that such thing is required as evidence in the case of any person arrested, shall forward it to the Magistrate to whom such person is forwarded or for his appearance before whom bail has been taken.*
- (b) *if it appears that such thing is liable to confiscation but is not required as evidence as aforesaid, shall sent it with a full report of the particulars of seizure to the Collector.*

- (c) *if no offence appears to have been committed shall return it to be person from whose possession it was taken.*

In the appeal before the Hon'ble Supreme Court, it is not established that muddamal sent to Magistrate having jurisdiction or not ? and therefore appeal rejected under Section 451.

(17) In the case on hand, along with the application applicant also produced the Report of Investigating Officer and as per this report muddamal used in the transportation of the prohibited liquor and therefore, investigating officer requested not hand over the muddamal vehicle as there is a strong possibility that again this muddamal vehicle will be used transportation of the contraband liquor. Considering the report of the investigating officer and considering the provision of Section 98(2) and Section 99 of the Prohibition Act learned Judicial Magistrate First Class, Devgadh-bariya rejected the application of the applicant filed for the interim custody of the muddamal vehicle. In the present case on perusal of the entire record it does not appear that prohibition officer or police officer has handed over the seized muddamal vehicle as provided under Section 132 of the Gujarat Prohibition Act. As held by the Hon'ble Supreme Court in the case of Khengarbhai Lakhabhai Dambhla (Supra) if the muddamal requires at the stage of the evidence in such circumstances muddamal forwarded to the Magistrate. In the case on hand, it does not appear that muddamal is forwarded to the learned Judicial Magistrate First Class, Devgadh-bariya as muddamal vehicle is required at the stage of the evidence and in

such circumstances this court is not empowered to passe order under Section 497 of the Bhartiya Nagarik Suraksha Sanhita, 2023 to release the muddamal vehicle. I therefore, decide the point no. 1 in the negative.

POINT NO.2

(18) As a sequel to the above discussion, this criminal revision application requires to be dismissed. I therefore, pass the following final order.

:- ORDER :-

1. The criminal revision application, filed by the applicant is hereby rejected.
2. The order, passed by the learned Judicial Magistrate First Class, Devgadh-baria in Criminal Misc. Application No.300/26, dtd.18-05-2026 is hereby confirmed.

Sign & pronounce in the open Court, today, on this **03rd** Day of **June, 2026.**

DT.03-06-2026
Place ; LIMKHEDA

[MINAXI MAHESH SONI]
2ND ADDITIONAL SESSIONS JUDGE,
DAHOD AT LIMKHEDA
[Code No.GJ 00740]