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**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
GIR-SOMNATH AT UNA.**

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Criminal Revision No. 6 of 2026

Exh. _____

Applicant : **Rasikbhai Jinabhai Bambhaniya,**
Age:-42 Yrs,
Occupation:- Agriculture,
R/O:- Anjar, Ta.:-Una,
District Gir-Somnath.

Versus

Opponent : The State of Gujarat

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Ld. Advocate : Mr. L. J. Solanki for the Applicant.
Ld. Prosecutor : Mr. M. K. Gohel for the Opponent - The State.

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

1. Being aggrieved and dissatisfied with the Order dated 07.02.2026 passed by the Ld. 2nd Additional Chief Judicial Magistrate, Una below Muddamal Application in connection with the offence registered with Una Police Station C.R. No.11186008250073/2025 for the offence punishable under Sections - 65(b), 65(c), 65(d), 65(e), 65(f),

81, 98(2) and 99 of the Gujarat Prohibition (Amendment) Act, 2017 (herein after referred to as Act), the applicant has filed present Revision Application under Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023.

2. Ld. Advocate for the applicant has submitted that, the applicant being an owner of the vehicle No. **GJ-32-Q-9264 – Yamaha Fascino Motorcycle** has filed an application under Section-497 of the Bharatiya Nagarik Suraksha Sanhita, 2023 on 13.01.2026 for the interim custody of said Muddamal vehicle Motorcycle, which was seized during the investigation of C.R. No. 11186008250073/2025 for the offence punishable under Sections - 65(b), 65(c), 65(d), 65(e), 65(f), 81, 98(2) and 99 of the Gujarat Prohibition (Amendment) Act, 2017 by the Una Police Station, pursuant to a complaint filed by the Police officer. After hearing both the parties, by an order dated 07.02.2026, the Ld. Trial Court passed an impugned order in question, rejecting the application of present applicant hence, the present Revision.
3. On notice, Ld. A. P. P. Mr. M. K. Gohel has appeared on behalf of the opponent - The State.
4. I have heard Ld. Advocate Mr. L. J. Solanki for the applicant and Ld. A. P. P. Mr. M. K. Gohel for the Opponent - State.

5. For the just decision of this Criminal Revision, following points arise for my consideration :

1. Whether the impugned Order passed by the Ld. 2nd Additional Chief Judicial Magistrate, Una below Muddamal Application in connection with offence registered with Una Police Station C.R. No. 11186008250073 /2025 for the offence punishable Sections - Sections - 65(b), 65(c), 65(d), 65(e), 65(f), 81, 98(2) and 99 of Gujarat Prohibition (Amendment) Act, 2017, dated 07.02.2026 is illegal, incorrect and improper ?
2. Whether the impugned Order passed by the Ld. 2nd Additional Chief Judicial Magistrate, Una is required any interference in context of prayer of this Revision ?
3. What Order ?

6. My findings regarding above mentioned points are as under :-

1. In the Affirmative.
2. In the Affirmative.
3. As per final Order.

-:: REASONS ::-

7. **Points Nos.1 & 2 :**

(1) Before adverting the merits and demerits of the case, it is pertinent to note that, this is a revision application preferred under Section 438 of the Bharatiya Nagarik 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 the Bharatiya Nagarik 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. It is pertinent to note that Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023, provides for the interim custody of muddamal article. Ld. Magistrate is duly authorized to pass such order according to law. Relevant consideration for granting or rejecting any application for interim custody of muddamal are such that whether opportunity has been given to opposite party having some interest in muddamal ? Whether there is any counter claim by any person ? Ld. Magistrate is not required to decide question of ownership of muddamal ? The only consideration is that who is entitled for best interim possession. Amongst this, one of the important consideration is that what is the evidential value of this muddamal ? Is there any possibility of destruction of evidence, if muddamal is handed over to any party ?

(2) 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. He has also submitted that, the said Motorcycle of the applicant is not directly or indirectly involved in the said offence and the police has not produced any evidence to prove that the said Motorcycle of the applicant is involved in the alleged offence. Moreover, considering the facts of muddamal application also, it is very much clear that applicant is the owner of said Motorcycle. He has also submitted that, trial may take time and if the muddamal Motorcycle would be kept in the police custody for a long time, it would cause damaged to the said Motorcycle thereby the applicant suffered economical loss. The applicant will abide by any conditions as imposed by the Hon'ble Court. Lastly, the Ld. Advocate for the applicant has prayed to allow the application of the applicant by setting aside the Order passed by the Learned Magistrate in the muddamal application on dated 07.02.2026.

(3) On the other hand, Ld. A. P. P. for the State-opponent has strongly submitted that, the Ld. Trial Court has rightly rejected the muddamal application filed by the applicant and therefore, the order of the Ld. Trial Court is correct and proper and the same does not require any interference. Ld. A. P. P. Mr. M. K. Gohel has also submitted that, as the

investigation is going on and therefore the interim custody of said muddamal vehicle Motorcycle cannot be handed over to the applicant, till the conclusion of the trial. Therefore, impugned order does not require any interference. Thus, Learned A. P. P. has strongly opposed this Revision Application and submitted that this application may be rejected.

(4) Having heard the Learned Advocates for the respective parties and having gone through the records and proceedings, it clearly transpires that, the police has seized muddamal vehicle No. GJ-32-Q-9264 – Yamaha Fascino Motorcycle. Now, considering the entire records, it appears from the police papers that, the liquor was allegedly recovered from the field/farm, owned and possessed by the applicant. Further, it also appears from the order passed by the Ld. Trial Court that, the Ld. Trial Court rejected the said muddamal application of the applicant on the basis of the quantity of liquor - i.e. 20 liters. The Ld. Trial Court has relied upon the provision of Section 98(2) of the Gujarat Prohibition Act, 1949 and also relied upon the amendment made by the Government vide Home Department, Sachivalaya Notification No.GG/65/2019/VDR/10/2009 /2061/E-1, dated 2nd July, 2019. But, it appears from the entire police papers that, the quantity of liquors seized during the raid is 20 liters., which is not exceeds the prescribed limit. Moreover, the accused No.1 of this offense

has filed “No Claim pursis” vide Exh.4 and thereby he has declared that, the present applicant is the owner of vehicle No. GJ-32-Q-9264 – Yamaha Fascino Motorcycle and he has no objection, if the said vehicle Motorcycle be handed over to the present applicant. Further, in support of the present application, the applicant has produced the copies of the police papers, R. C. Book of vehicle Motorcycle, order passed by the Ld. Trial Court and Aadhar Card of the applicant. It appears from the copy of R. C. Book of said vehicle Motorcycle No. GJ-32-Q-9264 vide Mark-3/2 that, the present applicant is the owner of said vehicle Motorcycle. Moreover, there is any no rival claim regarding the said muddamal vehicle No. GJ-32-Q-9264 – Yamaha Fascino Motorcycle. Further, in the case of *Sunderlal Ambalal Desai Vs. State of Gujarat*, reported in **2003(1) GLH 307**, the Hon’ble Supreme Court has observed and held that, *In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.*

(5) Therefore, as per the ratio laid down by the Hon’ble Supreme Court in the aforesaid decision and in view of the above discussion, I inclined to answer the points No.1 & 2 in affirmative and I pass the following final order.

-:: ORDER ::-

1. The present Criminal Revision Application No.6 of 2026 is hereby allowed.
2. The impugned order dated - 07/02/2026 passed by the Ld. 2nd Additional Chief Judicial Magistrate, Una below Muddamal Application in connection with the offence registered with Una Police Station C.R. No.11186008250073/2025 for the offence punishable under Sections - 65(b), 65(c), 65(d), 65(e), 65(f), 81, 98(2) and 99 of the Gujarat Prohibition (Amendment) Act, 2017 is hereby set aside.
3. The interim custody of muddamal vehicle No. GJ-32-Q-9264 – Yamaha Fascino Motorcycle be handed over in interim custody of the applicant, subject to the following conditions.

Conditions :-

- A. The applicant shall execute a bond (of 1.5 time value of muddamal), within a period of one week from today, for the production of the said muddamal vehicle No. GJ-32-Q-9264 – Yamaha Fascino Motorcycle, so released, if and when required before the Investigating Officer to the satisfaction of the Investigating Officer.
- B. The applicant shall not use the said vehicle No. GJ-32-Q-9264 – Yamaha Fascino Motorcycle, for any illegal purpose or activity.

- C. The applicant shall produce the said muddamal vehicle No. GJ-32-Q-9264 – Yamaha Fascino Motorcycle before the concerned Court, as and when call upon to produce the same for the purpose of further proceedings in the matter.
- D. Yadi be sent to the Court of the Ld. 2nd Additional Chief Judicial Magistrate, Una as well as the Investigating Officer of the Una Police Station, District Gir-Somnath for compliance of this order.

Signed & pronounced in the open Court today.

Date :-02/04/2026

Place :- Una.

(Atulkumar R. Patel)

In-charge Additional Sessions Judge,
Gir-Somnath at Una.

UIC No.GJ00710.