

GJGS030003042026



Received on : 02.06.2026

Registered on : 02.06.2026

Decided on : 20.06.2026

Duration : 18 – Days.

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BEFORE THE HON'BLE 3rd ADDITIONAL SESSIONS JUDGE,
AT UNA, DISTRICT GIR-SOMNATH,

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Criminal Misc. Application No. 111 of 2026

Exh._____

Raju @ Rakesh Lakhmanbhai Makvana,

Age:-36 years, Occupation:- Agriculture,

Residing at:- Sankhada, Ta.:-Una,

District Gir-Somnath.

....Applicant

Versus

The State of Gujarat

....Opponent

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Appearance:-

Ld. Advocate Mr. B. K. Parmar for the applicant.

Ld. A. P. P. Mr. M. K. Gohel for the opponent – The State.

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Subject:- Criminal Misc. Application under Section 497 of
Bharatiya Nagatik Suraksha Samhita, 2023.

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J U D G M E N T

1. This Criminal Misc. Application is preferred under Section 497 of the Bharatiya Nagarik Suraksha Samhita, 2023 (“BNSS”) seeking interim custody of the seized property (muddamal).

2. Factual Matrix:

- 2.1. The applicant has submitted that the vehicle Hero Honda Motorcycle bearing Registration No. GJ-32-C-4448, Engine No. JC71ET0024779 and Chassis No. ME4JC712JFT009219 (vehicle) belonging to him, was seized by Una Police Station in connection with FIR being C.R. No. 11186008260102/2026, registered under Sections 65(A), 65(e), 65(b), 65(c), 65(d), 65(f), 81 and 98(2) of the Gujarat Prohibition Act, 1949 and Sections 111(2)(b) of B.N.S. 2023. The applicant desires the interim custody of the said vehicle and therefore, present application is filed.
- 2.2. It has further been contended that the applicant is the lawful owner of the aforesaid muddamal article. He has also contended that the said article is presently lying at the police station in an unprotected and unsecured condition, which may result in its damage, theft or depreciation in value. It has also been submitted that there exists no presumption of guilt unless proven through due process of law.
- 2.3. The applicant has made reliance upon the judgment of Hon'ble Supreme Court in the case of Sunderlal Ambalal Desai v. State of Gujarat, which directs

expeditious disposal of muddamal applications, especially when the items seized are valuables like cash, diamonds or gold, etc. The applicant asserts his willingness to abide by any conditions imposed by the Court and prays for release of the vehicle.

3. Submissions:

- 3.1. Ld. Advocate Mr. B. K. Parmar appearing on behalf of the applicant submitted that the muddamal vehicle, owned by the applicant, is presently lying at the police station in an unprotected condition, which may lead to its damage, theft, or depreciation in value. The applicant is the rightful owner of the said article and is capable of maintaining and preserving his property. To prove the ownership of vehicle, the applicant has submitted RC book vide Mark-3/2. The muddamal article is seized merely under suspicion, and no conviction or penalty has been imposed by the Court as of now. If the vehicle is retained at the police station for a prolonged period, there is a likelihood of physical damage to the muddamal vehicle. Therefore, it is prayed that the said muddamal article be released to the applicant on interim custody, subject to appropriate conditions.

- 3.2. On the other hand, the Learned A. P. P. Mr. M. K. Gohel, relying upon the report of the Investigating Officer (Exh.4), has strongly opposed the present application. He submitted that the accused was arrested in the said offence with the conscious possession of the illicit liquor. It has further been submitted that if the muddamal is released, there exists a strong possibility of its misuse and non-production before the Court during trial. Accordingly, the Ld. APP has opposed the interim release of the muddamal.

4. Findings and Analysis:

- 4.1. I have considered the rival submissions advanced by both parties and have carefully perused the documents placed on record and the opinion/report of the Investigating Officer.
- 4.2. On perusal of report filed by Investigating Officer, it transpires that seized vehicle was used for transporting a substantial quantity of Indian-Made Foreign Liquor and the quantity of liquor seized from the accused person exceeded the prescribed limit.

- 4.3. It is evident that the muddamal vehicle has been seized from the accused and the vehicle is alleged to have been used for transportation of illicit liquor. In the present case, a significant quantity exceeding prescribed quantity of illicit liquor was recovered from accused persons.
- 4.4. On perusal of Section 98(2) of the Gujarat Prohibition Act, it transpires that a statutory embargo exists on the release of such vehicle. It is, therefore, necessary to examine the relevant statutory provisions to determine the legality and maintainability of the present application.
- 4.5. Section 98(2) of the Gujarat Prohibition Act provides that any receptacle, package, covering, or conveyance (including carts, vessels, vehicles, etc.) used in the transportation of articles liable to confiscation shall also be subject to confiscation by order of the Court. Significantly, it mandates that such conveyances shall not be released on bond or surety prior to the conclusion of the trial if the quantity of liquor seized exceeds the legally prescribed limit. As per the relevant notification issued by the Government of Gujarat, the prescribed limit is up to 20 liters. In the present case, the

quantity of liquor seized far exceeds the permissible limit, thereby attracting the embargo under Section 98(2).

- 4.6. Section 99 of the Act provides that during the trial, the Court may order confiscation of an article, and may, in certain cases, impose a fine in lieu of confiscation. However, it further stipulates that no conveyance shall be confiscated if the owner proves that due care was exercised to prevent the commission of the offence. Such a determination is to be made only at the stage of final judgment, and not during the pendency of the proceedings.
- 4.7. Section 100 of the Act applies where the offender is unknown or absconding, and empowers the Collector or other competent authority to order confiscation after due inquiry. This provision is not applicable to the present case as the accused has been arrested and is currently facing prosecution.
- 4.8. Section 132(b) provides that if a seized item is not required as evidence but is liable to confiscation, the concerned officer may forward the same to the Collector along with a full report. However, in the present case, as per the report of the Investigating

Officer, the muddamal vehicle is required to be retained as evidence in the ongoing trial. Hence, the condition for invoking Section 132(b) is not fulfilled.

- 4.9. In view of the above legal position, it is clear that the embargo imposed under Section 98(2) of the Gujarat Prohibition Act operates in the present case and prohibits the release of the muddamal vehicle on bond or surety prior to the conclusion of the trial.
- 4.10. In light of the foregoing discussion, it is evident that the present application does not fulfill the necessary legal requirements for the interim release of the muddamal vehicle. The applicant has failed to establish a valid and lawful claim to interim custody of the said article at this stage.
- 4.11. Even otherwise the accused was arrested with the vehicle in question from the place from where the large quantity of illicit liquor was seized. The release of the vehicle would multiply the possibilities of repeatedly using the vehicle in the like offence.

5. Conclusion:

5.1. In view of the foregoing discussion, this Court finds no merit in the present application, and therefore, following order is passed in the interest of justice:

-:: O R D E R ::-

1. The present Criminal Misc. Application stands **dismissed**.

Signed and pronounced today in Open Court on this **20th** day of **June, 2026**.

Date : 20/06/2026
Una

(Sunil Mahendrabhai Govani),
3rd Addl. Sessions Judge,
Una, District: Gir Somnath.
UID : GJ00918