



IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,

AT:MANAVADAR JUNAGADH

CRIMINAL CASE NO. 239/2026

In the matter of :-

GOVERNMENT OF GUJARAT

COMPLAINANT

V/s

MAHIPALSINH JAGANARAM JAKHAD

ACCUSED

Date of Judgment : 1/07/2026

OFFENCES PERTAINING TO GUJARAT PROHIBITION ACT, 1949

SECTION 65(E), 116B, 81, 98(2)

APPEARANCE :-

Learned APP Shri S H PARMAR for the complainant.

Learned advocate Mr. M P JOSHI for the accused.

ORDER BELOW EXHIBIT 5 AND EXHIBIT 1

1. The applicant-accused has preferred the present application under section 262 of the BNSS seeking prayer to discharge the present applicant in connection to the criminal case number

239/2026 in pursuance to the FIR number 11203037230156 of 2023 registered with MANAVADAR police station, JUNAGADH for the alleged offences punishable under section 65(e), 116B, 81, 98(2) of Gujarat prohibition Act, 1949.

The brief facts of the case are as under

2. The said FIR is filed against 3 accused persons namely accused number 1 ANILBHAI VADHIYA, accused number 2 KAMLESHBHAI KHER , accused number 3 SAGARBHAI PATEL, as on dated 22/05/2023.
3. The brief allegations of the said FIR number are that when the raid was conducted by the police officials the main accused number 1 and accused number 2, 3 was caught at the scene of the offence, while applicant was not caught from the scene of offence. The main accused was caught with prohibited Indian made foreign liquor in the presence of reputed panch witnesses, a total cost of muddamal recovered was Rs. 11,400/- all the accused have committed a crime by helping and conspiring with each other with offences punishable under 65(e), 81, 98(2), 116B of Gujarat prohibition Act, 1949.
4. The investigation was carried out by the investigating officer statements of witnesses were recorded, main Charge-sheet and one supplementary charge-sheet was filed. The main chargesheet was filed against 3 accused and on the basis of charge-sheet a criminal case was registered vide number 341/2024 against the said accused.
5. The main accused were tried for the offences punishable under section 65(e), 81, 98(2), 116B of Gujarat prohibition Act, 1949 and acquitted by the hon'ble Judicial magistrate first class, manavadar vide judgment dated 30/08/2025.

6. Present applicant-accused was arrested and a supplementary charge-sheet came to be filed against the present applicant-accused before this court. The present criminal case was registered against the said applicant-accused vide number 239/2026.

Arguments canvassed by the learned advocate on the behalf of applicant-accused.

7. Learned advocate has argued that there is no material or evidence available on record which connects the present applicant accused with the commission of offence further it is submitted that even if the entire charge-sheet is taken as a gospel truth the same do not constitute any offence against the present applicant as alleged.
8. Further the learned advocate appearing for the applicant accused has argued that the present applicant is not present at the scene of the offence when the raid was conducted. It is argued that the name of the present applicant is only on the basis of the statement of the co-accused, further it is the say of the learned advocate that there are no call details report filed by the investigating officer or there is no other material connecting the present applicant accused to the said alleged offence.
9. It is further submitted that the allegation that the contraband liquor was provided by the present applicant-accused to the other accused is false and the same is based only on the statements of the co-accused. Further statements of the witnesses recorded by the investigating officer also specifically state that the other accused has given the name of the present applicant to the police. These statements are no evidence in the

eyes of the law as they are hearsay statements. There are no other statements of witnesses which reflects the involvement or presence of the present applicant at the place of the offence and neither there are any materials pointing out the involvement of the present applicant on record.

10. It is also submitted that the main accused were tried for the offences punishable under section 65(e), 81, 98(2), 116B of Gujarat prohibition Act, 1949 and acquitted by the learned Judicial magistrate first class, manavadar vide judgment dated 30/08/2025 Lastly it is prayed to discharge the present applicant-accused for the said offences arising out of same incident.

Arguments canvassed by the additional public prosecutor.

11. Learned Additional Public Prosecutor has submitted that there is a prima facie case against the present applicant-accused and after thorough investigation and recording of statements of witnesses and panch witness the present applicant-accused is charge-sheeted as per section 173 of the code of criminal procedure.
12. Learned Additional Public Prosecutor has further submitted that there is enough ample material available on the record as evidence and the said material evidences and documents is annexed with the supplementary charge-sheet.
13. There is a specific role assigned to the present applicant-accused and his role is different from the main accused, the allegations in the FIR is that the present applicant-accused has supplied the alleged contraband liquor to the main accused and

submitted that his role is on the higher side and he requires to be tried for the offences punishable under section 65(e), 81, 98(2), 116B of Gujarat prohibition Act, 1949 and the benefit of the acquittal of main accused should not go in favour of the present-applicant. Lastly it is requested to reject the present application of the accused and to frame the charges under section 65(e), 81, 98(2), 116B of Gujarat prohibition Act, 1949.

14. Having heard the arguments advanced by both the learned advocates and after perusal of the documents on record. Considering the submissions and arguments advanced before this court. This court is of the opinion that in the interest of justice and in the present facts and circumstances of this case present application to discharge the applicant-accused of this criminal case deserves to be allowed. Following are the findings and reasons for the same.

Reasons and findings

15. After perusing the entire supplementary charge-sheet and the documents annexed with the charge-sheet it appears that though the name of the present applicant-accused is not mentioned in the FIR but what is the exact specific role of the present applicant-accused involved in the commission of the crime, no where it is stated in the charge-sheet and supporting documents. There is no material or evidence available on record which connects the present applicant-accused with the commission of offence.
16. Further from the allegations made in the FIR it is true that the present applicant-accused is not present at the scene of the offence when the raid was conducted. After perusal of the statements annexed with charge-sheet it is true that the name

of the present applicant-accused is only on the basis of the statement of the co-accused, further the fact remains that there are no call details report filed by the investigating officer.

17. The learned advocate has rightly brought to the notice of this court that the allegation that the contraband liquor was provided by the present applicant-accused to the other accused is purely based only on the statements of the co-accused. There are no other statements of witnesses which reflects the involvement or presence of the present applicant at the place of the offence and neither there are any materials pointing out the involvement of the present applicant on record.
18. It appears from supporting documents that the main accused who was present at the scene of the offence as per FIR was tried for the offences punishable under 65(e), 81, 116B of Gujarat prohibition Act, 1949 and acquitted by the hon'ble Judicial magistrate first class, manavadar vide judgment dated 30/08/2025 After perusal of the judgment it appears that the panch witnesses have become hostile and no evidence was found against the said main accused and this benefit should definitely be in favour of applicant herein.
19. At this juncture, this court finds it important to discuss the observations made in the case of **Raju @ Raju Gandy Roopchand Krishnani Versus State Of Gujarat CRIMINAL REVISION APPLICATION No. 265 of 2019; 2019 (0) AIJEL-HC 241091 by Hon'ble GUJARAT HIGH COURT, Decided on:- 24-04-2019 para 11 to para 14** where in it has been held that whatever evidence produced with charge sheet against applicant accused is only statement of co-accused, the same is hit by Section 25 of Indian Evidence Act. The relevant observations are reproduced herein:

11. Learned Senior counsel has argued and relied upon the judgment delivered in the case of *Girish H. Trivedi Vs. State of Gujarat* by this Court in Criminal Misc.Application No.5776 of 2004. Relevant paragraph of the said order reads as under:

"7. Considering the matter in exercise of powers conferred by Section 482 of Code of Criminal Procedure, it is to be seen, whether the facts disclosed by the charge-sheet constitutes any *prima facie* offence against the petitioner. In this exercise, the Court is not permitted to add or subtract anything and shall take the papers or materials on their face value. On going through the papers minutely along with learned advocates, for the parties, the fact emerges that so far as the ownership of the bulk of foreign liquor is concerned, there are statements of the coaccused before the police that the said bulk of foreign liquor was transported by the present petitioner. Now if this fact is considered with Section 3 of the Indian Evidence Act, the said evidence would not be admissible in a trial. Meaning thereby that if, this fact is taken on its face value, it does not disclose any involvement of the petitioner in the crime and the ingredient of any of the offences levelled against him under the Bombay Prohibition Act. It is well settled that the statements made by the co-accused before police cannot be used against the accused. So far as this aspect is concerned, it is clear that there is no material against the present petitioner with the prosecuting agency to prosecute the petitioner. Further if the fact is taken on its face value about the petitioner reaching at the spot in Santro Car near the place of raid by police then too this would not culminate into a material to prosecute the petitioner for charges levelled against him. Mere fact that the police tried to stop the car and the petitioner ran away would not be incriminating as to prosecute the petitioner for Sections 66(1)(B), 65 A & E, 81, 112 and 116 of the Bombay Prohibition Act. Therefore, after carefully considering the charge-sheet papers, *prima facie*, without embarking upon any inquiry as to truth or falsity for the same, it

is clearly borne out that no material is brought out to prosecute the petitioner in the said crime. In this view of the matter, this application is required to be allowed."

12. *As per Section 5 of the Evidence Act, the prosecution has to collect the evidence in any proceeding of existence or non existence of every fact in issue and of such other facts which is declared to be relevant under Section 6 to 55 of the Evidence Act and no others.*

In this case whatever the evidence produced with charge-sheet against the applicant-accused is only statement of co-accused, which is hit by Section 25 of the Evidence Act.

13. *In the instant case on hand no material is brought out from the chargesheet to prosecute the applicant in alleged offence except the statement of the co-accused. There is no other evidence contained in the charge-sheet. Merely because the applicant is involved in 51 similar cases he cannot be prosecuted in the present case.*

14. *Further, considering the contents of the application, argument advanced by the learned counsels for both the parties, record of the case, evidence submitted with charge-sheet and the ratio laid down by the Honourable Supreme Court and by this Court in above cases, it appears that charge against the accused to be groundless. The order passed by the learned trial Court is not correct, legal and proper in the eye of law. Hence, it deserve to be quash and set aside.*

20. Applying the ratio of above case of hon'ble High Court of Gujarat and making it same applicable to the present case on hand, in the instant case also no material is brought out from the chargesheet to prosecute the applicant in alleged offence except the statement of the co-accused. There is no other evidence contained in the charge-sheet. It requires to be noted that there is a gap of approximate 3 years in filing of the supplementary charge-sheet from the date of first

information report, no further material evidences have been collected after the arrest of the accused. After investigation, the investigating agency, in absence of relevant materials has placed the charge-sheet for trial of the applicant-accused person.

21. Therefore, this court is inclined to put a finding that the charge against the applicant-accused appears to be groundless and hence, in view of the foregoing discussion and finding, the following final order is passed in the interest of justice.

FINAL ORDER

1. The application of the accused is hereby allowed.
2. The present accused is hereby discharged in connection to the criminal case number 239/2026 in connection to the FIR number 11203037230156 of 2023 registered with manavadar police station, junagadh for the alleged offences punishable under section 65(e), 81, 98(2), 116B of Gujarat prohibition Act, 1949.
3. The muddamal described in chargesheet should be destroyed after the expiry of limitation of appeal/revision as per the rules and regulations.

Pronounced in the open Court today on this 1st July 2026

(Bharat Ramchand Lakhwani)
Judicial Magistrate First Class, manavadar
Judge Code-GJ01711