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Decided on 18-03-2026
Duration Ys. Ms. Ds.
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IN THE COURT OF 8TH ADDITIONAL SESSIONS
JUDGE,
KACHCHH AT BHUJ.
Criminal Revision Application No. 26/2026

Exh. 09

APPLICANT/REVISIONER :

LATIF MAMAD SUMRA,
Age : 32, Occu : Driving,
Residing at : Sumravandh,
Chakar Kotda,
Tal. Bhuj-Kachchh

V/S.

OPPONENT :

STATE OF GUJARAT

Through :
Public Prosecutor,
Court Complex, Bhuj - Kachchh

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Application U/s. 438 of BNSS.

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APPEARANCE:

Ld. Advocate for the Applicant/Revisionist : Mr. K.P.Gadhavi
Ld. Spl.P.P. for the opponent : Mr. M.M.Patel

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: J U D G M E N T :-

(1) The present Revisionist/Applicant (*hereinafter referred to as "Applicant"*) has questioned the legality and validity of

impugned order dated 17.02.2026 passed by Ld. Additional Judicial Magistrate First Class, Mundra-Kachchh (*herein after referred to as " Ld. Trial Court"*) in Cr.M.A. No. 19/2026 for releasing Muddamal vehicle whereby Ld. Trial Judge has rejected prayer of the applicant for releasing / returning muddamal / Tata Motor LTD, Modal No. 1815 LPT DCR48HSD 155B6M5 bearing Registration No.GJ-12-BZ-8554, which was seized in connection of offence registered at Mundra Police Station vide I.Cr. No. 11205032251773/2025 for the offence punishable Section 65(A)(E), 81, 116(B), 98(2) of Prohibition Act.

(2) Thereafter, present applicant has filed an application to release/ return his vehicle but the same was rejected by Ld. Trial Court *vide* an order Dtd. 17.02.2026 and against the said order, applicant has preferred the present revision application.

(3) Ld. Advocate for applicant/revisionist has submitted that, the order passed by Ld. Trial Court is bad in law which requires to be quashed. It is further submitted that, Ld. Trial Court has not taken into consideration of the settled principle of law. It is submitted that, contraband liquor was not found in the vehicle in question. It is submitted that, if the said vehicle is not returned to the applicant, it would cause injuries to the applicant. It is further submitted that at present the said vehicle is lying in the open space in the police station and thus, it may be possible to damage the spare-parts, tire and battery. On all these grounds, it is submitted that, the applicant is owner of the vehicle and he has

not used the vehicle for illegal activity and as such, the vehicle may kindly be released in his favour and considering this situation, the order of the Ld. Trial Court is requires to be quashed and set aside.

(5) Per contra, Ld. Special P.P. has submitted that, the vehicle is involved in the illegal transportation of the English liquor and total 31500 Beer Tin are seized in this offence and as per the provision of Section 98(2) of the Prohibition Act, this vehicle should not be released. It is submitted that, the finding rendered by the Ld. Trial Court is appears to be just and proper appreciation of the material available on record and therefore, the order passed by Ld. Trial Court does not warrant any interference. On these grounds, it is prayed that the present application may kindly be rejected.

(6) Heard, Ld. Advocates for the rival parties and perused impugned order passed by Ld. Trial Court.

(7) To determine the present criminal revision application, the following issues have been framed :-

- (a) Whether the Ld. Trial Court has committed any error of law in passing the impugned order dated 17.02.2026 in Cr.M.A. No. 19/2026 vide I.Cr. No. 11205032251773/2025 registered the offence in Mundra Police Station (For releasing muddamal) ?
- (b) What order ?

(8) My findings as to the above issues :

(a) In the Affirmative.

(b) As per final order.

-::REASONS ::-

(9) ISSUE NO. 1 :-

So far as releasing the muddamal under Prohibition Act, it would be apt to refer a decision rendered by the Hon'ble High Court of Gujarat in the case of **Paresh Jaykarbhai Brahmhatt Vs. State of Gujarat reported in 2018(1)GLR 558** wherein the Hon'ble High Court has held as under that ;

" 65. My final conclusion is that Section 98(2) of the Act, 1949 curtails the power of the Magistrate to order interim release of the seized vehicle under Sections 451 or 457 of the Cr.P.C., as the case may be. The Courts below will have no jurisdiction to order interim release pending the trial of the seized vehicle in connection with the offence under the Act, 1949, if the quantity of the liquor recovered exceeds 10 litres in quantity.

Thus, the Hon'ble High Court has ruled in the aforementioned judgment that Courts lack jurisdiction to order the interim release of muddamal when the recovered liquor exceeds 20 litres.

(11) Thereafter, *vide* Notification **No. GG/64/2014/VDR/10/2009/2016/E-1, Dtd. 02/07/2017** issued by Home Department, Sachivalaya, Gandhinagar, the amendment was carried out in Gujarat Prohibition (Liquor Sample and Determination of Quantity Seized Liquor) Rules 2009, in Sub-Rule 9, it is read as ***“ 20 Litres instead of 10 Litres”***.

(12) Furthermore, I have considered the rival submissions and record of the case and also perused the affidavit/ report filed by the Policy Agency, it appears that, the Police Agency has seized the vehicle in question bearing Registration No.GJ-12-BZ-8554 in connection with the offence under the Gujarat Prohibition Act. Having considered the panchanama of place of offence produced at list Exh. 8, it appears that the contraband Beer Tin were found nearby this Truck/ Vehicle in question and no any contraband Beer Tin or English Liquor is found from the said vehicle. Considering these facts on record, it cannot be said that the applicant or accused were transporting the liquor/ Beer Tin through the said vehicle and hence, the embargo of the Section 98(2) of the Gujarat Prohibition Act would not come into play. At this juncture, it is apt to refer the judgment of the Hon'ble High Court of Gujarat in **Special Criminal Application No. 10060 of 2019 in Kanaksinh @ Kano Ashoksinh Jadeja Vs. State of Gujarat** wherein the Hon'ble High Court of Gujarat has referred the decision in the case of *Pareshkumar Jaykarbhai Brahmbhatt (Supra)* and in para 5 of this judgment, it is observed that *"In Court's considered opinion, both the courts below have not considered the facts of the case in true perception because, it is a matter of fact that no any contraband liquor was found from the vehicle in question and, therefore, no any provision under Section 98(2) of the Gujarat Prohibition Act would come into play at all"*. In the case in hand also no any muddamal liquor is alleged to have been recovered from this vehicle. In addition thereto, as per the R.T.O record, the muddamal vehicle i.e. Truck bearing Registration No.GJ-12-BZ-8554 is owned by

the applicant- Latif Mamad Sumra. Further, if the said vehicle is not handed over and if the vehicle is kept in the police station pending trial, then, its condition may be deteriorated and over a period of time, it may become a scrap only. In light of peculiar facts of the case and as per the law laid down by the Hon'ble Apex Court in the case of **Sundar Ambalal Desai V/s State of Gujarat, reported in 2003(2) G.L.R 1337 (S.C)**, the present application is requires to be allowed by imposing certain terms and conditions. Further, the revisionist has produced the "No Objection" Certificate produced by the Indusing Bank Ltd/ Finance Company along with Loan Statement from which it transpires that, entire loan amount has been repaid, no loan amount is pending. Hence, the issue No. 1 is answered in Affirmative and in view of the all above facts and circumstances, this Court passes the following order in the larger interest of justice.

:- ORDER :-

- (1) Present Application bearing Criminal Revision No. 26 of 2026 filed by applicant U/s. 438 of B.N.S.S., is hereby allowed.
- (2) The order passed by Ld. Additional Judicial Magistrate First Class, Mundra-Kachchh in Cr.M.A. No. 19/2026 in connection with I Cr. No. 11205032251773/2025 registered in Mundra Police Station, order Dtd. 17/02/2026 is hereby quashed and set aside.
- (3) The interim custody of the Truck bearing registration No. **GJ-12-BY-8554** is hereby ordered

to be handed over to Applicant- **LATIF MAMAD SUMRA**, on executing bond of **one and half amount** of vehicle on the following conditions.

Conditions:-

1. The applicant is directed to produce the muddmal vehicle as and when required before concerned Investigating Officer/ Court.
 2. The applicant shall not use the vehicle for illegal purposes.
 3. The applicant, shall not sale, transfer or alienate the vehicle in any manner till the pendency of trial.
 4. The investigating officer is directed to handover the possession of muddamal vehicle after drawing pannchnama and taking necessary photographs of the vehicle.
- (3) The record and proceedings, if any, be sent to Ld. Trial Court henceforth.

Yadi be made accordingly.

Signed and Pronounced in this open court on this
18th day of March, 2026.

Date : 18/03/2026

Place: Bhuj.

(Tushar N. Khandhadiya)

8th Addl. Sessions Judge, Bhuj -

U.I.Code No.GJ00953

/Vaghela/