

2. Notice issued to the opponent was duly served upon the opponent and on behalf of the opponent Ld.Sp.P.P. Mr.H.A.Parmar has appeared and Mr.H.A.Parmar,Ld.Sp.P.P. has appeared on behalf of the State and has produced the report submitted by the investigating officer vide Exh.5.

3. Learned advocate for the applicant has submitted that that if the said muddamal vehicle will remain in police station, it would cause damage to it and therefore, has prayed to allow this application. The applicant has shown willingness to obey the conditions, which may be imposed by the Court. Per contra, Ld.Sp.P.P. has submitted the report of the investigating officer at Exh.5 and has objected the present application preferred by the applicant and submitted that considering the quantity of muddmal liquor involved in the offence i.e. more than 20 liters and provisions of Section-98 (2) of the Act and law settled by the Hon'ble High Apex Court and Hon'ble High Court of Gujarat, the present application is required to be rejected.

4. Heard Ld. Advocates for the respective parties and perused the record as well as the written opinion filed by the investigating officer at Exh.5.

5. Looking to the contents of the application and the documents annexed thereto, it appears that an offence has been registered with Thangadh Police Station vide C.R. No. 11211050250440/2025 for the offences punishable under Sections 65(a), 65(e), 81, 83, 116(b) and 98(2) of the Gujarat Prohibition Act and Sections 111(2)(b), 111(3), 111(4), 336(2),

336(3) and 340(2) of the B.N.S.S. It further transpires that in connection with the registration of the aforesaid offence, the police have seized the vehicle in question, which was involved in the commission of the offence. The present applicant claims to be the owner of the said vehicle and has preferred the present application seeking release of the vehicle which has been seized by the police in connection with the aforesaid offence.

6. Considering the above settled position of law and so far as the facts of the present case are concerned, as per Section 98(2) of the Gujarat Prohibition Act, the Court cannot release the vehicle on bond or surety pending the final judgment of the Court where the quantity of the seized liquor exceeds the quantity prescribed under the Rules. As per the Gujarat Prohibition (Liquor Samples and Determination of Quantity Seized Liquor) Rules, 2012, as per the Notification of the State Government dated 06-11-2019, Rule 9: Seizure of vehicle when quantity more than twenty liters:- Where the quantity of liquor seized is more than twenty liters in respect of any offence under the Act, the vehicle or conveyance carrying such liquor shall be liable to be confiscated in accordance with the provisions of Sub-section (2) of Section-98 of the Act.

7. In this regard it is also profitable to peruse the judgment passed by the Hon'ble High Court in **Special Criminal Application (Possession of Muddamal) No. 8521 of 2017** in the case of **Pareshkumar Jaykarbhai Brahmhatt v/s. State of Gujarat**, in which, the Hon'ble High Court has held 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, is the quantity of the liquor recovered exceeds 10 liters in quantity.

66. The legislature in its wisdom has prescribed a methodology to deal with the prohibition offences, seizure, confiscation, release etc. Once such a procedure is prescribed, the Courts have to examine the rights of the parties in accordance with the procedure so prescribed. I am unable to hold that the Magistrate and Revisional Court have committed any error in rejecting the applications preferred by the respective applicants under Section 451 or 457 of the Cr.P.C. In view of the provisions of Section 98(2) of the Act, 1949, the general provisions laid down in Sunderbhai Ambalal Desai Vs. State of Gujarat [JT(200) 10 SC 80] cannot be pressed into service for release of vehicle from the Court of Magistrate.”

8. Thus, considering the ratio laid down by the Hon'ble High Court and considering the fact that there is amendment in Section-98(2) of the Gujarat Prohibition Act, and there is also amendment in the Gujarat Prohibition (Liquor Samples and Determination of Quantity Seized Liquor) Rules 2012, Rule-9 and as per this new Rule, the quantity of the liquor has been enhanced from 10 liters to 20 liters.

9. In the present case, it appears from the record that the quantity of the seized illegal liquor exceeds 20 liters. Therefore, the provisions of Section 98(2) of the Act come into play and, consequently, pending the trial of the case, the muddamal vehicle seized in connection with the offence under the said Act cannot be ordered to be released.

10. Hence, in view of the above, I do not find any reason to release the muddamal vehicle in question during the pendency of the case. Hence I pass the following order.

:: ORDER ::

The present Criminal Misc Application is hereby dismissed.

Pronounced in the open Court on this **9th** day of **March, 2026.**

Date : 09/03/2026

Place: Surendranagar.

(KAILASNATH R. UPADHYAY)

Sessions Judge,

Surendranagar.

(GJ00333)