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**IN THE COURT OF THE 4th ADDITIONAL SESSIONS JUDGE
(Mr. N.G. Shah), SURENDRANAGAR.**

Criminal Misc. Application No. 252 of 2026

Exh.

Danabhai Dhudabhai Bhuva
Aged about 31 years, Religion: Hindu
Occupation: Agriculture,
Residing at: Limbdi, Haveli Seri,
Dist. Surendranagar.

...Applicant

Versus

1. The State of Gujarat
2. Department of Geology and Mining,
Surendranagar.

...Opponent

Learned Advocate Mr. H.A. Parmar for the applicant.

Learned PP Mr. M.P. Sabhani for the opponent – State.

Application under Section 497 of the Bhartiya Nagarik Suraksha
Sanhita, 2023

JUDGMENT

1. The Court has perused the documents submitted by the applicant as listed in Documentary Evidence Exh. 03 and Exh. 05 in support of the application. Heard the Ld. Advocate, Mr. H.A. Parmar for the applicant and Learned PP, Mr. M.P. Sabhani for the state at length.
2. In view of the facts of the present application filed by the applicant seeking interim custody of the seized muddamal Excavator machine i.e. XCMG Company Excavator Machine, Model-XE210i bearing Engine No. 32G95429503 which has been seized by the Mines Supervisor and kept it in the custody of the Department of Geology and Minerals. It is further submitted that the said machine was taken to Madargadh Village of Sayla Taluka for removing the acacia fence from the farm for drainage work and at the time of the raid by the investigation team no illegal excavation or digging work was going on by our excavator machine at the spot and further the machine was parked in the farm and the same has been seized by the Mines Supervisor and has not been involved in any illegal mining or excavation activities. However, the said machine was erroneously and arbitrarily seized. After the seizure of the said machine, a notice has been issued by the Department of Geology and Minerals on 15/01/2026 and in the said notice it has also been clearly mentioned that the said machine was in closed and parked condition at the time of seizure which was used for removing the acacia fence for drainage purpose from the farm. The said machine is the only tool of our business and used for different earthen works and road related work due to soil work and removal of excess soil and earn our livelihood

for our family. Presently, the said machine is being left in the open area and in closed condition, there is a possibility that its main jack and hydraulics, wiring may get damaged and many other mechanical defects are likely to occur. This may result in substantial and irreparable financial loss to the applicant. The applicant is ready and willing to abide by any terms and conditions that may be imposed by this Hon'ble Court, including furnishing of appropriate bond.

3. In support of this application, the applicant has submitted the Original Bill of the seized machine vide Mark 5/1, Copy of the Show Cause Notice issued by the Department of Geology and Minerals vide Mark 3/2, Copy of the Seizure Memo vide Mark 3/3, Copy of the Adhar Card of the applicant vide Mark 3/4, True Copy of the Exh.1 of Sessions Case No. 17/2026 vide Mark 3/5 and Original No Objection Certificate issued by Shriram Finance Ltd. vide Mark 5/2. The above documents are taken into consideration.
4. In connection with the present application of the applicant, this Hon'ble Court issued proper notice to the respondents as per the procedure of law. Upon service of the said notice, the respondents appeared before this Hon'ble Court and submitted their opinion, marked as Exhibit No. 4. In the opinion vide Exh. 4, it is stated that on receiving information from the Police Inspector, Sayla on 03/01/2026 the investigation team raided in Madargarh Village (Tal. Sayla) and found that a large-scale illegal blacktrap mineral mining was taking place. 13 Dumpers and 03 excavator machines including the machine of the applicant were found engaged in the mining of illegal hard moram and blacktrap mineral from the site. Accordingly,

all the 03 machines were seized and kept at Bahumali Bhavan, Surendranagar. Further, on 12/01/2026 Haribhai @ Hirabhai Bhimabhai Jograna appeared before the office and stated that machine in question belongs to Danabhai Dhudabhai Bhuva and our machine was lying in a closed condition in the farm for the last 15 days which was brought for removing acacia fence for drainage purposes and we have nothing to do with the blacktrap mineral mining pit. Surveyor of this office surveyed the site and it was found that a total of 11624.57 MT of Hard Moram mineral and 91323.96 MT of Blacktrap Mineral had been illegally mined and thus an amount of Rs. 4,03,34,374/- was imposed as penalty for settlement of the offence. Show Cause Notices were issued to the owners of the excavator machines, landowners and the persons involved in the illegal mining on 15/01/2026 to appear before this office along with the supporting documents. In response to the said notice the owners of the excavator machines appeared in person before this office and stated that he had rented out his excavator machine to Ratnabhai Jograna and Caterpillar Company machine to Haribhai Jograna and he did not know anything about where the machines were being operated. Since, the submissions of the owners of the excavator machines were not considered by this office, hence, a complaint in this regard has been filed before the Hon'ble Court vide Sessions Case No. 17/2026 as per the provisions of Gujarat Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017. Since, the owners of the excavator machines has caused huge financial loss to the government treasury by illegally mining minerals of huge value and have not paid the compounding amount

for the said offence and in order to recover the penalty amount from the accused persons it is humbly requested to the Hon'ble Court to pass necessary orders in this regard.

5. In the present matter, the Ld. Adv. for the applicant has argued the case based on the facts stated in the application and has submitted that the excavator machine in question, which has been seized, is the lawful property of the applicant. Since the said machine belongs to the applicant and continued non-use of the machine may result in mechanical damage, damage to its main jack and hydraulics, wiring etc., the applicant is likely to suffer substantial financial loss. Therefore, in light of the judgment delivered by the Hon'ble Supreme Court in the case of Sunderbhai Ambalal Desai, it is submitted that the applicant is entitled to the interim custody of the said machine. Accordingly, it is prayed that the present application be allowed.
6. Thus, upon consideration of the facts and the documents placed on record along with the present application, it appears that the muddamal XCMG Company Excavator Machine, Model-XE210i bearing Engine No. 32G95429503, was seized by the Department of Geology and Minerals. Further, a complaint in this regard has been filed before this Hon'ble Court vide Sessions Case No. 17/2026. The said machine, allegedly owned by the present applicant, was found to be mining illegal hard moram and blacktrap mineral. In response to the present application, Respondents have filed reply (Exh. No. 4), opposing the release of the said machine and supporting the seizure.

From the documents produced by the applicant—such as the Original Bill of the seized machine, Copy of the Show Cause Notice issued by the Department of Geology and Minerals, Copy of the Seizure Memo, Copy of the Adhar Card of the applicant, True Copy of the Exh.1 of Sessions Case No. 17/2026 and Original No Objection Certificate issued by Shriram Finance Ltd. etc. On perusing the document at Mark 5/1 i.e. the Original Tax Invoice of the said excavator machine, it transpires that the said machine has been purchased in the name of the applicant. Further, looking to the No Objection Certificate issued by ICICI Bank Ltd., it transpires that the bank has no objection if the said excavator machine is handed over to the applicant. Accordingly, the applicant has prayed for interim custody of the said machine under Section 497 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 451 of the Cr.P.C.), subject to appropriate terms and conditions. In this context, it is pertinent to refer to the judgment of the Hon'ble Gujarat High Court in Special Criminal Application (Muddamal) No. 8892 of 2017 – Bapalalsinh Dolatsinh Jadeja v. State of Gujarat, dated 20.11.2017, which laid down that the power to release a vehicle seized under the MMDR Act, 1957 rests with the Judicial Magistrate. Taking this precedent into account, the learned Additional Chief Judicial Magistrate, Limbdi, in Muddamal Application No. 20/2017, had rejected a similar application involving seizure under Sections 379, 114 of the IPC and Sections 4(1)(A), 21 of the MMDR Act, 1957 read with Rules 3, 5, 8, 13 and 17 of the Gujarat Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017. The Criminal Revision

Application No. 24/2017 against the said rejection was also dismissed by the learned Additional Sessions Judge, Limbdi. Subsequently, the applicant therein approached the Hon'ble High Court. After detailed examination of Sections 59(1) and 61 of the Delhi Excise Act, Rule 12 of the Gujarat Minerals Rules, and Section 497 of the BNSS (corresponding to Section 451 Cr.P.C.), the Hon'ble Court held that the Judicial Magistrate has the jurisdiction to consider and pass appropriate orders regarding the release of the seized vehicle. Paras 21 to 26 of the said judgment clarify that despite the special provisions of the MMDR Act, the Magistrate does not stand divested of powers under Section 451 Cr.P.C. / Section 497 BNSS, and may exercise judicial discretion to grant interim custody upon satisfaction of necessary conditions and safeguards. Paras 21 to 26 of the judgment is as under :

"21. Rule 12(3) of the Rules, 2017 makes it clear that if the property seized under sub-rule (1) of Rule 12 is produced before a court under sub - Clause (ii) or clause (b) of sub - rule (2) of rule 12 and the Court is satisfied that the offence has been committed in respect thereof, the court may order confiscation of the property under sub - section(4-A) of section 21 of the Act. The powers of confiscation are vested with the Court unlike the provisions of the Delhi Excise Act. Besides the above, sub - rule (7) of Rule 12 provides that the property seized under Rule 12 shall be kept in the custody of the authorized officer, any other third party, nearest police station or the Government premises until, payment for compounding the offence is made, or a bank guarantee is provided pursuant to sub - rule (5) or an order of the Court directing its disposal is received by the authorized officer.

22. Therefore, a joint reading of the Act and the Rules, 2017 makes it clear, that although the authorized officer can seize the vehicle, yet

cannot retain its possession, as no power has been given to deal with the vehicle, as the same vests exclusively with the learned Judicial Magistrate.

23. In case, the authorities decide to take any action with regard to the vehicle, then it becomes their solemn duty to file a complaint as envisaged under section 22 of the Act before the competent court.

24. In any case, the very fact of seizure of vehicle would amount to a prima facie decision by the authority under the Act and the Rules, 2017 to have the matter adjudicated through the Court by filing a complaint with the Judicial Magistrate. Otherwise, they can proceed to seize the mines and minerals and impose penalties without dealing with the vehicle.

25. The power of the authority, therefore, with regard to the transport vehicle, is limited to seizure and for production before the court. They have no power to, thereafter, retain the vehicles.

26. In such circumstances, referred to above, the reliance placed by the Revisional Court on the Supreme Court decision in the case of Narender (supra) was thoroughly misconceived. As explained by me. the provisions of the Delhi Excise Act are altogether different and are not, at all, similar to the provisions of the Act, 1957 or the Rules, 2017.

7. Subsequent to the above-mentioned judgment, the Hon'ble Gujarat High Court, in the case of Special Criminal Application (Quashing) No. 9745 of 2017 - Jhala Ghanshyamsingh Mobatsingh Vs. State of Gujarat, also held in its judgment dated 18.12.2017 that:

" In cases involving offences under the Mines and Minerals (Development and Regulation) Act, the authority to release vehicles seized in connection with such offences lies with the Judicial Magistrate"

8. This principle has been clearly laid down in Paragraph nos. 7 and

of the said judgment.

Para-7: Thus, in Bapalasingh Dolatsinh Jadeja (supra), this Court explained the position of law as regards the power of the Magistrate or "to order interim release of the vehicle under Sections 451 or 457 of the Cr.P.C., as the case may be", seized in connection with an offence under the Mines and Minerals (Regulation and Development) Act. This Court took the view that unlike the offence under the Gujarat Prohibition Act, 1949, Magistrate of the Court has the power to order interim release of the vehicle seized in connection with an offence relating to illegal mining. However, I would like to clarify that although such power is there with the Magistrate of the court under Sections 451 or 457 of the Cr.P.C., yet it has to be exercised for good reasons and in exceptional case only. If at all the Court concerned has any good reason to order interim release of the vehicle, the same should be on strict condition. To put it in other word, while ordering such interim release, the minimum condition of furnishing bank guarantee should be ordered.

Para-10 Illegal mining in the state of Gujarat, more particularly, the riverbed mining is at a rampage. Such indiscriminate and illegal riverbed mining has created a lot of ecological imbalance. It is an offence under the Mines and Minerals (Regulation and Development) Act and other enactments including the Indian Penal Code. In such circumstances, when a vehicle is being seized in connection with the offence of illegal mining of excavation, as the case may be, the Court, while at all ordering interim release, should impose the minimum condition of furnishing a running bank guarantee to the tune of 1.5 times the value of the vehicle.

9. Thus, considering the facts stated by the applicant, the documents placed on record, the submissions made by both parties, the relevant legal provisions, and the principles laid down by the Hon'ble Gujarat High Court in *Bapalasingh Dolarsinh Jadeja Vs. State of Gujarat* and *Jhala Ghanshyamsingh Mobatsingh Vs. State of Gujarat*, and taking into account the status of the seized property, it appears that the excavator machine in question – XCMG Company Excavator Machine, Model-XE210i bearing Engine No. 32G95429503 has been in the custody of the Department of Geology and Minerals since the date of seizure. According to the opinion marked as Exhibit 4, the said excavator machine was seized and is currently in the custody of the Department of Geology and Minerals. If the said excavator machine continues to remain unused, there is a high possibility that it may get mechanically damaged and damage to its main jack and hydraulics and wiring. Furthermore, such continued disuse is likely to result in financial loss to the applicant. Given that the applicant is the lawful owner of the seized excavator machine, and considering all the circumstances along with the legal position laid down by the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai Vs. State of Gujarat*, AIR 2003 SC 638, it would be just, proper, and in the interest of justice to allow the application and grant interim custody of the muddamal machine to the applicant, subject to appropriate terms and conditions. Therefore, upon consideration of all the above facts, circumstances, and the authoritative precedents of the Hon'ble Supreme Court and the Hon'ble Gujarat High Court, the following order is hereby passed in the interest of justice.

ORDER

1. The present application filed by the applicant is hereby allowed.
2. In the present case, the seized excavator machine i.e. XCMG Company Excavator Machine, Model-XE210i bearing Engine No. 32G95429503, which was seized by the Department of Geology and Minerals, shall be released to the applicant – Danabhai Dhudabhai Bhuva residing at Limbdi, Tal. Limbdi, Dist. Surendranagar, on an interim custody basis, upon furnishing a bank guarantee equivalent to one and half times the value of the said machine, along with a personal surety of the same amount, in accordance with Section 497 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 451 of the Criminal Procedure Code), and subject to the following conditions:
 - A. The applicant shall not sell, mortgage, transfer, or in any manner create third-party interest or alter the ownership of the muddamal excavator machine.
 - B. The applicant shall be bound to produce the muddamal excavator machine before this Court or any other Court or before the Department of Geology and Mining, Surendranagar as and when and where directed to do so.
 - C. The applicant should not cause any act to change the identity of the muddamal excavator machine.
 - D. At the time of taking interim custody of the muddamal excavator machine, the applicant shall, at his own cost, submit four

photographs showing all sides of the machine and also produce a videography of the excavator machine and submit the same before the Court.

- E. The applicant shall not use or permit the use of the muddamal excavator machine, in the commission of the present offence or any other criminal activity.
- F. The applicant shall furnish the bank guarantee and personal bond before the Department of Geology and Mining, Surendranagar.
- G. A copy of this order shall be furnished to the Department of Geology and Mining, Surendranagar, for necessary action.
- H. After the hand over of the muddamal excavator machine, the Department of Geology and Mining, Surendranagar, shall submit an immediate report to this Court regarding the same.

Signed and pronounced in the open Court on this 13th day of April, 2026.

Date: 13/04/2026
Place: Surendranagar

(N.G. Shah)
4th Additional Sessions Judge,
Surendranagar
Code No.GJ00751.