

Order Below application under section 265B of CrPC for Plea Bargaining

1. Today the matter is taken up in Special Sitting. The accused person moved an application under [Section 265-B](#) Cr.P.C. for plea bargaining. The application was supported with affidavit of the accused person. In the application brief description has been mentioned. The affidavit shows the voluntariness and understanding the nature and extent of punishment provided under the law. Accused person was not previously convicted in any case.
2. Notice of the application was given to the learned APP for the State. The Investigating officer was also present. The time granted to the accused persons as well as learned APP for the State to discuss the plea of bargaining and its consequences. Learned APP has stated that he has no objection with regard to the present application if allowed, and further prayed to pass sentence as deems fit to the nature of offence.
3. Accused persons examined in Camera and after satisfaction of voluntariness further process of plea bargaining conducted. The satisfaction has been observed that accused persons voluntarily file the plea bargaining application and sufficient time also given to the learned APP for the State as well as to the complainant to work out mutual satisfactorily disposing of the case. The mutual satisfactory disposition works out as per guidelines provided in [Section 265C](#) Cr.P.C.

4. Looking to the nature of offence it seems to this court that the offences under Gujarat Prohibition Act do not come under the preview of Socio Economic offences as the central government has specifically determined the list of offences which fall under the definition of socio economic offences vide its notification no. S.O 1042(E), dated 11th July of 2006.
5. Before imposing any sentence it is very much essential to look into the section 65AA of the said Act. Section 65AA says that “***Notwithstanding anything contained in section 65, whoever sells, buys, possesses or transports any intoxicant which is less than quantity as specified by the state Government by the notification in the official Gazette, shall, on conviction, be punished, for each such offence with imprisonment for a term which may extend to three years and also with fine***”.
6. Now it is evident that no such quantity is specified by notification in official Gazette by the Government of Gujarat till today. **The monetary value of country made liquor is Rs. 80;** therefore it seems to be too small in value. Further no minimum sentence is prescribed for the said offence, when quantity is less.
7. The basic principle of Criminal Jurisprudence has been that the punishment that fits the crime is the appropriate punishment in proportion to the culpability of the criminal conduct and it is what the offender or the perpetrator deserves for his crime. It is, also required to be noted that disproportionately large sentences in excess of blameworthiness would be as unjustifiable as

disproportionately small sentences. Disproportionately large sentences would be futile and useless infliction of suffering, it represents needless suffering.

8. It is evident that accused is poor, uneducated and he has not been previously convicted for same kind of offence. There are high prospects of rehabilitation as he is not a habitual offender. Further quantity of liquor seized is less than 10 ltrs. Therefore to reduce the delay in the disposal of criminal trials and appeals and keeping in mind the real purpose of sentencing, the accused person held guilty of offence punishable under Gujarat Prohibition Act.
9. The accused person heard on the quantum of sentence. As the statute does not provide for minimum punishment, in these facts and circumstances of the case I pass the following order:

Order

1. The accused is hereby sentenced to undergo sentence of imprisonment till rising of the Court and to pay a fine of Rs. ____/- and in default to undergo imprisonment for one month.
2. The statements or facts stated by an accused in the present application for plea bargaining filed under section 265B shall not be used for any other purpose except for the purpose of the present Case.
3. Non Valuable Muddamaal as shown in Muddmaal Receipt be destroyed after the period of Appeal.

4. The case file be consigned to record room after due compliance.

Signed and pronounced in the open Court on 08th Day of December 2018.

Date: 08/12/2018

(Arun Soni)

Place: Surat

Judge Code: GJ01422

Judicial Magistrate First Class