

REGISTERED ON: 01/11/2022
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 DECIDED ON: 05/11/2022
 DURATION: Y M D
 EXH. NO.4 00 00 04

BEFORE THE ADDITIONAL SESSIONS JUDGE AT GONDAL

CRIMINAL REVISION APPLICATION NO.48/2022

APPLICANT:-

1. KULDIP VALLABHBHAI DUDHREJIYA,
 Hindu, Adult, Labour Work,
 Opp.Bileshwar School,
 Kotdasangani.

VERSUS

OPPONENT:-

1. THE STATE OF GUJARAT,
 Through Addl.P.P.,
 Gondal.

Advocates :

D.V.SONDARVA, Learned Advocate for the applicant.

G.K.DOBARIYA, Learned A.P.P. for the opponent.

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**-// J U D G M E N T -\\**

1.By way of this Revision Application Under Sec.397 of Cr.P.C., the applicant has challenged the order dated 17/10/2022 passed below Muddamal Application No.158/2022 by the Learned Judicial Magistrate, First Class, Kotdasangani rejecting the application under Sec.451 of Cr.P.C. preferred by the present applicant for the grant of interim custody of Muddamal Motorcycle No.GJ-03LA-6841 seized by Police for being involved in C.R.No.11213026220188/2002 registered before the Kotdasangani Police Station for the offenses

punishable under Sec.65(E), 98(2) and 81 of Prohibition Act.

- 2.I have perused the records and documents produced before this Court and also heard the Learned Advocates for both the parties.
- 3.It appears from the record that the Learned Trial Court has rejected the Muddamal Application of the applicant under Sec.451 of Cr.P.C. mainly on the ground that the seized motorcycle was being used for transportation of 80 bottles of country made prohibited liquor considering the arguments of learned A.P.P. and considering the opinion of the Investigating Officer, the learned Trial Court has rejected the application of the applicant to release the seized vehicle.
- 4.The main arguments of the learned advocate on behalf of the applicant are that the order passed by the learned Magistrate is illegal and requires reconsideration and as the Learned Magistrate has committed error in passing the said order, the same is required to be set aside. He has further argued that the applicant is doing his business by way of using his motorcycle and if the motorcycle is not given back to the applicant then his business may get ruined. The present applicant is the owner of the said motorcycle. It is further submitted by the applicant's side that

the conclusion of the trial before the Trial Court will take long time and if the said vehicle is made to remain unnecessary at Police Station without proper care and maintenance then the said vehicle would get dilapidated and ruined and would be rendered useless and therefore, it is requested to release the said muddamal motorcycle seized by the Police and prayed to allow this revision application.

5. The Learned Addl.P.P. appearing on behalf of the State has submitted that the applicant has used the said muddamal vehicle for transporting the prohibited liquor and therefore, the police has seized the same and therefore, interim custody of the said muddamal vehicle cannot be handed over to the applicant. Therefore, he has requested to reject the present application of the applicant. The learned Addl.P.P. for the opponent-State has further argued that the Criminal Courts have no power to order interim release of the seized vehicle where the quantity of the liquor recovered exceeds 10 litres in quantity and in the instant case, the recovered country made liquor is of quantity of 80 bottles. Lastly, he has prayed to reject this revision application.

6. Heard the learned advocates for both the parties and perused the documentary evidences and police papers produced by the applicant. It appears from

the police papers as well as order passed by the learned Magistrate that the muddamal vehicle is allegedly used for transportation of prohibited liquor which exceeds the quantity of the liquor more than 10 litres. The police has recovered total 80 bottles of country made liquor. So, the seized quantity of liquor exceeds more than 10 litres. The muddamal vehicle in question is allegedly used for transportation of the said prohibited quantity of liquor and therefore, the police has seized the said muddamal motorcycle. Furthermore, the Hon'ble High Court of Gujarat has also held in the judgment given in ***Special Criminal Application No.8521 of 2017 in the case of Pareshkumar Jaykarbhai Brahmbhatt Vs. State of Gujarat decided on 15/12/2017 (Hon'ble Mr.Justice J.B.Pardiwala Saheb)*** that once it is held that the Criminal Court had no power to order interim release of the seized vehicle in exercise of the powers under Secs. 451 or 457 of the Cr.P.c., the question of the High Court exercising its jurisdiction, Sec.482 of the Code would not arise. It is further held that the Section 98(2) of the Act curtails the powers of the Magistrate to order interim release of the seized vehicle under Sec.451 & 457 of 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 offense

under the Act, if the quantity of the liquor recovered exceeds 10 litres in quantity.

7. Hence, considering the ratio laid down in above judgment of Hon'ble Gujarat High Court and looking to the police papers, it appears that the accused has used the seized vehicle for transportation of prohibited liquor and the quantity of the said liquor exceeds more than 10 litres. It also appears from the police papers that the police has recovered total 80 litres (Desi Liquor) of country made liquor which exceeds more than 10 litres. The muddamal vehicle in question is allegedly used for transportation of the said prohibited quantity of liquor and therefore, the police has seized the said muddamal motorcycle. Therefore, the Trial Court as well as this Revisional Court have no jurisdiction to release the interim custody of the muddamal vehicle allegedly used for transportation of prohibited liquor having quantity which exceeds more than 10 litres. Hence, considering above facts and circumstances, the order passed by the Learned Judicial Magistrate, First Class, Kotdasangani rejecting the muddamal application of the applicant to get the seized motorcycle back is just, proper and does not require any interference of this Court in this revision application. Hence, in view of

above discussion, present revision application fails and I pass the following order.

-// O R D E R \\\-

1. The present Revision Application is hereby dismissed.
2. The impugned order dated 17/10/2022 passed in Muddamal Application No.158/2022 by the Learned Judicial Magistrate, First Class, Kotdasangani is hereby confirmed.
3. Copy of this order be sent to concerned Trial Court.

Signed and pronounced in the open court to day on this 5th DAY OF NOVEMBER, 2022 at Gondal.

Date:- 05/11/2022

Place:- Gondal

(DILIP RAMNIKLAL BHATT)  
Additional Sessions Judge,  
G O N D A L

CODE NO.:GJ00444