

ORDER BELOW EXHIBIT 01

Gone Through the record and carefully perused the papers of the chargesheet submitted by the prosecution agency against the accused for the alleged commission of the offences punishable under Sections 66(1)(b) and 85(1)(3) of the Gujarat Prohibition Act, 1949. The primary question that falls for determination before this Court is whether the present criminal proceedings can legally continue, given that following the statutory deletion of Section 118 by the *Gujarat Prohibition (Amendment) Act, 2017*, all offences under the Act are no longer automatically cognizable, and by application of Part II of Schedule I of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), any offence against other laws carrying a punishment of less than three years, or up to three years, is explicitly classified as non-cognizable and bailable; since the maximum sentence prescribed under Section 66(1)(b) extends only up to six months and the sentence prescribed under Section 85(1)(3) extends up to three years, neither of these offences carries a punishment exceeding three years, thereby placing both sections squarely within the definition of strictly non-cognizable offences. Apart from this fatal procedural infirmity, a bare perusal of the chargesheet papers reveals that the basic statutory ingredients required to attract the mischief of Section 85(1)(3) are completely absent from the face of the record, as there is absolutely no evidence or material to establish that the accused was found in an inebriated condition in a public place and rendered completely incapable of taking care of himself, for which an appropriate judicial order has already been passed by this Court noting the non-applicability of the said section. Furthermore, Section 175(2) of the BNSS places an absolute statutory bar on the police machinery, mandating in clear terms that no police officer shall investigate a non-cognizable case without the prior, specific order of a competent Magistrate having power to try such case or commit the same for trial. On examining the judicial record of the present matter, it is explicitly evident that the investigating agency registered the First Information Report (FIR), conducted the entire investigation into these non-cognizable infractions, apprehended the accused, and subsequently filed this police

report directly on its own accord without ever seeking or obtaining the mandatory prior judicial sanction or order from this Court, which constitutes a flagrant violation of the mandatory procedural law established under Section 175(2) of the BNSS. It is a well-settled principle of law, consistently reaffirmed by the Hon'ble High Court of Gujarat in a catena of judgments, that an investigation conducted into non-cognizable offences by a police officer without the requisite prior magisterial order is entirely unauthorized, fundamentally lacking in jurisdiction, and *void ab initio*. A subsequent chargesheet or police report that is rooted in such an illegal and unauthorized investigation cannot form a lawful or valid foundation for this Court to take cognizance, summon the accused, or initiate a criminal trial. Where the very inception of the investigation suffers from an incurable, fundamental jurisdictional defect that goes to the root of the matter, and where the ingredients of the aggravated offence under Section 85(1)(3) are visibly not attracted, allowing the prosecution to proceed further and forcing the accused to undergo the rigors of a trial would be entirely futile and would amount to a gross abuse of the process of law and a miscarriage of justice. Consequently, as the present proceedings are legally unsustainable and cannot be cured by any subsequent rectification, this Court has no option but to stop the case at this threshold stage; therefore, the criminal proceedings of this Case against the accused for the offences under Sections 66(1)(b) and 85(1)(3) of the Gujarat Prohibition Act, 1949, are hereby **dropped and stopped**, the accused is hereby discharged from his bail bonds and his sureties stand canceled, and the muddamal article, if any, is ordered to be disposed of in accordance with the law only after the prescribed period for filing an appeal has expired.

Pronounced in open court in national Lok Adalat.

Date.11.07.2026.

Ahemdabad.

JMFC(Ahemdabad Rural)