

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SPECIAL CRIMINAL APPLICATION NO.5171 of 2025
(DIRECTION)**

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NANDVIR GOPAL KHASA (AAHIR)

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR ROHAN G VAGHELA(12034) for the Applicant(s) No. 1

MS SHRUTI PATHAK APP for the Respondent(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE DIVYESH A. JOSHI

Date : 02/05/2025

ORAL ORDER

1. Looking to the issue involved in the present matter, learned advocates appearing for the parties have jointly requested for disposal of the present petition at an admission stage and, hence, the present petition is taken up for final disposal.
2. Rule. Learned APP waives service of notice of rule for respondent – State of Gujarat.
3. By this petition under Articles 226 and 227 of the Constitution of India read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, the petitioner has prayed for modification of the condition imposed by the learned 5th Additional Sessions Judge, Bhuj-Kachchh while passing the order dated 04.06.2024 in Criminal Misc. Application No.491 of

2024, by which, the petitioner is directed to furnish bank guarantee of 1.5 times of the price of the vehicle in question.

4. Heard learned advocate Mr. Rohan Vaghela appearing for the petitioner and learned Additional Public Prosecutor Ms. Shruti Pathak for the respondents.
5. Learned advocate for the petitioner submitted that that muddamal vehicles i.e. Tractor bearing Registration No.GJ-12-CT-0238 of the ownership of the petitioner were seized by the concerned authority for the alleged offences. The petitioner therefore, filed an application under Section 451 of the Criminal Procedure Code, 1973 before the learned Court concerned for getting interim custody of the vehicles in question, which has been seized by the concerned authority. The said application came to be allowed by the learned Additional Sessions Court, Bhuj vide order dated 04.06.2024; however, a condition was imposed that the petitioner shall furnish bank guarantee of 1.5 times of the price of the vehicles in question. Being aggrieved by the said order, petitioner herein preferred present petition.
6. Learned advocate for the petitioner further submitted that the petitioner is the owner of the muddamal vehicle and petitioner is running his livelihood with the help of said machine, however as stated above, the muddamal vehicle were seized by the concerned authority on allegation that they

were involved in illegal mining and transportation of minor mineral. She further submitted that in fact, the condition imposed by the learned Court concerned is too harsh and it is not possible for the petitioner to fulfill the same. He submits that instead of bank guarantee, petitioner is ready and willing to give solvent surety of the same amount and therefore the said order may be modified to that extent. Learned advocate for the petitioner has relied upon and referred to the orders passed by the Coordinate Bench of this Court and submitted that in similar type of cases, the Coordinate Bench of this Court has passed order, whereby, the concerned owners were directed to furnish solvent surety instead of bank guarantee.

7. On the other hand, learned Additional Public Prosecutor has opposed this petition and contended that the Sessions Court has not committed any error while imposing the aforesaid condition and, therefore, this Court may not entertain the present petition.
8. Having heard learned advocates appearing for the parties and having gone through the material placed on record, it appears that in similar type of cases, the Coordinate Bench of this Court has considered the request of the concerned owner to furnish solvent surety instead of bank guarantee. Therefore in the facts of the present case, the present petition deserves to be allowed.

9. Therefore, the present petition is allowed. Accordingly, order dated 04.06.2024 passed by the learned 5th Additional Sessions Judge, Bhuj-Kachchh in Criminal Misc. Application No.491 of 2024 is hereby modified to the extent that the petitioner is permitted to submit solvent surety of the amount of 1.5 times of the price of the vehicle in question to the satisfaction of the authority concerned instead of furnishing bank guarantee and upon furnishing such solvent surety, the interim custody of the muddamal vehicles shall be given to the petitioner. Rest of the conditions imposed by the learned Court concerned shall continue to operate.
10. Rule is made absolute to the aforesaid extent. Direct service is permitted.

(DIVYESH A. JOSHI, J.)

Gautam

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: GAUTAM G PATIL(HC00190), Principal Pvt. Secretary, at High Court of Gujarat on 02/05/2025 17:58:00