IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (POSSESSION OF MUDDAMAL) NO. 12654 of 2026

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KHODABHAI NATHABHAI MALAKIYA

Versus

STATE OF GUJARAT & ANR.

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Appearance:
MR ADIL R MIRZA(2488) for the Applicant(s) No. 1
MR UTTKARSH SHARMA,PUBLIC PROSECUTOR for the Respondent(s) No. 1
RULE SERVED for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 06/11/2026

JUDGMENT

1. The petitioner has preferred this petition, seeking to invoke extraordinary jurisdiction of this Court under Article 226 and supervisory jurisdiction under Article 227 of the Constitution of India so also inherent powers of this Court under Section 497 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with a prayer to release Muddamal Vehicle i.e Eicher PRO bearing RTO registration No. GJ-13-AW-8364.

2. The case of the prosecution is that while the police personnel were on patrolling, they received a secret information of the vehicle in question carrying contraband and when police authorities intercepted the same, on carrying out the search of the said vehicle, it was found to be carrying contraband without any pass or permit. Therefore, an FIR being C.R. No. 11200011260937 of 2026 registered with Valsad Rural Police Station, for the offence punishable under the Prohibition Act.

3. Heard learned advocate for the petitioner and learned APP for the respondent.

4. Learned Advocate for the petitioner has urged that this Court has wide powers, while exercising such powers under Article 226 of the Constitution. It can also take into account the ratio laid down in the case of '***SUNDERBHAI AMBALAL DESAI VS. STATE OF GUJARAT'*,** reported in AIR 2003 SC 638, wherein, the Apex Court lamented the scenario of number of vehicles having been kept unattended and becoming junk within the police station premises. Learned advocate also produced the original certificate dated 28.07.2026, issued by the concerned bank / finance company, which indicates that it has 'No Objection', if, the vehicle in question is released in favour of the petitioner.

5. Learned APP for the respondent has objected the submissions made by learned advocate for the petitioner in view of the provisions of confiscation of the vehicle contained in the Prohibition Act, however, did not dispute that powers of this Court under Article 226 of the Constitution to order release of the vehicle can be exercised at any time, whenever the Court deems it appropriate.

6. The coordinate bench of this court in the case of '***MUSA KHAN JAT VS. STATE OF GUJARAT'*,** rendered in S.CR.A. No. 7190 of 2017, in an identical case, released the vehicle by exercising the power under articles 226 and 227 of the constitution of India.

7. It would be worthwhile to refer profitably, at this stage, the observations made by the Apex Court in '**SUNDERBHAI AMBALAL DESAI VS. STATE OF GUJARAT' (Supra)**, which read as under:

> *"15. Learned senior counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.*
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> *16. However, the learned counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.*
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> *17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."*

8. Recently, the Hon'ble apex court in the case of '***M/S ABC EXPRESS VS. STATE OF GUJARAT'*****,** reported in 2026 LiveLaw (SC) 885, noticed interplay of Section 451 of the Code of Criminal Procedure, 1973 (Section 497 of BNSS) and Section 98 of the Gujarat Prohibition Act, 1949 and held that section 98(2) of the Gujarat Prohibition Act, 1949, does not operate as an absolute embargo against the release of a seized vehicle on interim custody pending trial. It is further observed by the Hon'ble Apex Court that the Court is competent to exercise powers u/s 451 of the Code to pass appropriate order for its proper custody.

9. Resultantly, this petition is allowed.

10. The learned Trial Court / authority concerned is directed to release the vehicle of the petitioner being Eicher PRO bearing RTO registration No. GJ-13-AW-8364 on the terms and conditions that the petitioner:

(i) shall furnish a solvent surety of the amount equivalent to the price of the vehicle in question stated in the FIR.

(ii) shall file undertaking before the learned Trial Court that he shall not transfer the vehicle till final disposal of the trial.

(iii) shall produce the vehicle as and when directed by the learned Trial Court.

(iv) in the event of any subsequent offence, the vehicle shall stand confiscated.

11. Before release of the vehicle, concerned police authority shall take photographs of the vehicle from all sides at the cost of the petitioner and shall draw necessary panchanama to that effect. Said panchanama and photographs shall be part of charge sheet papers for the purpose of trial.

12. Copy of this order be send to concerned RTO, where the vehicle is registered, for necessary entry in the Register and to take notice that this Court has restrained transfer of vehicle till final disposal of the trial. Such transfer shall be subject to any order that may be passed by the learned Trial Court permitting transfer of vehicle.

Rule is made absolute, accordingly. Direct service is permitted.

(J. C. DOSHI,J)

UMESH/-

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: CHAVDA UMESH(HC00203), Principal pvt Secretary, at High Court of Gujarat on 06/11/2026 16:32:21