



2026 INSC 940

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 4172 OF 2026
(ARISING OUT OF S.L.P. (CRL.) NO. 10301 OF 2026)

M/S ABC EXPRESS

...APPELLANT(S)

VERSUS

STATE OF GUJARAT

...RESPONDENT(S)

J U D G M E N T

PRASHANT KUMAR MISHRA, J.

1. Leave granted.
2. The instant Appeal assails the judgment and order passed by the High Court of Gujarat at Ahmedabad in R/Special Criminal Application (Possession of Muddamal) No. 12264 of 2025 on 09.09.2025. The underlying criminal case originates from CR No. 11187006250007/2025, registered at PS Lunawada, District Mahisagar on 05.01.2025 and concerning the transportation of prohibited Indian-Made Foreign Liquor¹ in an Ashok Leyland Truck bearing registration RJ-14-GQ-2269². However, only a narrow question arises for our consideration: whether the said truck, after seizure, should be released into the custody of its owner, the appellant, pending trial, notwithstanding the large

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NISHA KHURANA
Date: 2026.09.02
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Reason:

¹ Hereinafter, '**IMFL**'

² Hereinafter, '**the subject vehicle**'

quantity of liquor found therein and certain provisions of the Gujarat Prohibition Act, 1949³.

3. To put it briefly, the incident and seizure took place during the intervening night of 04-05.01.2025 when the subject vehicle was found transporting IMFL under the guise of transport goods while traveling from Modasa towards Vadodara *via* Lunawada. The truck was then intercepted, the vehicle's registration number was confirmed and the seizure was effected. The driver, who was alone in the subject vehicle, identified himself as Qasid Mohammad Khan and when asked about the vehicle, he stated that it contained miscellaneous goods belonging to the appellant, M/S ABC Express. Upon opening the rear doors, the Police found plastic bags, plastic boxes and khaki-coloured cardboard boxes which contained bottles of IMFL. The driver was unable to produce a pass or permit for transporting the liquor. Therefore, the truck and driver were taken into Police custody and brought to the Local Crime Branch office, where the subject vehicle was unloaded and counted in the presence of the panch witnesses.

4. A huge quantity of IMFL in 8,064 bottles was consequently recovered which amounted to approximately 22,532.253 litres, with a cumulative value of Rs. 17,02,656/-. The vehicle also contained edible transport goods of Rs. 98,66,552/-.

³ Hereinafter, '**Prohibition Act**'

5. CR No. 11187006250007/2025 was then registered and dispatched to the concerned Court for offences under Sections 65(a), 65(e), 98(2), 81, 116(b) and 83 of the Prohibition Act and after completion of investigation, a charge-sheet was filed on 01.03.2025, before the competent Court. Charges were maintained under Sections 65(a), 65(e), 98(2), 81, 116(b) and 83 of the Prohibition Act against four accused persons including the driver - Qasid Mohammad Khan.

6. The appellant moved an application for release of subject vehicle being Muddamal Application No. 7 of 2025 before the learned Chief Judicial Magistrate, Lunawada, seeking interim custody of the vehicle under Section 497 of the Bharatiya Nagarik Suraksha Sanhita, 2023⁴. The said application came to be rejected on 22.05.2025 which was assailed before the learned Sessions Judge, Mahisagar at Lunawada by way of Criminal Revision No. 35/2025. The learned Sessions Judge vide its order dated 07.08.2025 affirmed the order passed by the learned Chief Judicial Magistrate.

7. The appellant thereafter challenged the above order before the High Court by preferring R/Special Criminal Application (Possession of Muddamal) No. 12264/2025 under Articles 226 and 227 of the Constitution and Section 528 of the BNSS. The High Court dismissed the revision application. Aggrieved, the appellant has preferred the present Appeal before this Court.

8. The appellant *inter alia* contended that the subject vehicle was a business/transport vehicle seized from the driver and the appellant/owner was

⁴ Hereinafter, 'BNSS'

not involved in the offense; trial may take around 4-5 years to complete; and the truck having been parked in Police Station for more than one year, it is deteriorating and that the appellant is willing to furnish adequate security for obtaining the interim custody of the subject vehicle.

9. Per contra, the learned counsel for the respondent-State submitted that in view of the provisions contained in Section 98(2) of the Prohibition Act (as amended), the subject vehicle cannot be released on bond or surety and the Courts below and the High Court as well have correctly rejected the appellant's prayer for grant of interim custody of the subject vehicle.

10. Having heard the learned counsel for the parties, it bears importance that in matter of interim custody, the Courts are necessarily constrained to make some preliminary determination. The Statement of Objects and Reasons of the Prohibition Act (as amended) itself expresses what Courts have been reiterating time and again since and in ***Sunderbhai Ambalal Desai v. State of Gujarat***⁵ vehicles, prevented from being released back to their owners under Section 98(2), languish and deteriorate sitting in a police station or court compound until final disposal of the criminal case. This benefits no one and causes major losses to the owner.

11. Section 98(2) of the Prohibition Act is not absolute embargo and the Trial Court must exercise its powers under Section 451 of the Code of Criminal

⁵ 2002 INSC 418

Procedure, 1973⁶ to pass appropriate order on the interim custody of the articles produced before the Court. We make particular reference to ***Khengarbhai Lakhabhai Dambhala v. The State of Gujarat***⁷ which arose in an analogous factual matrix and this Court dealing with an identical contention of statutory embargo under Section 98(2) of the Prohibition Act had examined the issue and the broader scheme of the Prohibition Act in some detail to held thus:

“7. The respondent State has also raised the contention that Section 98(2) of the said Act puts an embargo against release of the vehicle till the final judgment of the court if the quantity of seized liquor is more than the prescribed quantity. Since, such contention is often raised, we deem it necessary to deal with the provisions contained in Section 98 of the Act also. Section 98 reads as under:-

“98. Things liable to confiscation- (1) Whenever any offence punishable under this Act has been committed,

(a) any intoxicant, hemp, mhowra flowers, molasses, materials, still, utensil, implement or apparatus in respect of which the offence has been committed,

(b) where, in the case of an offence involving illegal possession, the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or molasses other than those in respect of which an offence under this Act has been committed, the entire stock of such intoxicant, hemp, mhowra flowers, or molasses,

(c) where, in the case of an offence of illegal import, export or transport, the offender has attempted to import, export or transport any intoxicant, hemp, mhowra flowers or molasses, in contravention of the provisions of this Act, rule, regulation or order or in breach of a condition of a licence, permit, pass or authorization, the whole quantity of such intoxicant, hemp, mhowra flowers or molasses which he has attempted to import, export or transport,

(d) where, in the case of an offence of illegal sale, the offender has in his lawful possession any intoxicant, hemp, mhowra flowers or molasses other than that in respect of which an offence has been committed, the whole of such other intoxicant, hemp, mhowra flowers or molasses, shall be confiscated by the order of the Court.

(2) Any receptacle, package or covering in which any of the articles liable to confiscation under sub-section (1) is found and the other contents of such receptacle, package or covering and the animals,

⁶ Hereinafter, ‘Cr.PC’

⁷ 2024 INSC 285

carts, vessels or other conveyances used in, carrying any such article shall likewise be liable to confiscation by the order of the Court. [but it shall not be released on bond or surety till the final judgement of the Court where the quantity of the seized liquor is exceeding the quantity as may be prescribed by the rules.]”

8. Sub-section (1) of Section 98 deals with the articles liable to confiscation, whenever any offence punishable under the Act has been committed. However, sub-section (2) of Section 98 is in two parts. The first part upto the conjunctive word “but”, states about the confiscation of the articles like receptacle, package or covering and about the confiscation of the animals, carts, vessels or any other conveyances used in carrying any such article, and the second part starting with the conjunctive word “but” is perceived to be an embargo against release of the conveyance used for carrying the article liable to be confiscated if the quantity of the seized liquor carried in such conveyance is more than the prescribed quantity, till the final judgment of the court. It may be noted that the second part of sub-section (2) of Section 98 was incorporated by the Gujarat Act 29 of 2011. However, in our opinion, this incorporation of the second part by amendment in 2011 is not very happily worded, and therefore, it is seen as an embargo.

9. When the conjunction “but” is used in a provision, after the punctuation mark “comma”, it is deemed that such conjunction is used to carve out an exception or proviso to the main provision. Meaning thereby, when the entire provision is divided into two parts by using the punctuation mark “comma” followed by the conjunctive word “but”, the second part is required to be construed as an exception or proviso to the first part. However, so far as sub-section (2) of Section 98 is concerned though it is in two parts connected with the conjunctive word “but”, there is hardly any co-relation between the first part and the second part thereof. It is difficult to comprehend the second part of sub-section (2) as an exception or proviso to the first part thereof. Since it is not happily worded, applying the doctrine of harmonious construction, we will have to harmonise the provisions contained therein with the other provisions of the Act and with the provisions contained in the Cr.P.C.

14. Thus, on the conjoint reading of the provisions contained in Section 98 and 132 of the said Act and of Section 451 Cr.PC, it is discernible that all these provisions operate in different fields. Section 98 deals with the Confiscation of the Articles whenever any offence punishable under the Act has been committed. The second part of sub-section (2) thereof would come into play when the Prohibition Officer or Police Officer sends the seized article liable to be confiscated but not required as an evidence, to the Collector as per Clause (b) of Section 132. However, Section 451 of the Cr.P.C. would come into play when the article property seized during the course of inquiry or investigation is produced before the jurisdictional Court as per Clause (a) of Section 132 and the Court is called upon to pass appropriate orders for the proper custody of such article/property pending the conclusion of the inquiry or the trial.

16. It is true that when the property/vehicle is seized during the course of investigation and the same is produced before the concerned Criminal Court, it is incumbent on the part of the concerned Court to pass appropriate orders for keeping the vehicle in proper custody pending the trial. It is also true that as held by this Court in case of *Sunderbhai Ambalal Desai vs. State of Gujarat*, [2002] Supp. 3 SCR 39 : (2002) 10 SCC 283, it is of no use to keep the seized vehicles at the police stations for a long period and it is for the magistrate to pass appropriate orders for the proper custody of the said such vehicles during the pendency of the trial. However, as observed earlier, the appellant without approaching the concerned criminal court under Section 451 of the Cr.P.C seeking custody of the vehicle in question, directly approached the High Court by filing Special Criminal Application under Article 226/227 of the Constitution of India, which was not the proper course as adopted by the appellant.”

12. The Courts below have thus seriously erred in taking a narrow view of the powers under Sections 451, 457, 458 and 459 of the Cr.PC. The legislative purpose of these provisions is to grant courts broad discretion to assess a variety of factors and direct the custody or disposal of any property produced during inquiry or trial. In the leading case of ***Basavva Kom Dyamangouda Patil (Smt.) v. State of Mysore and Another***⁸, a three-Judge Bench of this Court had held:

“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. ...”

(emphasis supplied)

⁸ (1977) 4 SCC 358

13. Khengarbhai Lakhabhai Dambhala (supra) had also appositely placed reliance on **Sunderbhai Ambalal Desai** (supra), wherein this Court had itself drawn attention to the prevalent problem of large quantities of seized property being kept at police stations for very long periods without following the proper procedure. Applications under Section 451 CrPC have to be disposed of “*expeditiously and judiciously*” keeping in mind: (i) the owner’s interest and preventing hardship from loss of use or misappropriation; (ii) public/State interest in avoiding indefinite custody by police & courts; (iii) evidence-preservation, and using panchanama and photographs where the actual item need not be produced at trial; and; (iv) safeguarding the integrity of trial by recording evidence promptly to prevent tampering. A court ought not sit on seized property for years without cause. This was strongly reaffirmed in **General Insurance Council and Others v. State of Andhra Pradesh and Others**⁹, also relied upon by the appellant, wherein the Court held:

“**15.** It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. ...”

14. Applying the foregoing to the facts at hand, a cumulative assessment of the relevant factors certainly weighs in the appellant’s favour. Continued seizure of the truck causes it real and ongoing loss of livelihood to the appellant. The

⁹ 2010 INSC 225

vehicle occupies space in the Police Station and serves no further purpose lying idle at the Police Station deteriorating and losing value with each passing day. We note that the chargesheet has already been filed. Any remaining evidentiary value may be preserved through panchnama, photography and videography, as was done when the appellant's edible goods were released pursuant to the earlier orders of the Court. This Court has repeatedly emphasized the question as to what purpose is actually served by continued custody and placing the vehicle in a state of suspended animation.

15. Lastly, on the point of possible confiscation proceedings, we observe that precedent relied upon by the High Court, ***State of Madhya Pradesh v. Uday Singh***¹⁰, dealt with the confiscation regime under the provisions of the Indian Forest Act, 1927 as amended in relation to the State of Madhya Pradesh by Madhya Pradesh Act 25 of 1983, and Section 52-C of which excludes the jurisdiction of any other “*court, tribunal or authority*” once the concerned Magistrate is intimated of the confiscation proceedings. The other decision, ***Multani Hanifbhai Kalubhai v. State of Gujarat and Another***¹¹, arose under the Gujarat Animal Preservation Act, 1954 and in fact does not pertain to confiscation at all. The Prohibition Act contemplates its own procedure for confiscation which includes notice to the owner, opportunity of hearing, option to pay *in lieu* fine, and so on. This cannot stand in the way of the relief sought in the instant appeal.

¹⁰ (2020) 4 SCC (Cri) 473

¹¹ 2013 INSC 69

16. For the reasons stated above, we are of the view that the High Court, as also the Courts below, erred in declining interim release of the vehicle solely on the strength of Section 98(2) of the Prohibition Act without examining either the settled principles governing interim custody of seized vehicles or the effect of the amendment to the provision that took effect from 31.07.2024.

17. In view of the above discussion, we allow the Civil Appeal, set aside the orders passed by the Courts below and direct handover of the interim custody of the subject vehicle to the appellant subject to the following conditions:

- (i)** The appellant shall furnish a personal bond, together with appropriate security, in a sum of Rs.15,00,000/- (Rupees Fifteen Lakh only) to the satisfaction of the Trial Court;
- (ii)** The appellant shall undertake to produce the truck before concerned Investigating Officer or Trial Court as and when directed;
- (iii)** The appellant shall not alienate or create a third-party interest over the subject vehicle during the pendency of the trial;
- (iv)** Before handing over custody, the Investigating Officer shall prepare a detailed panchnama of the vehicle, together with photographs and videography of its condition, in the presence of the appellant through its authorised representative and two independent witnesses, and shall place the same on the record of the Trial Court;
- (v)** In the event the vehicle is ultimately ordered to be confiscated upon conclusion of the trial or otherwise under Section 98(2), the Trial Court shall be at liberty to proceed against the security furnished,

and/or to pass such further or other orders, including for auction of the vehicle under the said provision, as may be permissible in law; and

(vi) The appellant shall abide by all further conditions, if any, that the Trial Court considers necessary to impose in the interest of the prosecution and the pending trial.

18. It is clarified that the observations made in this judgement are confined to the question of interim custody of the vehicle and shall not be construed as an expression of opinion on the merits of the pending trial, which must proceed uninfluenced by anything stated herein.

.....**J.**
(PRASHANT KUMAR MISHRA)

.....**J.**
(SHREE CHANDRASHEKHAR)

NEW DELHI;
SEPTEMBER 02, 2026.