

**IN THE COURT OF ADDITIONAL SESSIONS JUDGE,
OSMANABAD.
(Presided over by Rajesh S. Gupta)
ORDER PASSED BELOW EXH. 1 IN BAIL APPLICATION
NO. 455/2023 IN C.R.NO.346/2023 OF NALDURG POLICE
STATION
CNR No. MHOS-010020852023**

1. Amol Devidas Rathod, 2. Charan Devidas Rathod	Applicants/accused.
Vs.	
State of Maharashtra	Opponent

Appearance:

Shri. P.P. Kasture, Ld. Advocate for the applicants/accused

Shri. J.V. Deshmukh Ld. APP for the Respondent/State

Application heard on 11.08.2023

Application decided on 11.08.2023

1) Applicants have preferred anticipatory bail application under Section 438 of Cr.P.C. apprehending their arrest in C.R. No.346/2023 for the offences punishable u/s. 353, 225, 504, 506 r/w 149 of Indian Penal code and 12(A) of Prevention of Bombay Gambling Act of Naldurg, Police station.

2) The learned advocate for the applicants submitted that no such incident had occurred. There is no specific allegations as to applicants were actively involved in playing gambling as alleged. It is further submission no criminal force was applied on the public servant i.e. complainant to restrain them or obstruct from discharging official duty. The witnesses are public servant there is no chance of them to be tampered. Nothing further is to be recovered at their instance. Applicants undertakes to attend concerned police station and co-operate the investigation and hence in the above said circumstance prayed to release accused/applicants on anticipatory bail on any terms

and conditions.

3) On the other hand I.O. filed say at Exh. 7. Learned APP filed say at Exh.8. It is submitted that the name of applicants are specifically mentioned in the complaint as being deterring and threatening the police parties while discharging their official duties. The police party were restrained and man-handled by the applicant and other accused persons. The public servants were obstructed from discharging their duties. The names of other female accused are yet to be disclosed, who took active participation in commission of crime. There are possibilities if released on bail will threaten the witnesses and tamper with the evidence. Custodial interrogation of applicants is essential as investigation is in progress and charge-sheet is yet to be filed.

4) Heard the rival contentions of parties, the following points arise for consideration.

Sr.No.	<u>POINTS</u>	<u>FINDINGS.</u>
1.	Whether the applicant/accused is entitled for the relief as sought for?	In the affirmative.
2.	What order ?	As per final order, application is allowed.

REASONS

AS TO POINTS NO. 1 & 2 :-

5) It is apparent from complaint that, on 24.07.2023 they received a secret information about some persons are playing cards and gambling under construction building at Patilwada, Tq. Tuljapur. The police party visited the spot and found accused persons were

playing cards and money was also kept in front of them and thereby they were gambling. The mobiles and cash of Rs.26,500/- were seized and recovered. On making inquiry the accused persons took altercations with police and used criminal force to obstruct them from discharging their duties. They misbehaved with the police party and abused them in filthy language. It is further alleged the accused persons threaten the police party not to initiate against them and hence they will lay beneath their vehicle and will not allow them to move ahead. The incident was reported, complaint came to be lodged.

6) It is apposite to note that the applicants came alongwith their wives to restrain the police party while discharging their duties.

7) The police had issued a notice under 41 A of Cr.P.C. to all the accused. Despite of notice, they failed to cooperate.

8) Learned Advocate for the applicant/accused submitted that considering the nature of allegations physical interrogation is not necessary. He is ready to abide all the terms and conditions.

9) Determining the parameters while granting anticipatory bail in cases of serious offences, the Hon'ble Supreme Court in **Bhadresh Bipinbhai Sheth & ors. V/s. State of Gujarat reported in 2016 1 SCC 152**. After analysing entire law The Hon'ble Apex Court has observed some points as guideline such as :-

(A) Nature and gravity of the accusation and exact role of accused must be properly comprehended before arrest, and possibility of the applicant to flee from justice,

(B) possibility of accused likelihood to commit similar or other offences,

(C) whether impact of grant of anticipatory bail particularly

in cases of large magnitude affecting to very large number of people.

10) It was further observed a balance has to be struck between two factors namely no prejudice should be caused to free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of applicant/accused.

11) It is worth to be taken note no injury has been reported to either of the police party. As far as the offence is concerned, the applicants are resident of village Patiltanda. They are agricultural labours.

12) Taking into consideration the gravity of the offence and the role played by applicants/accused, considering the nature and circumstances under which offence is shown to be committed. Nothing is to be recovered at the instance of applicants. No purpose would be served by arresting and then releasing the applicants on bail. The applicants have a fixed place of residence, undertakes to attend police station and co-operate in investigation. The observations are for limited purpose for deciding present application, it may not have effect on the merits of case. The apprehension of prosecution can be safeguarded by imposing stringent conditions. In the said circumstance, I find applicants have made out the case of anticipatory bail. Taking into consideration the above said facts and circumstance, I pass the following order :

ORDER

- 1] Bail application is hereby allowed.
- 2] In the event of arrest the applicants/accused 1. Amol Devidas Rathod and 2. Charan Devidas Rathod in C.R. No. 346/2023 of Naldurg Police Station be

released on bail on furnishing P.B. & S.B. of Rs.50,000/- (**Rs. Fifty Thousand only**) each with one **Solvent** surety in the like amount.

- 3] Applicants shall furnish their residential proof alongwith their two close relatives.
- 4] The applicants/accused shall attend concerned police station thrice in week i.e., on Monday, Wednesday and Saturday between 10.00 a.m. to 02.00 p.m. till filing of charge-sheet.
- 5] The applicants/accused shall not directly or indirectly make any inducement, threat or promise to any persons acquainted with the fact of the case. Applicants/accused shall not indulge in any criminal activities while on bail and to maintain peace and harmony in the society.
- 6] The applicants/accused shall not permanently leave the Jurisdiction of concerned Police Station without prior permission of the Court.
- 7] The Investigating officer to initiate action on any breach of conditions committed by applicants/accused.
- 8] The applicants/accused are further directed to maintain the attendance diary of visit to the police station and they should be present on each and every date before the Court.
- 9] Inform concerned police station.

Osmanabad
Date : 11.08.2023

(Rajesh S. Gupta)
Addl. Sessions Judge
Osmanabad

CERTIFICATE

I affirm that, the contents of this P.D.F. file judgment/ order are same, word to word, as per the original Judgment.

Name of Stenographer	---	L.S.Patil Stenographer Grade-I
Court	---	District Court-1 & Addl. Sessions Court, Osmanabad.
Date	---	11.08.2023
Order signed by the Presiding Officer on	---	11.08.2023
Order uploaded on	---	16.08.2023