

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

46 BAIL APPLICATION NO.1420 OF 2023

MOHAMAD IRFAN MOHAMAD ARIF AND
SAYYAD ASIF SAYYAD RUKMODDIN
VERSUS
THE STATE OF MAHARASHTRA

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Advocate for Applicants : Mr. Shekade Shashikant E
APP for Respondent : Mr. K.S. Patil

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CORAM : S. G. CHAPALGAONKAR, J.
Dated: August 28, 2023

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PER COURT :-

1. The applicants are seeking regular bail in connection with Crime No.252 of 2023 dated 1.7.2023 registered with Anandnagar police station, Osmanabad, Tq. & District Osmanabad for the offences punishable under sections 188, 272, 273, 328, 34 of the Indian Penal Code.

2. Investigation was set in motion on the basis of the information given by Police Constable Mr. Dnyaneshwar Kagade from Anandnagar Police Station, District Osmanabad.

3. In nutshell, it is alleged that on receipt of secret information, a tempo bearing registration No.AP-23-W-2999 was halted by the police party. On search of the said vehicle, large quantity of contraband/Gutkha was found transported in the vehicle. The applicant no.1 was driver and applicant no.2 was the cleaner on the said vehicle. The applicants were arrested in pursuance of the registration of the offence. The

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applicants are behind bars for about two months. Prayer of the applicants for bail has been rejected by the Sessions Court vide order dated 4.8.2023. Hence, this application.

4. Apparently, the applicants were the driver and cleaner of the vehicle, which was alleged to have been found carrying contraband of Gutkha of large quantity. However, ownership of contraband material is not yet established. Offences charged are bailable except the offence u/s 328 of the IPC. Whether section 328 of IPC would attract or not in such case is a question under consideration before the Larger Bench of the Supreme Court. However, this Court has consistently taken a view that section 328 would not attract in absence of specific allegation of administration of the substance. In that view of the matter, case is made out for grant of bail subject to certain conditions. Hence, the order.

ORDER

- I. Criminal Bail Application is hereby allowed.
- II. The applicants 1. MOHAMAD IRFAN MOHAMAD ARIF AND 2. SAYYAD ASIF SAYYAD RUKMODDIN be released on bail in connection with Crime No.252 of 2023 dated 1.7.2023 registered with Anandnagar police station, Osmanabad, Tq. & District Osmanabad for the offences punishable under sections 188, 272, 273, 328, 34 of the Indian Penal Code on furnishing P.R. Bond in the sum of Rs.50,000/- (Rs. Fifty Thousand) **each**, with one S.B. of the like amount by each of them, on the following conditions :-

- a] The applicants shall not tamper with the prosecution evidence.
- b] The applicants shall attend the concerned police station once in a week i.e. on every Saturday between 10.00 am to 11.00 am till filing of the charge-sheet.
- c] The applicants shall furnish their detail address alongwith Aadhar Card with the concerned police station and shall cooperate with the investigation.

III. Bail application is accordingly disposed off.

(S.G. CHAPALGAONKAR J.)

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