

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,**  
**COURT NO. 3, OSMANABAD.**

Order below Exh. 01 in Cri.M.A. No. 615/2022  
(CNR NO. MHOS030025712022 )

Rafiq Shaikhlal Nadaf Vs. State

C.R No. 288/2022 – Anandnagar Police Station

1. Perused the application and say of Ld. APP & Investigating Officer (IO). IO has given no objection to handover the seized machinery, equipment i.e. Mega Free pley, Mega Free, Multi Pleasrs, Win, Mitt, Master, Holly win, Wander, W.T.U, Well, Pimde bons, 4 G, to the applicant Mr. Rafiq Shaikhlal Nadaf. According to applicant this machinery, equipment are seized by the police in connection with the crime bearing CR No. 288/2022. The machinery, equipment were seized by the police during the course of investigation. He uses the said machinery, equipment in his day-to-day business. He has filed his affidavit and also filed copy of novelty electronics, which shows that applicant is the owner of machinery, equipment dated 01.02.2016.

2. Investigating Officer has objection to return the machinery, equipment to the applicant. Aforesaid video coin game center it is illegal and runing by applicant if said machine and equipment return to the applicant then applicant will start the illegal video game centre again therefore above equipment and machine will not return to the applicant. Hence I.O prayed for reject the application. Ld. APP has strongly objected the application. Applicant running illegal game center. In support of application it is not appears about charge sheet.Applicant has not

filed original receipt and said machinery and equipment. Applicant has committed has offence U/sec. 8 of Prevention of Gambling Act. After the conviction it is necessary to destroyed/ forfeit the said muddemal. In future applicant in case of conviction it is not possible to submit said muddemal in court. In say of Investigation Officer has objected the said application. Said muddemal is important evidence case of prosecution. Applicant will commit same type of offence. If said muddemal will return to the applicant less chances by applicant to produce before the court, chances of in original machinery and equipment will changed by way of changing in colour, body, applicant will mortgage and pldege of said muddemal. Hence application is rejected.

3. Perused the record and documents attached in the nature of F.I.R., and Election card, receipt of machnery, equipment, application for rennuation dated 01.02.2020, 28.09.2022, Form DD-1 Premises Licence shop of applicant. It would therefore be necessary to note that the material placed on record indicates that **Rafiq Shaikhhlal Nadaf** is the owner of the said machnery, equipment.

4. Hence, in such case it is necessary to reiterate the ratio laid down by the Hon'ble Supreme Court in (**Sunderbhai Ambalal Desai Vs. State Of Gujarat, Special Leave Petition (crl.) 2745 of 2002**). Wherein the Hon'ble Supreme Court observed that,

*In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:*

*1. Owner of the article would not suffer because of its remaining unused or by its misappropriation.*

*2. Court or the police would not be required to keep the article in safe custody;*

*3. If the proper panchanama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and*

*4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.*

Hence, I proceed to pass following order;

### ORDER

1. Concerned Investigating Officer, Anandnagar Police station is directed to handover the custody of seized Machinery and equipment to the applicant Mr. Rafiq Shaikhlal Nadaf on following terms and conditions :

- i) Applicant shall not sale, alienate, transfer or create any charge over the property.
- ii) Applicant shall not cause any change or material alternations in the property.
- iii) Applicant shall produce the property before the Court whenever he is directed to produce the same.
- iv) Applicant shall not use the machinery and equipment for any illegal purpose.
- v) Applicant shall execute a bond of Rs. 85,000/- and undertake all above conditions in it.

2. Concerned IO shall prepare detail panchanama said machinery and equipment, take photographs of the machinery and equipment before handing over to the applicant on proper identification & verification.

Date : 13.10.2022.

Sd/-  
I/c Judicial Magistrate First Class,  
Court No. 3, Osmanabad