

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 326 of 2019**

- Abha Mudliyar D/o Late Shri T. S. Mudliyar Aged About 55 Years W/o Shri Dinesh Lal Marka, R/o Shukla Gali, Swami Vivekanand Ward- 57, Burhapara, Raipur, District Raipur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through: P. S. Tikrapara, Raipur, District- Raipur, Chhattisgarh

---- Non Applicant

MCRC No. 752 of 2019

- Anuchit Wadekar W/o Vijay Wadekar Aged About 37 Years R/o Behind Nutan School House Of Madan Lal, Police Station Tikrapara, Raipur District Raipur Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Tikrapara, Raipur District Raipur Chhattisgarh

---- Non Applicant

For the Applicants	:	Shri T.K. Jha and Shri Sourabh Sharma, Advocates
For Non Applicant	:	Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****21.02.2019**

1. Since both the petitions arise from same crime No., these bail petitions are being disposed off simultaneously.
2. These are first bail application under Section 439 of the Cr.P.C. preferred by the applicants before this Court and no other bail application is pending before any other Court.
3. Perused the case diary provided by the learned counsel for the State in connection with Crime No. 423/2018 registered at Police Station- Tikrapara, Raipur District- Raipur (C.G.) for the offence punishable under Section 370(1) Part 4 & 6 of the Indian Penal Code and Section 81 of Juvenile Justice (Care and Protection of Children) Act, 2015.
4. Case of the prosecution, in brief is that complainant Nilesh Sharma approached to applicant Anuchit Wadekar to get a newly born baby for his sister. Applicant Anuchit Wadekar shown him female baby and told that mother of that baby is Pooja Rao who had given the baby for sale. He made agreement to get that baby with applicant Anuchit Wadekar. Applicant Anuchit Wadekar told him that she, coaccused Shanu Mashih, Lili Shanti Panna, Abha Mudliyar used to sell the newly born babies and earlier they had sold newly born babies to willing persons. They charged for one baby Rs.1,50,000/-. During the investigation it was found that on 12/09/2018 in the dispensary of applicant Anuchit Wadekar delivery of Ku. Pooja Rao was conducted.

5. Learned counsel for the applicants submits that applicants have no criminal background, they are innocent and have been falsely implicated in the present case, therefore, they shall be released on bail.
6. On the other hand, learned counsel for the State opposes the bail application, however, submits that there is no antecedent against the applicants.
7. Learned counsel for the applicant- Anuchit Wadekar further submitted that alleged child was not transferred to anyone thus no offence is made out against the applicant Anuchit Wadekar.
8. Complicity of applicant Abha Mudliyar is described in the memorandum of applicant Anuchit Wadekar.
9. As per the Section 27 of the Indian Evidence Act, an accused of any offence gives some information in custody and in consequence thereof, any fact is discovered then such portion of the information is admissible as is distinctly relates to the discovery. Such information may be confessional or not.
10. Hon'ble Supreme Court in the matter of **Madhu- v- State of Kerala** [(2012) 2 SCC 399] has laid down the following judicial precedent :-

“Relevance of the confessional statements would depend on the discovery of facts based on the information supplied by the accused. If any fresh facts have been discovered on the basis of the confessional statement made by the accused, the same would be relevant. If not, the confessional statement cannot be proved against the accused, to the detriment of the accused.”

11. Hon'ble Supreme Court in the matter of **Jitendra Kumar -v -State of Haryana** [(2012) 6 SCC 204] has laid down the following judicial precedent :-

“What has been recorded in Ext.P43 cannot be taken to be confession of the accused in relation to commission of the crime, but the other part by which the motor cycle was recovered, would be the portion admissible in evidence. The admissible part can very safely be segregated from the inadmissible part in this statement.”

12. Looking to the provision of Section 27 of the Evidence Act and aforesaid judicial precedents laid down by Hon'ble Supreme Court in **Madhu** (supra) and **Jitendra Kumar** (supra), this Court finds that the information given by an accused through memorandum is admissible in evidence to such extent it relates to the discovery of some incriminating article.
13. The Second Additional Sessions Judge, Raipur overlooked this well settled legal principle which he should have considered.
14. Looking to the facts and circumstances of the case and materials available on record, the bail application of applicant **Abha Mudliyar** is allowed and it is directed that if applicant furnishes one solvent surety for a sum of Rs.25,000/- along with a personal bond of Rs.25,000/- to the satisfaction of the concerned Trial Court with the condition that she will appear before the Trial Court at 11:00 am as and when directed till trial and she would cooperate during the trial, she shall be released on bail.
15. Looking to the facts and circumstances of the case and materials available on record, the bail application of applicant **Anuchit Wadekar** is rejected.
16. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
Judge

Parul