

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 11-3-2019

Delivered on 13-3-2019

MCRC No. 363 of 2019

1. Rakhan Ram S/o Budhram Aged About 24 Years Caste Rautiya , r/o Village Sukra ,police Station Sanna ,district Jashpur Chhattisgarh., District : Jashpur, Chhattisgarh
2. Mohan Ram S/o Nispiter Aged About 35 Years Caste Rautiya ,r/o Village Sukra ,police Station Sanna ,district Jashpur Chhattisgarh., District : Jashpur, Chhattisgarh

---- Applicants

Versus

- State Of Chhattisgarh Through Station House Officer Police Station Sanna ,district Jashpur Chhattisgarh., District : Jashpur, Chhattisgarh

---- Non-applicant

For applicants	Mr. J.K. Saxena, Adv.
For State	Ms. Sangeeta Mishra, Govt. Advocate

Hon'ble Shri Justice Sharad Kumar Gupta**CAV ORDER**

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicants before this Court and his no bail application is pending before any other court.
2. The applicants have been arrested in connection with Crime No 62/2018 registered in police station Sanna Distt. Jashpur (CG) for offence punishable under Section 302, 34, 449 of the IPC.
3. Prosecution story in brief is that on 17.08.2018 at about 8:00 am in village Sukra, dead-bodies of deceased Ladduram and his wife deceased Sanjobai were found in their house in injured condition. The son of the deceased namely Rajuram had expressed doubt on applicant No.1 Rakhan Ram. On the memorandum of applicant No.1 Rakhan Ram one wooden club, one T-shirt and one full pant had been seized. On the memorandum applicant No. 2 Mohan Ram one torch was seized from him. As per the case diary blood like stains were present on

the said full pant. As per the draft for RFSL blood like stains were present on said wooden club. Seized wooden club, full pant, T-shirt have been sent to RFSL.

4. Learned counsel for the applicants submits that the applicants have no criminal background. They are innocent and have been falsely implicated in the present case, therefore, they shall be released on bail.
5. On the other hand, learned counsel for the State opposes the bail application.
6. 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.
7. 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.”

8. 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.”

9. 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.

10. The Sessions Judge, Jashpur overlooked this well settled legal principle which he should have considered.

11. Looking to the facts and circumstances of the case, looking to the evidence available on record against the applicant No.1 **Rakhan Ram**, his bail application is rejected.

12. Looking to these facts and circumstances of the case, looking to the evidence available on record against applicant No.2 Mohan Ram, It is directed that if the applicant No.2 **Mohan Ram** furnishes one solvent surety for a sum of Rs.25,000/- along with a personal bond in the like sum to the satisfaction of the concerned Trial Court with the condition that he will appear before the Trial Court at 11:00 am as and when directed till trial and he would cooperate during the trial, he shall be released on bail.

13. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)
Judge