

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1448 of 2019**

1. Shaymlal Nuppo S/o Bhima Nuppo Aged About 22 Years R/o Barrem School Para, Police Station- Arapur, District- South Bastar Dantewada, Chhattisgarh., District : Dantewada, Chhattisgarh
2. Hidma Ram Mandavi S/o Rama Aged About 20 Years R/o Barrem School Para, Police Station- Arapur, District- South Bastar Dantewada, Chhattisgarh., District : Dantewada, Chhattisgarh

---- Applicants**Versus**

State Of Chhattisgarh Through The Police Station- Arapur, District- South Bastar Dantewada, Chhattisgarh., District : Dantewada, Chhattisgarh.

---- Respondent

For the Applicants	:	Shri P.K. Tulsyan, Advocate
For the State	:	Shri Ashutosh Pandey, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****13/03/2019**

1. This is the first bail application under Section 439 of the CrPC and there is no bail application is pending before any other Court.
2. Perused the case diary provided by the learned counsel for the State in connection with the Crime No.4/2018 registered at Police Station Arapur, District Dantewada (C.G.) for the offence punishable under Section 307 of IPC and 3 & 5 of Explosive Substance Act.
3. Case of the prosecution, in brief is that on 01/06/2018 Police officials had gone for RSO duty from Kamal Post to Kondapara Post. Due to blast of pressure ID which was implanted by naxalite. Constable G.D. Magar sustained grievous injury.
4. Complicity of the applicants are described in their own memorandum and memorandum of other applicant.
5. Learned counsel for the applicants submits that they are innocent and falsely implicated in the present case, therefore, they shall be released on bail.
6. On the other hand, counsel for the State opposes the bail application. He further submits that no criminal antecedents against the applicants.
7. 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 confessional or not.

8. Hon'ble Supreme Court in the matter of **Madhu vs. State of Kerla (2012) 2 SCC 399** has laid down the following judicial precedent :-

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

9. Hon'ble Supreme Court in the matter of **Jitendra Kumar vs. State of Haryana (2012) 6 SCC 204 (to be taken out from Library)** has laid down the following judicial precedent :-

'What has been recorded in disclosure statement of accused cannot be taken to be confession of accused in relation to commission of the crime but other part by which the motorcycle was recovered would be portion admissible in evidence. Admissible part can be safely segregated from inadmissible part in this statement.'

10. 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.
11. The Session Judge South Bastar, Dantewada overlooked this well settled legal principle which should have been considered.
12. Looking to the facts and circumstances of the case, looking to the fact that there is no likelihood of the accused to abscond and tamper the evidence, it is directed that if the applicants furnishes one solvent surety for a sum of Rs. 25,000/- each along with a personal bond in the like sum to the satisfaction of the concerned Court with the condition that they shall appear before the trial Court at 11.00 am as and when directed till trial and they would cooperate during the trial, they shall be released on bail.
13. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)
Judge