

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 06-05-2019****Delivered on 07-05-2019****MCRC No. 2374 of 2019**

1. Jinnat Hussain @ Bigan D/o Sarfuddin Ansari, Aged About 50 Years R/o Amwa, Police Station Chhattarpur, District - Palamu (Jharkhand)
2. Jalal Ansari @ Jalal Ahmad S/o Sadik Ansari, Aged About 40 Years R/o Amwa, Police Station Chhattarpur, District Palamu (Jharkhand)

---- Applicants**Versus**

- State Of Chhattisgarh Through Police Station Pasta, District Balrampur - Ramanujganj Chhattisgarh

---- Non Applicant

For the Applicants : Shri Arvind Singh, Advocate

For Non Applicant : Ms. S. Mishra, Govt. Advocate

Hon'ble Shri Justice Sharad Kumar Gupta**C A V ORDER**

1. This is second bail application under Section 439 of the Cr.P.C. preferred by the applicants before this Court. No other bail application is pending before any other Court.
2. Earlier, the first bail application of the applicants was dismissed for want of prosecution on 29.03.2019 by this Court in MCRC No.1774 of 2019.
3. Perused the case diary provided by the learned counsel for the State in connection with Crime No.35/2018 registered at Police Station- Pasta, District- Balrampur- Ramanujganj (C.G.) for the offence punishable under Sections 302, 364-A, 120B of IPC and 25, 27 of Arms Act.
4. Prosecution story in brief is that on 14/07/2018 the dead body of deceased Bhola Kumar Sao was found in area of Police Station Latehar and on very day the dead body of the deceased Sagufta Parveen was found in Kanda Forest, Police Station Pasta. Both dead bodies were found in injured condition. Near the dead body of deceased Sagufta Parveen, one empty cartridge was seized. It is alleged that appellant and other co-accused hatched conspiracy to kill the deceased Bhola Kumar Sao and Sagufta Parveen and in-furtherance to the conspiracy, they killed deceased Bhola Kumar Sao and Sagufta Parveen.
5. The complicity of applicants has been described in the memorandum of co-accused Sagir Ansari. The complicity of applicant No.1 Jinnat Hussain@ Bigan has

been described in the memorandum of co-accused Ajimullah @ Ajmer @ Rehan.

6. There is no memorandum of applicants, neither any incriminating article has been seized from them.
7. Learned counsel for the applicants submits that they are innocent and falsely implicated in the present case, therefore, they shall be released on bail.
8. On the other hand, learned counsel for the State opposes the bail application, however, submits that there is no antecedent against the applicants.
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 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, Ramanujganj, District- Balrampur- Ramanujganj in the Court of Additional Sessions Judge Ramanujganj, overlooked this well settled legal principle which he should have considered.
14. Looking to the above mentioned 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 each 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, they shall be released on bail.
15. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
Judge