

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

RESERVED ON 8-5-2019

DELIVERED ON 9-5-2019

MCRC No. 2808 of 2019

- Murari Gurjar S/o Ratiram Gurjar Aged About 32 Years R/o House No.65, Purana Swarg Mandir, Maha Cant Indore, P.S. Mhow, District- Indore, Madhya Pradesh

---- Applicant

Versus

- State Of Chhattisgarh Through The District Magistrate Mungeli, District- Mungeli, Chhattisgarh

---- Respondent

MCRC No. 2867 of 2019

1. Koushlendra Singh Jadaun S/o Devendra Singh Aged About 32 Years R/o Kila Road, Ward No. 15, Gohad, P.S.- Gohad, District- Bhind (M.P.) At Present Sargaon, District Mungeli, Chhattisgarh
2. Indrajeet Mishra S/o Baldeo Aged About 31 Years R/o Dagdauva, P.S.- Mauganj, District- Rewa (M.P.) At present behind Kali Dhaba, Hirri Mines, P.S. Chakarbatha, District- Bilaspur, Chhattisgarh

---- Applicants

Versus

- State of Chhattisgarh Through The Station House Officer, Police Station- Sargaon, District Mungeli, Chhattisgarh

---- Respondent

For applicants	Mr. Shashank Thakur, Adv.
For non-applicant/State	Mr. Vikram Dixit, Govt. Adv.

Hon'ble Shri Justice Sharad Kumar Gupta
CAV Order

1. As both these bail applications arise out of same crime number of same police station, they are being disposed of by this common order.
2. These are first bail applications under Section 439 of the Cr.P.C. preferred by the applicants before this Court and their no bail application is pending before any other court.
3. Perused the case diary.
4. The applicants have been arrested in connection with Crime No. 14/2019 registered in police station Sargaon, Distt. Mungeli (CG) for offence punishable under Sections 302, 201, 120-b, 397, 395, 412, 396 of IPC.
5. Prosecution story in brief is that on 16-1-2019 ahead to

Madhwani turn between village Kirna to Bilaspur in bushes the dead body of deceased Asik Ansari was found in injured condition. Head injury was present on his body. Deceased was driver of trailer bearing registration No. CG 15 AC 4214. During merg inquiry one woolen cap, one sleeper, one iron rod, one wheel pana having blood like stain were seized from said vehicle. Applicants Koshlendra Singh, Indrajeet Mishra and other co-accused hatched conspiracy to kill and in furtherance to said conspiracy the deceased was killed. The coal which was loaded in said vehicle was sold to Gurunanak Coal Depot. Applicant Murari Gurjar is the owner of said coal depot. The mobile of deceased was also looted.

6. Counsel for the applicants argued that the applicants are innocent and has been falsely implicated hence they be released on bail.

7. On the other hand, the State Counsel opposed the bail application. He further submits that no criminal antecedent has been reported against applicants in the police case diary.

8. The complicity of applicants Koshlendra Singh and Indrajeet Mishra has been described in the memorandum of co-accused Dheeraj Patel and confessional statement of co-accused Dheeraj Patel and Tulsidas alias Lala Patel.

9. On the memorandum of applicant Murari Lal Gurjar one truck coal was seized from him.

10. Neither there is any memorandum of applicants Koshlendra Singh and Indrajeet Mishra nor any incriminating article has been seized from them.

11. While dealing with the bail application, it is not much important that what is the allegation, rather it is more important that what is the prima facie legally admissible evidence available on record.

12. As per Section 26 of the Evidence Act, confession by accused while in custody of police is not admissible in evidence.

13. 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.

14. 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 confessional statement would depend upon discovery of unknown facts based on information supplied by accused if any fresh fact has 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.”

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

16. 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.

17. The Sessions Judge, Mungeli did not consider this well settled legal principle which it should have considered.

18. Looking to the above mentioned facts and circumstances of the case, looking to the prima facie material available on record regarding applicants, the applications are allowed. It is ordered that if each of the applicants furnishes one solvent surety for a sum of Rs. 25,000/- along with one personal bond of the like sum to the satisfaction of the trial Court concerned, they be released on bail.

19. CC as per rules.

Sd/-
(Sharad Kumar Gupta)
Judge