

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 2618 of 2019**

Vishal Gayakwad, son of Prakash Gayakwad, aged about 18 years, R/o Kashiram Nagar, District Raipur (CG). **---- Applicant**

Versus

State of Chhattisgarh, through Station House Officer, Police Station Telibandha, District Raipur (CG). **---- Non-applicant**

AND**MCRC No. 2869 of 2019**

Raja Thakur, S/o Chhuttan Singh Thakur, aged about 18 years, R/o New Bharat Nagar, Dr. Rajendra Prasad Nagar Katora Talab Raipur, Tahsil and District Raipur (CG). **---- Applicant**

Versus

State of Chhattisgarh, through Police Station Telibandha, District Raipur (CG). **---- Non-applicant**

For Applicants	: Mr. C.R. Sahu & Mr. Pravin Kumar Tulsyan, Advocates
For Non-applicant	: Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta
Order On Board

01.05.2019

1. Above mentioned two bail applications arise out of a common Crime No.172/2019 registered at Police Station Telibandha, District Raipur for the offence punishable under Sections 327, 294, 324, 506(B) & 34 of Indian Penal Code, therefore, they are being heard analogously and decided by this common order. All the two are first bail applications filed under Section 439 of the CrPC.
2. Case of the prosecution, in brief is that Ranjeet Kumar Dhamejani runs Men Wear Shop in the name of Mahamaya Collection at Municipal Corporation Complex, Telibandha, Raipur. Complainant Pankaj Prem Chandani is an employee in his shop. On 31.03.2019 between 19:30 to 19:45 hrs, the applicant-Vishal Gayakwad and one another unknown person reached in the said shop and told to said complainant to come out from the shop. When he came out, they abused him, gave threat and demanded money for consuming liquor and beat him by hands and fists. The applicant-Vishal Gayakwad caused injury on his face by blade. As per MLC report of the complainant, two

incised wound were found on his body.

3. Counsel for the applicants respectively submitted that the applicants have not committed any offence. They are innocent and have been falsely implicated in the present case, therefore, they may be released on bail.
4. On the other hand, counsel for the State opposed the bail applications of the applicants. However, he submitted that previously no criminal antecedent is reported against the applicants in police case diary.
5. The complicity of the applicant Raja Thakur shown in the memorandum of applicant Vishal Gayakwad.
6. As per 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.
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 confessional statement would depend upon discovery of unknown facts based on information supplied by accused if any fresh facts 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.”
8. Hon'ble Supreme Court in the matter of **Jitendra Kumar -v- 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 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.”
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. Eight Additional Sessions Judge, Raipur did not consider this well settled legal principle which it should have considered.
11. Looking to the these facts and circumstances of the case, looking to the

fact that there is no likelihood of the accused to abscond and tamper the evidence; and the trial is likely to take some more time for its final disposal, this Court is inclined to give benefit of Section 439 of the Cr.P.C. to the applicants. Accordingly, the bail applications (M.Cr.C. No.2618/2019 & M.Cr.C. No.2869/2019) are allowed.

12. It is directed that the applicant Vishal Gayakwad furnishes two solvent sureties for a sum of Rs.25,000/- along with a personal bond of Rs.50,000/- to the satisfaction of the concerned Trial Court and applicant Raja Thakur furnishes only 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 they shall appear before the Trial Court at 11:00 am as and when directed till trial and they would co-operate during the trial, they shall be released on bail and they shall not involve any such type of crime in future.

13. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)

JUDGE

L/-