

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 3493 of 2019**

1. Dhiraj Patel S/o Shri Rammilan Patel Aged About 21 Years R/o Village- Dwari, Thana- Gudh, Civil And Revenue District- Rewa, MP
2. Tulsi Das @ Lala Patel S/o Triveni Das Patel Aged About 26 Years R/o Village- Dwari, Thana- Gudh, Civil And Revenue District- Rewa, MP

---- Applicants**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station- Sargaon, District- Mungeli, Chhattisgarh., District : Mungeli, Chhattisgarh

---- Respondent

For applicants Mr. Sunil Sahu, Adv.
 For non-applicant/State Ms. Aporva Pandey, PL.

Hon'ble Shri Justice Sharad Kumar Gupta**ORDER ON BOARD****21-6-2019**

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. Counsel for the applicants submits that he wants of withdraw the bail application of applicant No. 1 Dhiraj Patel.
3. As prayed, bail application of **appellant No. 1 Dhiraj Patel** is rejected.
4. Perused the case diary.
5. The applicants have been arrested in connection with Crime No. 14/2019 registered in police station Sargaon, Distt. Mungeli (CG) for offence punishable under Section 302, 201, 120-B, 397, 412, 396 of IPC.
6. Prosecution story in brief is that applicants, co-accused Koshlendra Singh and Indrajeet Mishra hatched conspiracy to kill and in furtherance to said conspiracy the deceased Asik Ansari

was killed who 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. On the memorandum of applicant No. 1 Dheeraj Patel, the dead body of the deceased was recovered on 16-1-2019 ahead to the Madhwani turn between village Kirna to Bilaspur in bushes. The coal which was loaded in said vehicle was sold to Gurunanak Coal Depot. Co-accused Murari Gurjar is the owner of said coal depot. The mobile of deceased was also looted.

7. Counsel for the applicants argued that the applicant No. 2 Tulsi Das is innocent and has been falsely implicated hence he be released on bail.
8. On the other hand, the State Counsel opposed the bail application. He further submits that no criminal antecedent has been reported against applicant No. 2 in the police case diary.
9. The complicity of applicant No. 2 Tulsidas alias Lala Patel is described in his own confessional statement. One mobile and Rs. 400/- were also seized from him.
10. In the case in hand there is no memorandum of applicant No. 2 Tulsidas alias Lala Patel nor any incriminating article has been seized from him.
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 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. However, looking to the above mentioned facts and circumstances of the case, looking to the prima facie material available on record regarding **applicant No. 2 Tulsi Das alias Lala Patel**, his bail application is allowed. It is ordered that if the applicant No. 2 Tulsi Das alias Lala Patel 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 with the condition that he shall appear before the court concerned at 11.00 am as and when directed, he be released on bail.
19. CC as per rules.

Sd/-
(Sharad Kumar Gupta)
Judge