

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 3269 of 2019**

Rahul Yadav, son of Shiv Prasad Yadav, aged about 21 years, R/o Titurdih Gandhi Chowk, Durg, District Durg (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Police Station Mohan Nagar Durg, District Magistrate Durg (CG).

---- Non-applicant**AND****MCRC No. 3594 of 2019**

Chetan Kumar Nishad, son of Gautam Nishad, aged about 18 years, R/o Kailash Nagar, Gandhi Chowk Purani Basti, Station Para, Titurdih, Tahsil and District Durg (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Police Station Mohan Nagar, Durg, District Magistrate Durg (CG).

---- Non-applicant

For Applicants	: Mr. Avinash Chand Sahu, Advocate
For Non-applicant	: Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta
Order On Board

28.06.2019

1. Above mentioned two bail applications arise out of a common Crime No.103/2019 registered at Police Station Mohan Nagar, District Durg for the offence punishable under Sections 20(b), 27(a) of NDPS, 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 on 25.03.2019 at about 23:20 hrs in front of Durga Tent House, Kailash Nagar, Titurdih, Durg, Inspector Rakesh Baghre posted at Police Station Mohan Nagar seized 2.100 kg cannabis from the possession of applicant-Rahul Yadav.
3. The complicity of applicant-Chetan Kumar Nishad was described in the memorandum of applicant-Rahul Yadav. Nothing was seized from the possession of applicant-Chetan Kumar Nishad.
4. Counsel for the applicants 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.

5. 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.

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. Special Judge, Durg 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.3269/2019 & M.Cr.C. No.3594/2019) are allowed.

12. It is directed that in each case the applicants namely Rahul Yadav and Chetan Kumar Nishad furnish 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 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.

13. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)

JUDGE

L/-