

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4660 of 2019**

1. Sudhakar Prajapati S/o Tilak Ram Prajapati, Aged About 35 Years
R/o Village Kurudih, Police Station Urga, Tahsil And District Korba
Chhattisgarh., District : Korba, Chhattisgarh
2. Raghunandan Patwa S/o Mahesh Ram Patwa Aged About 60 Years
R/o Village Kurudih, Police Station Urga, Tahsil And District Korba
Chhattisgarh., District : Korba, Chhattisgarh
3. Indrapal Singh God S/o Samrat Singh Goda Aged About 30 Years R/o
Village Kurudih, Police Station Urga, Tahsil And District Korba
Chhattisgarh., District : Korba, Chhattisgarh

---- Applicants

Versus

State Of Chhattisgarh Through Station House Officer, Police Of Police
Station Urga, District - Korba Chhattisgarh., District : Korba,
Chhattisgarh.

---- Respondent

For the Applicants	:	Shri Anil Gulati, Advocate
For the State	:	Shri H.S. Ahluwalia, Dy. A.G. and Shri Vinod Tekam, P.L.

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board**13/08/2019**

1. Shri Harishchandra Tandekar, Inspector, Thana In-charge Urga,
District Korba (C.G.) present.
2. This is the first bail application under Section 439 of the CrPC and
there is no bail application is pending before any other Court.
3. Perused the case diary provided by the counsel for the State in
connection with the Crime No.51/2019 registered at Police Station
Urga, District Korba (C.G.) for the offence punishable under Section
34(2) & 36 of C.G. Excise Act.
4. Case of the prosecution, in brief is that on 10/03/2019, 59.76 bulk
liters of country made liquor was seized from the possession of co-
accused RamGopal Patel.
5. Counsel for the applicants submitted that they have falsely implicated

in the present case, therefore, they may be released on bail.

6. On the other hand, counsel for the State opposes the bail application. He further submits that one another criminal case under Excise Act has been registered against the applicants.
7. The complicity of applicants is described in memorandum of co-accused Ram Gopal Patel, which is not admissible in evidence.
8. 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.
9. Hon'ble Supreme Court in the matter of **Madhu vs. State of Kerla (2012) 2 SCC 399** has laid down the following judicial precedent :-

'Relevance of the confessional statements would depend upon discovery of unknown facts based on information supplied by accused if any fresh fact 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.'

10. Hon'ble Supreme Court in the matter of **Jitendra Kumar vs. 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 the crime but other part by which the motorcycle was recovered would be portion admissible in evidence. Admissible part can be safely segregated from inadmissible part in this statement.'

11. 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.
12. The Second Additional Sessions Judge, Korba (C.G.) overlooked this

well settled legal principle which should have been considered.

13. 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 the applicants furnishes 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 Court with the condition that they shall appear before the concerned Court at 11.00 am as and when directed till trial and they would cooperate during the trial, they shall be released on bail.

14. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)
Judge

Kamde