

HIGH COURT OF CHHATTISGARH, BILASPURMCRC No. 9606 of 2018

- Gudda Choudhari S/o Late Shankar Singh Aged About 36 Years R/o Village Bijouli, P. S. Palimukimpur, Aligarh, At Present R/o Anandvan, Mathura, District Mathura U. P.

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Saraipali, District Mahasamund Chhattisgarh

---- Non Applicant

MCRC No. 9615 of 2018

- Dalveer Singh S/o Hoob Lal Aged About 34 Years R/o Village Barlai, P. S. Farey, District Mathura U. P.

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Saraipali, District Mahasamund Chhattisgarh

---- Non Applicant

For the Applicants : Shri Raghvendra Pradhan, Advocate

For Non Applicant : Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board22.02.2019

1. Since both the petitions arise from same crime No., these bail petitions are being disposed off simultaneously.
2. These are first bail application under Section 439 of the Cr.P.C. preferred by the applicants before this Court and no other bail application is pending before any other Court.
3. Perused the case diary provided by the learned counsel for the State in connection with Crime No. 234/2018 registered at Police Station- Saraipali, District- Mahasamund (C.G.) for the offence punishable under Sections 379, 411, 413, 34 of Indian Penal Code and Section 3 & 4 of Lok Sampatti Nivaran Act and Section 15 (2) (4) of Mines Petroleum Pipe Lines Act.
4. Case of the prosecution, in brief is that in the intervening night of 26.07.2018 and 27.07.2018, at village Chattigirola, some unknown persons built a valve on petroleum pipeline and stole 20,000 liters diesel. On the memorandum of applicant Gudda Choudhari one santro car, one welding machine including wires, welding rod and generator were seized from him. On the memorandum of Dalveer Singh one truck, one plastic pipe, one Gaity and one Dhamela were seized.
5. Learned counsel for the applicants submits that applicants have no criminal

background, they are innocent and have been falsely implicated in the present case, therefore, they shall be released on bail.

6. On the other hand, learned counsel for the State opposes the bail application, however, submits that there is no antecedent against the applicants.
7. 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.
8. 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 the confessional statements would depend on the discovery of facts based on the information supplied by the accused. If any fresh facts have been discovered on the basis of the confessional statement made by the accused, the same would be relevant. If not, the confessional statement cannot be proved against the accused, to the detriment of the accused.”

9. 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 Ext.P43 cannot be taken to be confession of the accused in relation to commission of the crime, but the other part by which the motor cycle was recovered, would be the portion admissible in evidence. The admissible part can very safely be segregated from the inadmissible part in this statement.”

10. 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.
11. The Additional Sessions Judge, Saraipali District- Mahasamund overlooked this well settled legal principle which he should have considered.
12. Looking to the facts and circumstances of the case and materials available on record, the bail applications of applicants are allowed and it is directed that if each applicant furnishes 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 she will appear before the Trial Court at 11:00 am as and when directed till trial and she would cooperate during the trial, she shall be released on bail.
13. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
Judge

Parul