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**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 9442 of 2018**

Chandrakumar Sahu S/o Maniram Sahu Aged About 43 Years R/o Street No. 4, House No. 5-B, Sector-I, Bhilai, P. O. Sector-I, Police Station Bhatti, District Durg Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Police Station Supela District Durg Chhattisgarh, District : Durg, Chhattisgarh .

---- Respondent

**MCRC No. 9671 of 2018**

Moh. Asif Gani S/o Moh. Usman Gani Aged About 38 Years R/o Tokiyapara, Durg Tahsil And District Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Supela District Durg Chhattisgarh, District : Durg, Chhattisgarh

---- Respondent

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|--------------------|---|----------------------------------------------------|
| For the Applicants | : | Shri Shrawan Agrawal, Advocate (MCRC No.9442/2018) |
|                    | : | Ms. Saumya Sharma, Advocate (MCRC No. 9671/2018)   |
| For the State      | : | Shri Sumit Jhawar, Panel Lawyer                    |

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**Hon'ble Shri Justice Sharad Kumar Gupta**

**Order On Board****09/01/2019**

1. As MCRC No. 9442/2018 and MCRC No.9671/2018 arise out of the same crime number of the same police station, they are being disposed of by this common order.
2. The applicants have preferred these applications under Section 439 of the CR.P.C. as they apprehend their arrest in connection with Crime No.- 361/2018 registered in Police Station Supela, District Durg (C.G.) for the offence punishable under Sections 406, 34 of IPC.
3. Argument heard.
4. Case of the prosecution, in brief is that complainant Ramji Singh R/o Dewangan Mohalla, Supela Bhilai had purchased a vehicle bearing registration number C.G. 07 CA/5939 and C.G. 07 CA 5739 through HDB

Finance Company. Co-accused Syed Mazid Ali had entered an agreement for sale of said vehicles with said complainant. The condition was that co-accused Syed Mazid Ali will pay the installments of said finance company. Said agreement for sale was executed through applicant No. 1 Chandrakumar Sahu. He had also received commission in said agreement for sale. It is said that co-accused Syed Mazid Ali sold the aforesaid vehicles to co-accused Sheikh Rafiq who disposed of the said vehicle by cutting as scrap. Co-accused Syed Mazid Ali sold the vehicle through applicant No. 2 Moh. Asif Gani.

5. The complicity of applicant No.2 Moh. Asif Gani is described and shown in the memorandum of co-accused Syed Mazid Ali and his own memorandum which are not admissible in evidence.
6. Learned counsel for the applicants submits that they have innocent and falsely implicated in the present case, therefore, they shall be released on bail.
7. On the other hand, counsel for the State opposes the bail application. He further submits that six other criminal cases have been registered against the applicant Chandrakumar and five other criminal cases have been registered against the applicant Mohd. Asif Gani.
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 Kerala (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 (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 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. First Additional Sessions Judge, Durg was unnecessarily impressed with confessional statement of the memorandum of applicant and co-accused.
12. The Court below did not consider this well settled legal principle which it should have considered.
13. Though six and five other criminal cases have been registered against the applicant No. 1 Chandrakumar and applicant No. 2 Moh. Asif Gani respectively but looking to the facts and circumstances of the case, looking to the nature of evidence *prima facie* available on record against applicants, this Court is inclined to give the benefit under Section 439 of CrPC to the applicants. Accordingly bail application is allowed. It is directed that if the applicants furnishes one solvent surety for a sum of Rs. 25,000/- each along with a personal bond of Rs. 25,000/- each to the satisfaction of the concerned 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 cooperate during the trial, they shall be released on bail.
14. Certified copy as per rules.

Sd/-  
(**Sharad Kumar Gupta**)  
Judge