

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 9739 of 2018**

1. Birju Mahato, S/o Jaylal Mahato, aged about 19 years.
 2. Doman Thakur, S/o Pitamber Thakur, aged about 19 years.
- Both are resident of Jogi Nagar Ward No.49, O.P. Padmanabhpur, Durg, District Durg (CG). **---- Applicants**

Versus

State of Chhattisgarh, through Station House Officer, Durg, District Durg (CG). **---- Non-applicant**

For Applicants	: Mr. Anuraag Jha, Advocate.
For Non-applicant	: Mr. S.R.J. Jaiswal, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta
Order On Board

16.01.2019

1. This is 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.
2. Perused the case diary provided by the counsel for the State in connection with crime No.808/2018 registered at Police Station Durg, District Durg for the offence punishable under Sections 354, 34 of IPC, Section 8 of POCSO Act and Section 67(B) of I.T. Act.
3. Case of the prosecution, in brief is that on 08.08.2018 the prosecutrix was aged about 15 years. She is a resident of village Borsi Padmanabhpur Durg. On 08.08.2018, co-accused Akshat Parihaar and prosecutrix were returning back by Scooty from Nurshing College then at near Hanuman Temple, 6-7 unknown persons stopped their Scooty and molested her. One unknown person made a video of molestation and, subsequently, the said video was exposed.
4. Counsel for the applicants submits 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 opposes the prayer for grant of bail to the applicants.
6. In the test identification parade, it has not been mentioned that prosecutrix has identified the present applicants.
7. The complicity of the applicants shown in the memorandum of co-

accused Lakhan Chauhan and Aklesh @ Akkhalesh, which is not admissible in evidence.

8. 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.
9. 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.”
10. 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.”
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 Fifth Additional Sessions Judge/Special Judge under POCSO Act, Durg did not consider this well settled legal principle which it should have considered.
13. Looking to 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 application is allowed.
14. It is directed that if the applicants 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.

15. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)

JUDGE

L/-