

HIGH COURT OF CHHATTISGARH, BILASPURMCRC No. 444 of 2019

- Phulbatiya Chaturvedi W/o Lt. Shri Motiram Chaturvedi Aged About 80 Years R/o Village Dhaneli, P. S. Dharsiva, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh
- Bhagwati Chaturvedi W/o Lt. Shri Amritlal Chaturvedi Aged About 31 Years R/o Village Dhaneli, P. S. Dharsiva, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Applicants

Versus

- State Of Chhattisgarh Through Police Station Vidhan Sabha, Raipur District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Non-applicant

For Applicant : Shri Manish Sharma, Advocate.

For Non-applicant : Shri Vikram Dixit, Govt. Advocate

Hon'ble Shri Justice Sharad Kumar GuptaOrder On Board06.02.2019

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 learned counsel for the State in connection with crime No. 395/2018 registered at Police Station – Vidhan Sabha, Raipur District Raipur (C.G.) for the offence punishable under Section 302 of the Indian Penal Code.
3. Case of the prosecution, in brief is that on 27/10/2018 the dead body of the deceased Parmanand Chaturvedi was found near canal in village Sakri in injured condition.

4. The complicity of the applicants is described in the memorandum of coaccused Umashankar Dhritlahre.
5. Learned counsel for the applicants submits that the 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 be 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 Second Additional Sessions Judge, Raipur did not consider the aforesaid settled legal principle which he should have considered.

12. Looking to these facts and circumstances of the case, this Court finds that the complicity of the applicants described in aforesaid memorandum is not admissible in evidence with which the Second Additional Sessions Judge was unnecessarily impressed, It is directed that if each applicant furnishes one solvent surety for a sum of Rs.25,000/- along with a personal bond in the like sum to the satisfaction of the concerned Trial Court with the condition that he will appear before the Trial Court at 11:00 am as and when directed till trial and he would cooperate during the trial, he shall be released on bail.

13. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE