

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 8859 of 2018**

Deepak @ Diwan Suryavanshi S/o Shri Ramesh Suryavanshi Aged
About 19 Years R/o Torwa Basti, Near Shiv Mandir, P. S. Torwa, Tahsil
And District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The District Magistrate, Bilaspur
District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh.

---- Respondent

For the Applicant	:	Shri Suresh Tandan, Advocate
For the State	:	Shri A.K. Swarnkar, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board**11/12/2018**

1. This is the first bail application under Section 439 of the CrPC and there is no bail application is pending before any other Court.
2. Perused the case diary provided by the learned counsel for the State in connection with the Crime No.204/2018 registered at Police Station Masturi, District Bilaspur (C.G.) for the offence punishable under Section 380, 457, 411/34 of IPC.
3. Case of the prosecution, in brief is that in the intervening night of 03-04/06/2018 at village Masturi, from the house of complainant Premdas Manikpuri unknown persons stolen two silver anklets, 1 golden ring, 1 silver ring, 1 silver half kardhan, 1 golden nose, 1 silver key ring, cash of Rs.45,000/- and one stamp paper.
4. Learned counsel for the applicant submits that he has innocent and falsely implicated in the present case, therefore, he shall be released on bail.
5. On the other hand, counsel for the State opposes the bail application. He further submits that no criminal antecedents against the applicant.
6. As per the certified copy of the 5th Additional Sessions Judge, Bilaspur dated 26/10/2018 bail application of the applicant was rejected on the basis of memorandum and seizure.
7. In the case in hand there is neither memorandum of applicant nor anything has been seized from him.
8. Complicity of the applicant has shown in the memorandum of co-accused Om Prakash Suryawanshi @ Nanu Suryavanshi.
9. 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.

10. Hon'ble Supreme Court in the matter of **Madhu vs. State of Kerla (2012) 2 SCC 399** has laid down the following judicial precedent :-
11. 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.
12. 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 :-
13. 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.
14. 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. Additional Sessions Judge, Bilaspur was unnecessary impressed with confessional statement of the memorandum of co-accused Om Prakash Suryawanshi @ Nanu Suryavanshi.
15. As per the web copy of co-ordinate Bench of this Court dated 05/10/2018 in MCRC No. 6643/2018 the co-accused Vishwanath has granted bail.
16. The case of applicant is better than co-accused Vishwanath who has enlarged on bail.
17. Looking to the 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 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 Court with the condition that he shall 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.
18. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)
Judge