

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 9129 of 2018**

Shiv Kumar S/o Rajkumar Pandey Aged About 27 Years R/o Village Chaknar, Tahsil Chhuikhadan, District Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Of Police Station Gandai, District Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh.

---- Respondent

For the Applicant	:	Shri Abhishek Sharma, Advocate
For the State	:	Shri R.K. Pandey, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board**07/12/2018**

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 Istgasa No.02/2018 registered at Police Station Gandai, District Rajnandgaon (C.G.) for the offence punishable under Section 41(1+4) 457, 380, 34 of IPC.
3. Case of the prosecution, in brief is that between 07/07/2018 to 09/07/2018 from Govt. Higher Secondary School, Jangalpur some unknown persons stolen three computers, one printer, one projector worth of the stolen property is Rs.42,000/-. On the memorandum of applicant one CPS, one monitor, one keyboard, one mouse and one UPS were seized from him.
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 Additional Sessions Judge, Khairagarh dated 07/10/2018 applicant had admitted commission of theft in his memorandum.
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 vs. State of Kerla (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.

9. 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.

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. Additional Sessions Judge, Khairagarh was unnecessarily impressed with confessional statement of the memorandum of applicant and co-accused Girdhari.
11. 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.
12. Certified copy as per rules.

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