

HIGH COURT OF CHHATTISGARH, BILASPURMCRC No. 9123 of 2018

1. Sanjay Sahu S/o Suresh Kumar Sahu Aged About 26 Years R/o Near Bajrang Mandir, Geeta Nagar, Bhanpuri, Thana Khamtarai, District And Tahsil Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Vijay Sahu S/o Suresh Kumar Sahu Aged About 32 Years R/o Near Bajrang Mandir, Geeta Nagar, Bhanpuri, Thana Khamtarai, District And Tahsil Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Applicants

Versus

- The State Of Chhattisgarh Through The Police Station Khamtarai, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh

---- Non-applicant

For Applicant	: Mr. Samir Singh, Advocate.
For Non-applicant	: Mr. S. Gupta, Government Advocate

Hon'ble Shri Justice Sharad Kumar Gupta
Order On Board

07.12.2018

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant 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. 416/2018 registered at Police Station – Khamtarai, District Raipur, (C.G.) for the offence punishable under Sections 420, 467, 468, 471, 120 (B) of the Indian Penal Code.
3. Case of the prosecution, in brief is that complainant Pushpa Vishwakarma is resident of village Gitanagar, Bhanpuri. When she went to bank to get the entry in the passbook at Chhattisgarh Rural Gramin Bank, Branch Bhanpuri then she came to know that some unknown person has withdrawn Rs. 1,22,000/- by ATM from her account. She had suspicion on applicant No. 1 Sanjay Sahu. On the memorandum of applicant No. 1 Sanjay Kumar Sahu Rs. 2000/- has been seized from him. On the memorandum of applicant No. 2 Vijay Kumar Sahu Rs. 1500/- has been seized from him.
4. Learned counsel for the applicant submits that the applicant has no criminal background. He is innocent and has been falsely implicated in the present case, therefore, he shall be released on bail.
5. On the other hand, learned counsel for the State opposes the bail application, however, he submits that there is no antecedent against the applicant.
6. As per the order dated 12.11.2018 of the Fourth Additional Sessions Judge to the First Additional Sessions Judge, Raipur applicants had confessed their complicity in the 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- 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 Fourth Additional Sessions Judge to the First Additional Sessions Judge, Raipur did not consider this well settled legal principle which it should have considered.
12. 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, 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.
14. A copy of this order be circulated to all the judicial officers of the sub-ordinate Courts for future guidance after approval, if necessary.

Sd/-
(Sharad Kumar Gupta)
JUDGE