

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Reserved on 18-2-2019****Delivered on 25-2-2019****MCRC No. 96 of 2019**

- Mohd. Zahoor Ansari S/o Mohd. Maksud Ansaari Aged About 21 Years R/o Village Murukar, Police Station And Tahsil Lesliganj, District Palaamu Jharkhand.

---- Applicant**Versus**

- State Of Chhattisgarh Through The Police Station Balrampur District Balrampur-Ramanujganj Chhattisgarh.

---- Non-applicant

For applicant : Mr. Samir Uraon and Mr. Sumit Singh Rathore, Adv.
For non-applicant : Mr. Vikram Dixit, Govt. Advocate

Hon'ble Shri Justice Sharad Kumar Gupta**CAV ORDER**

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court and his no bail application is pending before any other court.
2. The applicant has been arrested in connection with Crime No 159/2018 registered in police station Ramanujganj Distt. Balrampur Ramanujganj (CG) for offence punishable under Section 302, 120B, 201, 392, 420 of the IPC and 25, 27 of the Arms Act.
3. Prosecution story in brief is that on 18/19-08-2018 at the bank of Dahbora Nullah at village Dhaborapata Daldoha, the dead body of the deceased Kapil Chodhury was found in injured condition. Deceased was running a taxi bearing registration No. CG15CH0001. On 18.08.2018, deceased had parked said vehicle in stand at Ramanujganj. During the investigation, it was found that applicant, coaccused Tajmul Ansari, Sonu, Ashish, Lalan hatched a conspiracy and in a preplanned manner they murdered deceased and robbed his said vehicle.
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. Now this Court considers what material is available against the applicant.
7. As per the alleged seizure one mobile was seized from applicant. It is alleged that applicant was in contact with other coaccused from said mobile.
8. No call record of conversation regarding applicant and other coaccused, is produced.
9. The complicity of the applicant is described in the memorandum of other coaccused.
10. 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.
11. 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.”

12. 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.”

13. 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.
14. The Additional Sessions Judge, Ramanujganj overlooked this well settled legal principle which he should have considered.
15. Looking to the facts and circumstances of the case, looking to the materials available on record against the applicant, 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 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.
16. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)
Judge