

NAFRHIGH COURT OF CHHATTISGARH, BILASPURMCRC No. 505 of 2019

- Shivkumar S/o Badri Prasad Lodhi Aged About 22 Years R/o Village Umriya, Police Station Bilha, District (Revenue And Civil) Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through Police Station Masturi, District (Revenue And Civil) Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Non-applicant

For Applicant : Mr. Anand Kesharwani, Advocate.

For Non-applicant : Mr. Ashutosh Pandey, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board07.02.2019

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. 347/2018 registered at Police Station – Masturi, District (Revenue And Civil) Bilaspur (C.G.) for the offence punishable under Sections 457, 380 of the Indian Penal Code.
3. Case of the prosecution, in brief is that in the intervening night of 18.08.2018 and 19.08.2018 from the shop of complainant Subhash Tandon, Subhash Traders and Contractor at village Tikri, cash Rs. 32000/- and one cheque book were stolen by some unknown persons.
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. The complicity of the applicant is described in the memorandum of coaccused Vikki @ Jaykishan Ghritlahre, Rajiv Kumar Jagat and memorandum of applicant himself. There is no seizure from the applicant.
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 Eighth Additional Sessions Judge, Bilaspur did not consider this well settled legal principle which he 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 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.

13. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE