

NAFRHIGH COURT OF CHHATTISGARH, BILASPURMCRC No. 436 of 2019

Tejram Nishad, S/o late Shri Phool Say Nishad, aged about 64 years, R/o village Dudhipali, Thana and Tahsil Basna, Civil and Revenue District Mahasamund (CG).
---- Applicant

Versus

State of Chhattisgarh, through Station House Officer, Police Station Rakhi, District Raipur (CG).
---- Non-applicant

For Applicant	: Mr. Sumit Shrivastava, Advocate
For Non-applicant	: Mr. S.R.J. Jaiswal, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta
Order On Board

06.02.2019

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 counsel for the State in connection with crime No.216/2018 registered at Police Station Rakhi, District Raipur for the offence punishable under Section 489-B/34 of Indian Penal Code.
3. Case of the prosecution, in brief is that on 30.11.2018, co-accused Heera Singh Dhruv deposited Rs.40,000/-, 20 fake currency notes of Rs.2000/- in the account of Dwarika Prasad Dhruv through recycle machine. The complicity of the applicant has been described in the memorandum of co-accused Heera Singh Dhruv and his own memorandum.
4. Counsel for the applicant submits that the applicant has not committed any offence. He is innocent and has been falsely implicated in the present case, therefore, he may be released on bail.
5. On the other hand, counsel for the State opposes the bail application, however, he submits that no criminal antecedent is reported against the applicant in police case diary.
6. As per 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.
7. 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 confessional statement would depend upon discovery of unknown facts based on information supplied by accused if any fresh facts 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."
8. Hon'ble Supreme Court in the matter of **Jitendra Kumar -v- 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 crime but other part by which motorcycle was recovered would be portion admissible in evidence. Admissible part can be safely segregated from inadmissible part in this statement.”

9. 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.

10. The Second Additional Session Judge, Raipur did not consider the aforesaid well settled legal principle though it should have considered this aspect.

11. Looking to the above facts and circumstances of the case, prima facie this Court finds that the complicity of the applicant described in the aforesaid memorandum is not admissible in evidence and trial Court was unnecessary impressed with the complicity. Looking to the fact that there is no likelihood of the accused to abscond and tamper the evidence; and the trial is likely to take some more time for its final disposal, this Court is inclined to give benefit of Section 439 of the Cr.P.C. to the applicant. Accordingly, the bail application is allowed. 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 shall appear before the Trial Court at 11:00 am as and when directed till trial and he would co-operate during the trial, he shall be released on bail.

12. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)

JUDGE

L/-