

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 815 of 2019**

Birendra Rajak, son of Jagdish Rajak, aged about 28 years, R/o Ward No.06, Barethpara, Khairagarh, P.S. And Tahsil Khairagarh, District Rajnandgaon (CG).

---- Applicant**Versus**

State of Chhattisgarh, through the Station House Officer, Police Station Khairagarh, District Rajnandgaon (CG).

---- Non-applicant

For Applicant	: Mr. Rudranath Mukherjee, Advocate.
For Non-applicant	: Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****26.02.2019**

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.299/2018 registered at Police Station – Khairagarh District Rajnandgaon (C.G.) for the offence punishable under Sections 457, 380, 34 of the Indian Penal Code.
3. Case of the prosecution, in brief is that in the intervening night of 19/20-10-2018 at village Amlidih Rs. 2,50,000/- cash were stolen from the house of the complainant Rama Sharma. The complicity of the applicant is described in the memorandum of the co-accused Md. Rijwan, Lakki @ Kalu @ Suraj, Vijay Yadav, Usman Beg, Sadap Khan and memorandum of applicant himself in crime No. 299/2018 registered at police station Khairagarh which are not admissible in evidence. On the memorandum of the applicant Rs. 35000/- was 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 and submits that 2 other criminal cases under IPC have already been registered against the applicant in police case diary.

6. There is no such prima facie evidence on record that allegedly amount seized from the applicant is the subject matter of stolen cash.
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 Additional Sessions Judge, Khairagarh overlooked this well settled legal principle which he should have considered.

12. Looking to these facts and circumstances of the case, 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 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.

10. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)

JUDGE

L