

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 990 of 2019**

Kalinga Gond, S/o Shri Sanlocham Gond, aged about 35 years, R/o Village Bhimkhoj, Santosi Nagar, Ward No.03, P.S. Khallari, District Mahasamund (CG).

---- Applicant**Versus**

State of Chhattisgarh, through Station House Officer, Pamgarh, District Janjgir Champa (CG).

---- Non-applicant

For Applicant	: Ms. Meena Shastri, Advocate
For Non-applicant	: Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta
Order On Board

21.02.2019

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.308/2018 registered at Police Station Pamgarh, District Janjgir Champa for the offence punishable under Sections 379, 34 of Indian Penal Code.
3. Case of the prosecution, in brief is that on 05.11.2018 at about 16:10 hrs beside Sabri Pathology at village Seevrinarayan, the complainant Tikam Kumbhkar had hanged one bag on the handle of his motorcycle containing Rs.3 lacs. One unknown person reached there and stole the said bag with the said amount and ran away. One motorcycle was seized from the possession of the applicant. The complicity of the applicant has been described in the memorandum of the co-accused Kanhaiya @ Pandu.
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. He submits that one case under Excise Act has already been registered 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 be 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 Third Additional Sessions Judge, Janjgir Champa 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 and 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/-