

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 1158 of 2019**

1. Shubham Sahare . S/o Ranjeet Sahare Aged About 24 Year
2. Kamlesh Kotangle S/o Vijay Kotangle Aged About 23 Years,
3. Kamesh Sakhare S/o Aatmaram Sakhare Aged About 23 Years,

All are R/o Kadauti Tola, Thana Sahekasa, District Gondiya, M. H.,
District : Gondiya *, Maharashtra

---- Applicants**Versus**

The State Of Chhattisgarh Through Police Station Bortalav, District
Rajnandgaon Chhattisgarh, District : Rajnandgaon, Chhattisgarh.

---- Respondent

For the Applicants	:	Shri Samir Singh, Advocate
For the State	:	Shri Vikram Dixit, Govt. Advocate

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board**27/02/2019**

1. This is the first bail application under Section 439 of the CrPC and there is no bail application is pending before any other Court.
2. Perused the case diary provided by the learned counsel for the State in connection with the Crime No.11/2018 registered at Police Station Bortalav, District Rajnandgaon (C.G.) for the offence punishable under Section 392/34 of IPC.
3. Case of the prosecution, in brief is that on 06/03/2018 about 5 p.m. complainant Bhuwan Lal Sinha was going from village Bagarekasa to Dongargarh by motorcycle. He had a bag containing Rs73,363/-. Near the Bakhram Temple three unknown persons who had covered their face by scarf came by motorcycle, thrown chili powder on his eyes and looted Rs.73,363/-. On the memorandum of applicant No. 1 Shubham Sahare Rs. 8200/- were seized from him. On the memorandum of applicant No. 2 Kamlesh Kotangle Rs.2100/- were seized and on the memorandum of applicant No. 3 Kamesh Sakhre Rs. 1800/- were seized from him.
4. Learned counsel for the applicants submits that they are innocent and falsely implicated in the present case, therefore, he shall be released on bail.
5. On the other hand, counsel for the State opposes the bail application. He further submits that no criminal antecedents against the applicants.
6. 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.

7. Hon'ble Supreme Court in the matter of **Madhu vs. State of Kerala (2012) 2 SCC 399** has laid down the following judicial precedent :-

'Relevance of the confessional statements would depend upon discovery of unknown facts based on information supplied by accused if any fresh fact 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 vs. 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 the crime but other part by which the 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 (Additional Judge, Dongargarh of First Additional Session Judge, Rajnandgaon, District Rajnandgaon Smt. Sangeeta Naveen Tiwari) overlooked this well settled legal principle which should have been considered.
11. Looking to the 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 applicants furnishes one solvent surety for a sum of Rs. 25,000/- each along with a personal bond in the like sum to the satisfaction of the concerned Court with the condition that they shall appear before the trial Court at 11.00 am as and when directed till trial and they would cooperate during the trial, they shall be released on bail.
12. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)
Judge