

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 1179 of 2019**

Vivek Mishra, aged about 45 years, son of late Sharda Prasad Mishra,
Occupation Agriculturist resident of village Misrauli, P.S. Tarakulwa, District
Dewariya (Uttar Pradesh). **---- Applicant**

Versus

State of Chhattisgarh, through Police Station Sanawal, District Balrampur
Ramanujganj (CG). **---- Non-applicant**

For Applicant	: Mr. Pushpendra Kumar Patel, Advocate.
For Non-applicant	: Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta
Order On Board

06.03.2019

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.42/2018 registered at Police Station Sanawal, Ramanujganj, District Balrampur Ramanujganj for the offence punishable under Sections 294, 323, 307, 302/34 of Indian Penal Code.
3. Case of the prosecution, in brief is that on 02.07.2018 at about 9:00 p.m. near Pachawal Chalkhi culvert, co-accused Narayan Pando and Ramprasad Pando had beaten complainant Kamlesh Singh by club and caused injury on his head. Both the said co-accused also beat deceased Maan Singh due to injury he died. As per MLC report of the complainant Kamlesh Singh, one lacerated wound was found on his head and injury was found simple in nature. Injury was caused by hard and blunt object.
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 prayer for grant of bail to the applicant, however, he submits that no criminal antecedent is reported against the applicant in police case diary.
6. The complicity of the applicant is described in the memorandum of co-accused Ram Prasad Pando and Narayan Pando.

7. 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.

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 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.”

9. 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.”

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, Ramanujganj did not consider the aforesaid well settled legal principle though it should have considered this aspect.

12. Looking to the above facts and circumstances of the case, the bail application is allowed. It is ordered that if the applicant furnishes one solvent surety for a sum of Rs.25,000/- along with one personal bond of the like sum to the satisfaction of the trial Court concerned, he be released on bail.

13. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)

JUDGE

L/-