

NAFRHIGH COURT OF CHHATTISGARH, BILASPURMCRC No. 1704 of 2019

- Chandresh Kumar @ Chandu Sen S/o Shri Nanduram Sen Aged About 18 Years R/o Santoshi Nagar, Birgaon, Near Sanskritik Bhawan, Police Station- Urla, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station- Pandari, Raipur, Chhattisgarh., District : Raipur, Chhattisgarh

---- Non-applicant

For Applicant : Mr. P.K. Patel, Advocate.

For Non-applicant : Mr. SRJ Jaiswal, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar GuptaOrder On Board27.03.2019

- 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.
- Perused the case diary provided by the learned counsel for the State in connection with crime No. 470/2018 registered at Police Station – Pandari, Raipur, (C.G.) for the offence punishable under Section 395 of the Indian Penal Code.
- Case of the prosecution, in brief is that on 06.11.2018 at about 00:30 hrs complainant Shani Bajaj was going to his house by Activa bearing registration No. CG 04 HJ 6181. Near the Bajrangbali Temple, Daldal Shivni, Raipur, 4 unknown persons who had covered their faces by clothes, reached there by 2 motorcycles. Those persons took said vehicle and 1 i-phone bearing Sim number 9827877778. On the memorandum of applicant his own motorcycle was seized from him. In the case in hand there is no TIP conducted.
- 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.
- On the other hand, learned counsel for the State opposes the bail application and submits that 11 other criminal cases have been registered against the applicant, out of which 5 are under IPC and 6 are under Cr.P.C.
- The complicity of the applicant has been described in the memorandum of the said coaccused.
- 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.
- 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.”
- 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 8th Additional Sessions Judge, Raipur overlooked this well settled legal principle which he should have considered.
12. Though 11 other criminal cases have been registered against the applicant but looking to the facts and circumstances of the case, looking to the evidence available on record against the applicant, 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.
13. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)
JUDGE