

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 2453 of 2019**

- Sagar Nayak S/o Shatrughan Nayak Aged About 21 Years R/o Mathpuraina, B.S.P. Colony, Raipur, District Raipur CG

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Tikrapara, Raipur, District Raipur CG

---- Respondent

For applicant	Mr. Sharad Mishra, Adv.
For non-applicant/State	Mrs. M. Asha, PL.

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****13-5-2019**

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicant before this Court and his no bail application is pending before any other court.
2. The applicant has been arrested in connection with Crime No. 72/2019 registered in police station Tikrapara, Raipur, Distt. Raipur (CG) for offence punishable under Section 457 and 380 of IPC.
3. Prosecution story in brief is that complainant Santosh Agrawal runs a jewelery shop at Siddharth Chowk, Tikrapara, Raipur in the name and style of Chhattisgarh Jewelers. In the intervening night of 1st and 2nd of Feb. 2019 some unknown person stole jewelery from the shop worth Rs. 76 lacs. On the memorandum of applicant, one iron rod was seized from him.
4. Complicity of the applicant is described in the memorandum of co-accused Kheer Sindhu, Laxman Nayan alias Kalia, Sunil Sona alias Billu and applicant himself.
5. Counsel for the applicant argued that the applicant is innocent and has been falsely implicated hence he be released on bail.
6. On the other hand, the State Counsel opposed the bail application. He further submits that no criminal antecedent has been reported against applicant in the police case diary.
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 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 fact has 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] 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 4th Addl. Sessions Judge to the Court of 1st Additional Sessions Judge, Raipur did not consider this well settled legal principle which it should have considered.
12. Looking to the above facts and circumstances of the case, 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. CC as per rules.

Sd/-
(Sharad Kumar Gupta)
Judge