

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on 1-5-2019

Delivered on 2-5-2019

MCRC No. 2633 of 2019

- Safarulla S/o Safaruddin Aged About 25 Years Occupation- Labour, R/o Ranpur Khurd, Post- Parsa, Police Station And Tahsil- Ambikapur, District- Surguja, CG

---- Applicant

Versus

- State of Chhattisgarh Through District- Magistrate- Raigarh, District- Raigarh, CG

---- Respondent

For applicant	Mr. Nishikant Sinha, Adv.
For non-applicant/State	Ms. Sangeeta Mishra, Govt. Adv.

Hon'ble Shri Justice Sharad Kumar Gupta**CAV Order**

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. 288/2018 registered in police station Lailunga, Distt. Raigarh (CG) for offence punishable under Section 302, 397, 120-B, 201/34 of IPC.
3. Prosecution story in brief is that deceased Ajay Kumar Ekka was the resident of village Rajapur. He was running a taxi bearing registration No. CG 15 B 3074. On 6-12-2018 some unknown person booked his vehicle. He had a mobile bearing SIM No. 7440799803. On 7-12-2018 the dead body of deceased was found in injured condition beside the Tikra of Dharam Singh at village Karrahan. Some unknown persons had looted his taxi and said mobile.
4. Counsel for the applicant argued that the applicant is innocent and has been falsely implicated hence he be released on bail.
5. 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.
6. The complicity of applicant is described in the memorandum of co-accused Maajuddin and Irshad Alam.
7. For rejecting the bail application it is not sufficient that alleged allegations are serious in nature or heinous offence has been committed. What is important is that prima facie legally admissible evidence is available on record.

8. In the case in hand there is no memorandum of applicant leading to recovery of incriminating article.

9. 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.

10. 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.”

11. 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.”

12. 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.

13. The Addl. Sessions Judge, Gharghoda did not consider this well settled legal principle which it should have considered.

14. Looking to the above mentioned facts and circumstances of the case, and as trial will take its own time, the 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.

15. CC as per rules.

Sd/-
(Sharad Kumar Gupta)
Judge