

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 2997 of 2019**

- Irfan Ansari S/o Usuf Ansari, Aged About 24 Years Caste - Musalman R/o Village - Matrameta, Police Station T. Tangar, District Simdega (Jharkhand)
- Saddam Husen S/o Moh. Ali Ansari, Aged About 24 Years Caste - Musalman R/o Village - Dihariya, Police Station Rehla, District Palam (Jharkhand)

---- Applicants**Versus**

- State Of Chhattisgarh Through Station House Officer, Police Station Tumla, District Jashpur Chhattisgarh

---- Non Applicant

For the Applicants : Shri Sanjeev Kumar Sahu, Advocate

For Non Applicant : Shri Ashutosh Pandey, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****15.05.2019**

1. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicants before this Court and no other bail application is pending before any other Court.
2. Perused the case diary provided by the learned counsel for the State in connection with Crime No.07/2019 registered at Police Station- Tumla, District- Jashpur (C.G.) for the offence punishable under Sections 394, 452, 34 of Indian Penal Code.
3. Case of the prosecution, in brief is that on 11.03.2019 between 14:00 -15:00 hours at village Sikirma, Farsabahr, four unknown persons entered in the house of complainant Jamni Pekra, they beat her, one person pointed the knife on her chest. They stole some golden ornaments, some silver ornaments, some brass platters, cash of Rs.13,000/-.
4. In test identification parade complainant identified applicant Irfan Ansari but did not identify the applicant Saddam Husen. On the memorandum of applicant Irfan Ansari three brass platters were in the name of husband of complainant was designed, were seized from him.
5. Learned counsel for the applicants submits that applicants have no criminal background, they are innocent and have been falsely implicated in the present case, therefore, they shall be released on bail.
6. On the other hand, learned counsel for the State opposes the bail application, however, submits that one similar type of case has been registered against the applicants at Jhadsudha.
7. The complicity of applicant Saddam Husen is described in the memorandum of applicant Irfan Ansari. There is no memorandum of applicant Saddam Ansari nor any incriminating article has been seized from him.
8. 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.
9. 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.”

10. 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.”

11. 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.
12. The Additional Sessions Judge, Kunkuri overlooked this well settled legal principle which he should have considered.
13. Looking to the above mentioned facts and circumstances of the case, looking to the prima facie material available on record against the applicant Saddam Husen, looking to the fact that there is no likelihood of the accused to abscond and tamper the evidence, **the present bail application of applicant Saddam Husen is allowed**, it is directed that if applicant Saddam Husen furnishes one solvent surety for a sum of Rs.25,000/- along with a personal bond of Rs.25,000/- to the satisfaction of the concerned trial Court, he shall be released on bail.
14. Looking to the above mentioned facts and circumstances of the case, looking to the prima facie material available on record against the applicant Irfan Ansari, looking to the seriousness of the offence, looking to the impact of granting bail to the applicant on society, **the present bail application of applicant Irfan Ansari is rejected**
15. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
Judge

Parul