

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 4464 of 2019**

Khelkumar Khunte S/o Mela Ram Khunte Aged About 24 Years R/o Village Mouhapali, Police Station Chandrapur, Tahsil Dabhara, District- Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

---- Applicant

Versus

State Of Chhattisgarh Through District Magistrate Janjgir-Champa, District- Janjgir-Champa, Chhattisgarh And Also Through The Police Of Police Station Dabhara, District- Janjgir-Champa, Chhattisgarh., District : Janjgir-Champa, Chhattisgarh.

---- Respondent

For the Applicant	:	Shri Govind Dewangan, Advocate
For the State	:	Shri D.C. Verma, Govt. Advocate

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board**09/08/2019**

1. This is the first bail application under Section 439 of the CrPC and there is no bail application is pending before any other Court.
2. Perused the case diary provided by the counsel for the State in connection with the Crime No.166/2019 registered at Police Station Dabhara, District Janjgir-champa (C.G.) for the offence punishable under Section 379/34 of IPC.
3. Case of the prosecution, in brief is that complainant Raghunandan Prasad Prajapati is the resident of village Dabhara. On 08/05/2019 between 7 to 8 p.m. front of his house his motorcycle bearing registration number C.G. 11 A.S. 2234 was stolen by some unknown persons. The aforesaid motorcycle was seized from co-accused Khagesh Patel.
4. The complicity of applicant is described in his own memorandum which is not admissible in evidence.
5. Counsel for the applicant submitted that he has innocent and falsely implicated in the present case, therefore, he may be released on bail.

6. On the other hand, counsel for the State opposes the bail application. He further submits that no criminal antecedents against the applicant.
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 vs. State of Kerala (2012) 2 SCC 399** has laid down the following judicial precedent :-

'Relevance of the confessional statements would depend upon discovery of unknown facts based on information supplied by accused if any fresh fact 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 vs. 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 the crime but other part by which the 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 First Additional Session Judge, Sakti, District Janjgir-Champa overlooked this well settled legal principle which should have been considered.
12. Looking to the above mentioned facts and circumstances of the case,

looking to the fact that there is no likelihood of the accused to abscond and tamper the evidence, 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 Court with the condition that he shall appear before the concerned 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

Kamde