

NAFRHIGH COURT OF CHHATTISGARH, BILASPURMCRC No. 4819 of 2019

- Mohit Garg S/o Sheeshan Garg Aged About 35 Years R/o Sushanta City-2, Blcok - B, 938, Jassi Pawli, Police Station Sadar, District Bhatinda, Punjab., District : Bathinda, Punjab

---- Applicant

Versus

- State Of Chhattisgarh Through Station House Officer, Police Station Sakari, District Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh

---- Non-applicant

For Applicant : Mr. Rupesh Shrivastava, Advocate.

For Non-applicant : Mr. D.C. Verma, Govt. Advocate

Hon'ble Shri Justice Sharad Kumar GuptaOrder On Board09.08.2019

1. 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.
2. Perused the case diary provided by the learned counsel for the State in connection with crime No. 173/2015 registered at Police Station – Sakri District Bilaspur (C.G.) for the offence punishable under Sections 419, 420/34 of the Indian Penal Code.
3. Case of the prosecution, in brief is that on 31.05.2015 complainant Raj Kumar Pathak, APC at Police Academy, Raipur received call in his mobile bearing SIM No. 07352773448, caller told him that he is bank officer and obtained his ATM card No. and OTP. Thereafter Rs. 9990/- were withdrawn from his account.

4. 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.
5. On the other hand, learned counsel for the State opposes the bail application and submits that 3 other similar type of cases have been registered against the applicant.
6. The complicity of the applicant is described in his own memorandum and in the memorandum of Md. Rizwan Ansari.
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 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.”

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 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. In the case in hand the complicity of the applicant is described in his own

memorandum and in the memorandum of Md. Rijwan Ansari. Thus it is not admissible in evidence.

12. The Seventh Additional Sessions Judge, Bilaspur 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 fact that there is no likelihood of the accused to abscond and tamper the evidence, trial will take its own time, this Court is inclined to give benefit of Section 439 of the Cr.P.C. to the applicant. Consequently, the application is allowed. It is directed that if the applicant furnishes two solvent sureties for a sum of Rs.25,000/- each along with a personal bond of Rs. 50,000/- to the satisfaction of the concerned Court with the condition that he will not involve in any similar type of crime in future, he will 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.

14. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)
JUDGE