

**NAFR****HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 6644 of 2018**

Akshay Sidar, S/o Govind Chandra Sidar, aged about 22 years, R/o Village Timarlaga, Police Station Sarangarh, District Raigarh (CG). ---- **Applicant**

**Versus**

State of Chhattisgarh, through Station House Officer, Police Station Sarangarh, District Raigarh (CG). ---- **Non-applicant**

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| For Applicant     | : Mr. Awadh Tripathi, Advocate       |
| For Non-applicant | : Mr. Suryakant Mishra, Panel Lawyer |

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

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**07.01.2019**

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 counsel for the State in connection with crime No.59/2018 registered at Police Station Sarangarh, District Raigarh for the offence punishable under Sections 302, 201, 120B, 34 of IPC.
3. Case of the prosecution, in brief is that on 30.01.2018, the dead body of the deceased Purandar Sahu was found near the mine at village Timarlaga. It is stated that co-accused Rambha was having illicit relation with the co-accused Laxmi Sidar and deceased Purandar Sahu. On 30.01.2018 the applicant, co-accused Om Prakash @ Tegnu Nishad caught hold the body of deceased Purandar Sahu and co-accused Laxmi Sidar killed the deceased by iron rod.
4. Counsel for the applicant submits that the applicant has not committed any offence. He is innocent and has been falsely implicated in the present case, therefore, he may be released on bail.
5. On the other hand, counsel for the State opposes the prayer for grant of bail to the applicant however he submits that no criminal antecedent is reported against the applicant in police case diary.
6. The complicity of the applicant is shown in the memorandum of the co-accused Laxmi Sidar which is not admissible in evidence.
7. In the case in hand, there is neither memorandum of the present applicant nor seizure has been made from him.
8. As per 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.

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 confessional statement would depend upon discovery of unknown facts based on information supplied by accused if any fresh facts 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.”

10. Hon'ble Supreme Court in the matter of **Jitendra Kumar -v- State of Haryana** [(2012) 6 SCC 204] **(to be taken out from Library)** 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.”

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 trial Court did not consider this well settled legal principle which it should have considered.

13. As per web copy of order dated 03.07.2018 passed by co-ordinate bench of this Court in M.Cr.C. No.4258 of 2018 (Om Prakash @ Tegnu Nishad) has been released on bail.

14. Looking to the above facts and circumstances of the case, looking to the evidence prima facie available against the applicant, looking to the fact that there is no likelihood of the accused to abscond and tamper the evidence; and the trial is likely to take some more time for its final disposal, this Court is inclined to give benefit of Section 439 of the Cr.P.C. to the applicant. Accordingly, the bail application is allowed.

15. 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 Trial Court with the condition that he shall appear before the Trial Court at 11:00 am as and when directed till trial and he would co-operate during the trial, he shall be released on bail.

16. Certified copy as per rules.

**Sd/-**

(Sharad Kumar Gupta)

**JUDGE**

L/-