

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 7925 of 2018**

Rocky Gurde S/o Late Ajay Gurde Aged About 22 Years R/o Kosanala
Bhilai Police Station Supela, District Durg Chhattisgarh.

---- **Applicant**

Versus

State Of Chhattisgarh Through Station House Officer, Police Station
Supela District - Durg Chhattisgarh., District : Durg, Chhattisgarh.

---- **Respondent**

For the Applicant	:	Shri A.C. Sahu, Advocate
For the State	:	Shri I. Lakra, Dy. Govt. Adv.

Hon'ble Shri Justice Sharad Kumar Gupta**Order On Board****14/01/2019**

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 learned counsel for the State in connection with the Crime No.14/2018 registered at Police Station Supela, District Durg (C.G.) for the offence punishable under Section 302, 201/34 of IPC.
3. Case of the prosecution, in brief is that on 10/01/2018 at 07.30 a.m. near the GRP Chowki, Charoda dead body of deceased Rajkumar Sen @ Raj Sen was found. Injuries were also present on the body of the said deceased. As per the postmortem report cause of death was sock and hemorrhage resultant by injury over vital organs.
4. The complicity of the applicant described in the memo of co-accused Dayal Singh, Riyaz Khan, Ramlal Meshram, Kailash Bag @ Bhaya, Naveen Das and also the memorandum of applicant himself which are not admissible in evidence.
5. Learned counsel for the applicant submits that he has innocent and falsely implicated in the present case, therefore, he shall 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 confessional or not.

8. Hon'ble Supreme Court in the matter of **Madhu vs. State of Kerla (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 (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 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. First Additional Sessions Judge, Durg was unnecessarily impressed with confessional statement of the memorandum of applicant and co-accused.

11. Looking to the facts and circumstances of the case, looking to the *prima facie* evidence available on record against the applicant, this Court is inclined to get the benefit under Section 439 of CrPC to the applicant, 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 trial Court at 11.00 am as and when directed till trial and he would cooperate during the trial, he shall be released on bail.

Sd/-
(Sharad Kumar Gupta)
Judge