

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 8817 of 2018**

Dalganjan Vishwakarma, S/o Shri Jaikaran Vishwakarma, aged about 27 years,  
R/o village Ward No.17, Kenapara, Thana and Tahsil Baikunthpur, District Koriya  
(CG). **---- Applicant**

**Versus**

State of Chhattisgarh, through Police Station Khadgava, District Koriya (CG).  
**---- Non-applicant**

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| For Applicant     | : Mr. Sharad Mishra & Mr. Sachin Singh Rajput, Advocate. |
| For Non-applicant | : Mr. Neeraj Kumar Sharma, Dy.G.A.                       |

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

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**03.01.2019**

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.89/2018 registered at Police Station Khadgava, District Koriya for the offence punishable under Sections 302, 34 of IPC.
3. Case of the prosecution, in brief is that on 09.07.2018 at about 6-7 a.m. in village Chhotosalhi, the body of deceased Shriram was found in his house. An injury was present in the right side of his head. A spade was also present there. Blood like stain was present on the spade. On the memorandum of co-accused Lal Sai, one club was seized from him. Blood like stain were also present on club. The complicity of the applicant Dalganjan Vishwakarma is mentioned in the memorandum of the co-accused Lal Sai. There was an agricultural land dispute between the deceased and co-accused Lal Sai.
4. The Second Additional Sessions Judge, Manendragarh rejected the bail application of the applicant on the ground that land dispute was present between the applicant and the deceased. The complicity of the applicant shown in the memorandum of co-accused Lal Sai.
5. 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.
6. On the other hand, counsel for the State opposes the prayer for grant of

bail to the applicant.

7. In the case in hand, there is neither memorandum of the present applicant nor seizure 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 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 Second Additional Sessions Judge, Manendragarh did not consider this well settled legal principle which it should have considered.

13. Looking to these facts and circumstances of the case, 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.

14. 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.

15. Certified copy as per rules.

**SD/-**

(Sharad Kumar Gupta)

**JUDGE**

L/-