

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****MCRC No. 9144 of 2018**

1. Gopal Gond, aged about 20 years, son of Shri Maniram Gond, R/o Sukli, P.S. and Tahsil Janjgir, District Janjgir Champa (CG).
2. Ramkumar, aged about 19 years, son of Shri Laxman, Caste Gond, R/o Munund, P.S. and Tahsil Janjgir, District Janjgir Champa (CG).
3. Mahesh Ram Gond, Aged about 21 years, son of Shri Samaru Gond, Caste Gond, R/o Village Semra, P.S. Nawagarh, District Janjgir Champa (CG).

---- Applicants**Versus**

State of Chhattisgarh, through District Magistrate, Janjgir-Champa, through Police Station Janjgir, District Janjgir Champa (CG).

---- Non-applicant

For Applicants	: Mr. Pushpendra Kumar Patel, Advocate.
For Non-applicant	: Mr. Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta
Order On Board

21.01.2019

1. Case diary is not available.
2. This is first bail application under Section 439 of the Cr.P.C. preferred by the applicants before this Court and no other bail application is pending before any other Court.
3. Perused the copy of charge-sheet provided by the counsel for the applicants in connection with crime No.509/2018 registered at Police Station Janjgir, District Janjgir Champa for the offence punishable under Sections 457, 380 & 34 of Indian Penal Code.
4. Case of the prosecution, in brief is that in the intervening night of 22.08.2018/23.08.2018 at village Sukli from the shop of complainant Balram Prasad Rathore, some unknown persons have stolen Rs.8,000/- and 05 mobile sets, out of which, 03 mobiles were of Micromax company, 01 was of Airtel company and 01 was of Samsung company. The memorandum of applicants recorded in Crime No.532/2018, Police Station Janjgir are part of case diary, but there is no seizure regarding this case.
5. Counsel for the applicants submits that the applicants have not committed any offence. They are innocent and have been falsely implicated in the present case, therefore, they may be released on bail.

6. On the other hand, counsel for the State submitted that four criminal cases of similar nature have already been registered against the applicants hence the applicants are not entitled for grant of bail.
7. The complicity described in the memorandum of applicants is not admissible in evidence.
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 trial Court did not consider this well settled legal principle which it should have considered.
13. Though four criminal cases of similar nature have already been registered against the applicants, but looking to above mentioned facts and circumstances of the case, *prima facie* looking to the evidence available on record against the applicants, 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 applicants. Accordingly, the bail application is allowed.

14. It is directed that if the applicants furnish one solvent surety for a sum of Rs.25,000/- each along with a personal bond in the like sum to the satisfaction of the concerned Trial Court with the condition that they shall appear before the Trial Court at 11:00 am as and when directed till trial and they would co-operate during the trial, they shall be released on bail.

15. Certified copy as per rules.

Sd/-

(Sharad Kumar Gupta)

JUDGE

L/-