

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 9770 of 2018**

Moh. Asif Gani S/o Moh. Usman Gani Aged About 38 Years R/o Takiyapara ,durg Tahsil And District Durg Chhattisgarh., 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	:	Ms. Saumya Sharma, Advocate
For the State	:	Ms. Sangeeta Mishra, Govt. Adv.

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board**09/01/2019**

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.713/2018 registered at Police Station Supela, District Durg (C.G.) for the offence punishable under Section 406, 34 of IPC.
3. Case of the prosecution, in brief is that complainant Rajendra Mishra R/o Kailash Nagar Housing Board, Bhilai had purchased a vehicle bearing registration number C.G. 07 AX/7765 through Tata Motors Finance Company. On 10/05/2017 co-accused Syed Mazid Ali had entered an agreement for sale of said vehicle with complainant. There was a condition that co-accused Syed Mazid Ali will pay the installments to said finance company. Thereafter co-accused Syed Mazid Ali did not deposited the installments. He also did not returned back the said vehicle to said complainant. It is said that co-accused Syed Mazid Ali sold the aforesaid vehicle to co-accused Sheikh Rafiq who disposed of the said vehicle by cutting as scrap. Co-accused Syed Mazid Ali had sold that vehicle through applicant. Applicant had got the commission for it.
4. The complicity of applicant is described and shown in the memorandum of co-accused Syed Mazid Ali and his own memorandum 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 five other criminal cases have been registered 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 unnecessary impressed with confessional statement of the memorandum of applicant and co-accused.
11. The Court below did not consider this well settled legal principle which it should have considered.

12. Though five other criminal cases have been registered against the applicant but looking to the facts and circumstances of the case, looking to the nature of evidence *prima facie* available on record against applicant, this Court is inclined to give the benefit under Section 439 of CrPC to the applicant. Accordingly bail application is allowed. 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.

13. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)
Judge

Kamde