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HIGH COURT OF CHHATTISGARH, BILASPUR**MCRC No. 9761 of 2018**

Golu Chauhan S/o Shri Bhanu Chauhan Aged About 25 Years R/o Baradera, Dhansuri, Police Station Mandir Hasoud, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh .

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Vidhan Sabha, Raipur, Civil And Revenue District Raipur Chhattisgarh, District : Raipur, Chhattisgarh.

---- Respondent

Along with**MCRC No. 9786 of 2018**

Jethu @ Ramnath Dewar S/o Ganesh Dewar Aged About 27 Years R/o Baradera, Dhansuli, Police Vidhan Sabha, District Raipur Chhattisgarh, District : Raipur, Chhattisgarh .

---- Applicant

Versus

State Of Chhattisgarh Through The Station House Officer, Police Station Vidhan Sabha, Civil And Revenue District Raipur Chhattisgarh, District : Raipur, Chhattisgarh.

---- Respondent

For the Applicant	:	Shri Aditya Chopra, Advocate (in MCRC No. 9761/2018)
	:	Ms. Sunita Sahu, Advocate (in MCRC No. 9786/2018)
For the State	:	Shri Vinod Tekam, Panel Lawyer

Hon'ble Shri Justice Sharad Kumar Gupta

Order On Board**16/01/2019**

1. As MCRC No. 9761/2018 and MCRC No.9786/2018 arise out of the same crime number of the same police station, they are being disposed of by this common order.
2. The applicants have preferred these applications under Section 439 of the Cr.P.C. as they apprehend their arrest in connection with Crime No.282/2018 registered in Police Station Vidhan Sabha Raipur, District Raipur (C.G.) for the offence punishable under Sections 457, 380, 349, 34 of IPC.

3. Case of the prosecution, in brief is that in the intervening night of 07/08/2018 and 08/08/2018 from the warehouse of the Housing Board Nardaha unknown persons had stolen the electric fitting materials worth Rs. 10,19,214/-.
4. Learned counsel for the applicants submits that they have innocent and falsely implicated in the present case, therefore, they shall be released on bail.
5. On the other hand, counsel for the State opposes the bail application. He further submits that no criminal antecedents against the applicants.
6. The complicity of the applicants described in the memorandum of co-accused persons Jethu, Pawan Chouhan, Doman Das Ratre, Ghanshyam Markam and in the memorandum of applicants themselves which are not admissible in evidence.
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. The Sessions Judge, Raipur was unnecessarily impressed with confessional statement of the memorandum of applicant and co-accused.

11. The Court below overlooked this well settled legal principle which it should have considered.
12. Looking to the facts and circumstances of the case, looking to the evidence available against the applicants on the record, if the applicants furnishes two solvent sureties for a sum of Rs. 25,000/- each along with a personal bond or Rs. 50,000/- each to the satisfaction of the concerned 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 cooperate during the trial, they shall be released on bail.
13. Certified copy as per rules.

Sd/-
(Sharad Kumar Gupta)
Judge

Kamde