

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.40616 of 2014

Arising Out of PS.Case No. -38 Year- 2014 Thana -SC ST P.S. District- SIWAN

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1. Nawal Kishor Tiwari @ Nawal Kishor Pati Tiwari Son of Brijnandan Pati Tiwari
 2. Amrita Kumari Daughter of Nawal Kishor Tiwari @ Nawal Kishor Pati Tiwari
 3. Bindu Devi Wife of Nawal Kishor Tiwari @ Nawal Kishor Pati Tiwari
 4. Chandra Bhushan Pati Tiwari Son of Nawal Kishor Tiwari @ Nawal Kishor Pati Tiwari , All resident of village- Gothi, Police Station- Andar, District- Siwan

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bipin Bihari Singh
Mr. S. K. Ranjan

For the Opposite Party/s : Mr. Ram Shankar Das, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

2 13-03-2015

Heard the parties.

The petitioners have applied for anticipatory bail under Section 438 Cr. P.C. with respect to a criminal prosecution registered under Sections 354, 379 and some other allied offences under the Indian Penal Code as also under Sections 3(1), (iv), (x) and (xi) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

Learned counsel appearing on behalf of the petitioners has drawn attention of this Court with respect to the findings recorded by the learned Sessions Judge that the petitioners were earlier released on personal bonds by the police and they are on police bail, but according to him, subsequently, charge sheet was submitted against the petitioners for non-bailable offences, therefore, they apprehend their arrest in the aforesaid criminal case, as such, they have applied for grant of anticipatory bail

under Section 438 Cr. P.C.

It is now settled legal proposition that once the accused surrenders either before the court or the police, and/or is on police bail, the petition under section 438 Cr. P. C. is not maintainable.

Hence, the application for grant of anticipatory bail filed on behalf of the petitioners in connection with Siwan SC/ST Police Station Case No. 38 of 2014 dated 20.03.2014, pending in the court of learned Chief Judicial Magistrate, Siwan, is rejected, as not maintainable.

However, if the petitioners surrender in the court below within a period of four weeks from today and apply for regular bail, then their prayer for bail shall be considered in the light of the observations made by this Court in the case of **Mahendra Prasad Singh vs. State of Bihar [2004(3) PLJR 491]** as also the other judicial pronouncements made by this Court on the same subject matter.

(Birendra Prasad Verma, J)

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