

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22885 of 2016

Arising Out of PS.Case No. -1 Year- 2014 Thana -ECONOMIC OFFENCES, BIHAR District-
PATNA

Reshmi Devi, Wife of Jhakhari Ram, Resident of Rudrabarkala, P.S.-
Sonhan, District - Kaimur. Ar present residing at C/2 Surya Bihar Colony
Phase-2, Ashiyana Nagar, P.S.- Rajiv Nagar, District- Patna.

.... Petitioner

Versus

The State of Bihar through Economic Offence Unit Bihar, Patna.

.... Opposite Party

with

Criminal Miscellaneous No.24774 of 2016

Arising Out of PS.Case No. -1 Year- 2014 Thana -ECONOMIC OFFENCES, BIHAR District-
PATNA

Jhakari Ram @ Jhakhari Ram son of Late Harichand Ram, Resident of
Village- Rudrabarkala, P.S.- Sonhan, District- Kaimur, At present residing
at C/2 Surya Bihar Colony, Phas-2, Ashiyana Nagar, P.S.-Rajiv Nagar,
District- Patna.

.... Petitioner

Versus

The State of Bihar through Economic offence Unit, Bihar, Patna.

.... Opposite Party

Appearance :

(In Cr.Misc. No.22885 of 2016)

For the Petitioner : Mr. N.K. Agrawal, Sr. Advocate.

For the Opposite Party : Mr. Rajiv Ranjan Prasad (For Eou)

(In Cr.Misc. No.24774 of 2016)

For the Petitioner : Mr. N.K. Agrawal, Sr. Advocate.

For the Opposite Party : Mr. Rajiv Ranjan Prasad (For Eou)

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

5 18-08-2016 Heard Shri N.K. Agrawal, learned senior counsel for

the petitioners and Shri Rajiv Ranjan Prasad for Economic

Offence Unit.

Shri N.K. Agrawal, learned senior counsel for the



petitioners submitted that the learned Special Judge Vigilance Ist, Patna has rejected the petition of the petitioners on technical ground relying on the judgment of Hon'ble Supreme Court passed in **Cr. Appeal No. 2415 of 2009 (arising out of S.L.P. (Cr.) No. 4190 of 2006) HDFC Bank Vrs. J.J. Mannan and J.M. Jaun Paul and others reported in 2010 (1) SCC, 679.**

It is further submitted that in the case of **Shri Gurbaksh Singh Sibbia and Others v. State of Punjab**, reported in **(1980) 2 SCC 565** and later on in the case of **Rabindra Saxena** reported in **2010 (1) SCC page 684**, it has been held that even after submission of charge sheet an application under Section 438 Cr.P.C. cannot be barred and the application under Section 438 Cr.P.C. can be filed even after submission of charge sheet. Therefore, let the matter be sent back to the learned court below to pass order on merit.

Shri Rajiv Ranjan Prasad, learned counsel appearing on behalf of Economic Offence Unit has very fairly submitted that so far as the position of law as decided by the larger Bench of the Hon'ble Supreme Court in **Shri Gurbaksh Singh Sibbia and Others** (supra) is that at any time the application under Section 438 Cr.P.C. can be filed.

Considering the facts aforesaid and the fact that the

learned Special Judge Vigilance, Patna has rejected the petition of the petitioners on technical ground, I am sending back both the cases to the learned Special Judge Vigilance, Patna to consider the prayer of anticipatory bail of the petitioners on merit afresh after hearing both the parties and pass order in accordance with law.

(Prabhat Kumar Jha, J.)

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