

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.28673 of 2018**

Arising Out of PS.Case No. -352 Year- 2012 Thana -ROHTAS COMPLAINT CASE District-  
SASARAM (ROHTAS)

=====

1. Madan Sah S/o Late Banshropan Sah, R/o Vill.- Chenari (Bharandua)  
P.O. & P.S.- Chanari, District- Rohtas.

.... .... Petitioner/s

Versus

1. The State of Bihar.  
2. Krishna Prasad Gupta S/o Late Ram Sundar Sah,  
3. Dheeraj Kumar S/o Sri Krishna Prasad Gupta, Both belongs to Vill.-  
Chenari South , P.S.- Chanari , P.O.- Chenari, District- Rohtas.

.... .... Opposite Party/s

=====

**Appearance :**

For the Petitioner/s : Mr. Raghunandan Kumar Singh, Adv

For the Opposite Party/s : Mr. Shyam Kumar Singh, APP

=====

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR**  
**ORAL ORDER**

4 12-09-2018

Heard learned counsel for the parties.

This is an application under Section 439 (2) of the Code of Criminal Procedure for cancellation of bail granted to opposite party Nos.2 and 3 in connection with Complaint Case No.352 of 2012 by the learned A.C.J.M., Rohtas at Sasaram for the offences under Sections 420,406 and 120B of the Indian Penal Code. The order of the learned A.C.J.M. is at Annexure-3. The said order reveals that the opposite party Nos.2 and 3 had taken loan from the complainant on the occasion of marriage of their daughters and they had promised to transfer their land in favour of the complainant. However, subsequently, they did not transfer.



The petitioners challenged the aforesaid order before the learned Sessions Judge under Section 439 (2) of the Code of Criminal Procedure and the learned Sessions Judge rejected the prayer of the petitioners by a reasoned order considering the grounds set-forth by different judicial pronouncements for consideration of cancellation of bail.

The order of the learned Sessions Judge has been challenged in this application under Section 439 (2) Cr.P.C.

Section 439 of the Code of Criminal Procedure is being reproduced below:

**“439. Special powers of High Court or Court of Session regarding bail.”-(1) A High Court or Court of Session may direct—**

*(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in sub-section (3) of section 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section;*

*(b) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:*

*Provided that the High Court or the Court of*



*Session shall, before granting bail to a person who is accused of an offence which is triable exclusively by the Court of Session or which, though not so triable, is punishable with imprisonment for life, give notice of the application for bail to the Public Prosecutor unless it is, for reasons to be recorded in writing, of opinion that it is not practicable to give such notice.*

*(2) A High Court or Court of Session may direct that any person who has been released on bail under this Chapter be arrested and commit him to custody.”*

Apparently, this application is not maintainable, under the aforesaid provision against refusal of prayer for cancellation by the learned Sessions Judge in exercise of power under Section 439(2) Cr.P.C. which is concurrent powers of the High Court as well as of the Sessions Judge.

Hence, this application stands dismissed as not maintainable.

**(Birendra Kumar, J)**

Nitesh/-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|

