

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14642 of 2019

Arising Out of PS. Case No.-25 Year-2015 Thana- SONBERSA District- Sitamarhi

Vikesh Das S/o Late Dukha Das residence of village-Matiyar Khurd, P.S-
Sahiyara, District - Sitamarhi.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Virendra Kumar, Advocate

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

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

3 03-05-2019 This application has been filed under Sections 439
and 440 of the Code of Criminal Procedure for grant of regular
bail after refusal of the prayer by learned Assistant Sessions
Judge-II, Sitamarhi, in Sessions Trial No.62 of 2016 by order
dated 09.01.2019.

The office pointed out defect that since prayer for bail
has been refused by the Assistant Sessions Judge. Hence, prayer
should have made before the learned Sessions Judge.

For removal of the aforesaid defects, the petitioner
approached before the learned Sessions Judge, Sitamarhi, under
Section 439 Cr.P.C., vide B.P. No.270 of 2019. By order dated
14.03.2019, order at Flag-A, the learned Sessions Judge,
Sitamarhi, has rejected the petition as not maintainable. As
prayer for bail was refused by an Assistant Sessions Judge in a
sessions trial.



Section 10(1) Cr.P.C. provides that all the Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction. Section 439 Cr.P.C. gives special powers to the High Court or the Court of Session regarding bail.

Section 439(1) reads as follows:

“439(1). A High Court or Court of Sessions may direct 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.”

If a subordinate Court to the Sessions Judge has refused the prayer for bail the Sessions Judge was competent enough to entertain the prayer under Section 439 Cr.P.C. in the same manner when he considers the prayer for bail under Section 439 Cr.P.C. against refusal of prayer for bail by any Magistrate.

Therefore, the order of the learned Sessions Judge is not consistent with the law. Hence, the same stands set aside and it is directed that the learned Sessions Judge shall entertain the prayer of the petitioner under Section 439 Cr.P.C. in



connection with Sonbarsa P.S. Case No.25 of 2015 and shall
pass necessary order according to law.

With the aforesaid observation, this application stands
disposed of.

(Birendra Kumar, J)

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