

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40285 of 2019

Arising Out of PS. Case No.-791 Year-2017 Thana- KHAGARIA District- Khagaria

-
1. MD. MOFIL @ MAHFIL MIYAH Son of Md. Rafique
 2. Md. Jahangir
 3. Md. Alamgir @ Alamgir
 4. Md. Sahid
Sl. No. 2 to 4 are sons of Md. Mofil
 5. Md. Mokim Son of Md. Rafique
 6. Sajina Khatoon Wife of Md. Mokim

All residents of Village - Kutubpur, P.S.- Khagaria (Muffasil), District - Khagaria

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bishweshwar Ram
For the Opposite Party/s : Mr.J.N. Thakur (App 104)

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 02-07-2019 The petitioners apprehend their arrest in connection with Khagaria (Moffasil) P.S.Case No. 791 of 2017 registered under Sections 308,323,341,504 and 506/34 of the Indian Penal Code.

Allegation against the petitioners is that they surrounded the informant and assaulted him with *lathi* and rod etc. causing injury on left leg and left hand of the informant.

Learned counsel for the petitioners submits that injuries caused to the informant are simple in nature and police, in view of the fact of case, has granted bail to the petitioners under



Section 437(2) of the Cr.P.C.

The petitioners pray for anticipatory bail in this case registered under Sections 308, 323, 341, 504 and 506/34 of the Indian Penal Code. The admitted position is that petitioners were on police bail during the course of investigation and subsequently charge sheet has been submitted by the police under Sections 323, 325, 341, 379, 385 and 504/34 of the Indian Penal Code which all are bailable. However, learned Magistrate differs with the police report, took cognizance under Section 308 of the Indian Penal Code which is non-bailable.

In view of law laid down by this Court in the case of *Mahendra Prasad Singh vs. The State of Bihar* reported in *2004(3) PLJR 491* and of *Ram Vilas Singh vs. The State of Bihar* reported in *2008(3) PLJR (HC) 253*, it is evident that application for anticipatory bail is not maintainable in the said case. This Court has held that when the case is initially for non-bailable offences wherein the accused is taken into custody and then released on bail by the police, an application for anticipatory bail on the ground that he has an apprehension of arrest in the case cannot be held to be maintainable. The petitioner must honour the terms of the police bail and appear before the court without any delay. In case, the petitioner



appears before the Court below within six weeks then the court below shall consider his prayer for bail keeping in view the well established principle that a person, who is already on bail, shall not be denied such privilege unless there is any allegation of misuse, etc.

Accordingly, this application is disposed of with the above directions.

(Anil Kumar Sinha, J)

sujit/-

U		T	
---	--	---	--

