

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30629 of 2023

Arising Out of PS. Case No.-71 Year-2016 Thana- KHANPURA District- Samastipur

1. RAM LAKHAN MAHTO SON OF LATE SURYA NARAIN MAHTO
RESIDENT OF VILLAGE -SIROPATTI, PS- KHANPUR, DISTT-
SAMASTIPUR
2. SIKANDAR MAHTO @ SIKANDAR KUMAR SON OF RAM LAKHAN
MAHTO RESIDENT OF VILLAGE -SIROPATTI, PS- KHANPUR,
DISTT- SAMASTIPUR
3. SURENDRA MAHTO @ SURENDRA KUMAR SON OF RAM LAKHAN
MAHTO RESIDENT OF VILLAGE -SIROPATTI, PS- KHANPUR,
DISTT- SAMASTIPUR
4. BIJENDRA MAHTO @ BIJENDRA KUMAR SON OF RAM LAKHAN
MAHTO RESIDENT OF VILLAGE -SIROPATTI, PS- KHANPUR,
DISTT- SAMASTIPUR
5. JITENDRA MAHTO @ JITENDRA KUMAR SON OF RAM LAKHAN
MAHTO RESIDENT OF VILLAGE -SIROPATTI, PS- KHANPUR,
DISTT- SAMASTIPUR

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dr. Om Prakash Om, Adv.
For the Opposite Party/s : Mr.Mohammad Sufyan, APP.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

4 31-07-2023 Heard the parties.

2. Petitioners apprehend their arrest in connection with
Khanpur P.S. Case No. 71 of 2016, registered for the offence
punishable u/s 147, 148, 149, 323, 324, 307, 379, 504 of the
IPC, pending in the court of learned C.J.M., Samastipur.

3. Learned counsel for the petitioners submits that
petitioners were granted bail by learned Court below before



submitting the final charge sheet and the charge sheet has been submitted under Section 302 and other Sections of IPC and accordingly, the learned Court below has took cognizance under the aforesaid sections.

4. It is settled principle of law that once the petitioner has been granted bail either by police or by the Court, the petition under Section 438 Cr.P.C. on behalf of petitioner is not maintainable.

5. In view of the matter, the application is disposed of with a direction to petitioners to surrender before the learned Court below within six weeks from today and seek regular bail and the learned Court below would consider the same without being prejudiced by this order in view of the ration laid down in the case of **Mahendra Prasad Singh Vs. The State of Bihar** reported in **2004 (3) PLJR 491**. In this decision, it was held that once the bail has been granted and the bail bond executed, at a later stage if the offence is treated as non-bailable, the applicant cannot file his application for grant of anticipatory bail. The only remedy available to him is to surrender before the concerned Court and the Court concerned will grant him bail without taking into custody, considering his conduct while on police bail and also that he has not misused the privilege of bail.



6. With the aforesaid observation and direction, this application stands disposed of.

(Anjani Kumar Sharan, J)

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