

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39298 of 2023

Arising Out of PS. Case No.-82 Year-1995 Thana- RAUTA District- Purnia

-
1. Salam @ Md. Salam Son Of Kalimuddin Resident Of Village - Hathuwa Bhuna, P.S. - Rauta, Distt. - Purnia
 2. Sadique @ Md. Sadique Son Of Kalimuddin Resident Of Village - Hathuwa Bhuna, P.S. - Rauta, Distt. - Purnia

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Md. Helal Ahmad

For the Opposite Party/s : Mr.Shahabuddin Azeem @ S. Azeem

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

2 03-08-2023 Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. The petitioners apprehend their arrest in Rauta P.S.
Case No. 82 of 1995 registered for the offences punishable
under Sections 323, 307, 34 of the Indian Penal Code pending in
the Court of learned Judicial Magistrate Ist Class, Purnia.

3. Learned counsel for the petitioners submits that
petitioners were granted bail by the police before submitting
the final charge sheet, thereafter charge sheet has been
submitted under Sections 341/323 of the I.P.C. but the learned
Court below has taken cognizance under the aforesaid Sections
323, 307 of the IPC.

4. It is settled principle of law that once the petitioner



has been granted bail either by the police or by the Court, the petition under Section 438 of the Cr.P.C. on behalf of the petitioner is not maintainable.

5. In view of the matter, the present application is disposed of with a direction to the petitioners to surrender before the learned Court below within six weeks from today and seek regular bail and the learned lower Court would consider the same without being prejudiced by this order in view of the ratio 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)

anand/-

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

