

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39673 of 2023

Arising Out of PS. Case No.-662 Year-2022 Thana- MAJHAULIA District- West Champaran

1. Umesh Prasad Son Of Devnandan Prasad Resident Of Village- Ahwar Shekh Dewan Tola, Ps- Majhuwalia, Dist- W. Champaran
2. Motilal Prasad Son Of Devnandan Prasad Resident Of Village- Ahwar Shekh Dewan Tola, Ps- Majhuwalia, Dist- W. Champaran
3. Sarmesh Kumar @ Sarves Kumar Son Of Vishwanath Prasad Resident Of Village- Ahwar Shekh Dewan Tola, Ps- Majhuwalia, Dist- W. Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dhannjay Kumar No 2
For the Opposite Party/s : Mr. Lalan Kumar

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

3 22-08-2023 Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. The petitioners apprehend their arrest in Majhuwalia P.S. Case No. 662 of 2022 registered for the offences punishable under Sections 341, 323, 325, 307, 504/34 of the Indian Penal Code pending in the Court of learned C.J.M., Bettiah, West Champaran.

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, 325, 504, 34 of the I.P.C. and the learned Court below has taken cognizance under the aforesaid Sections.

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)

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