

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.246 of 2023

Arising Out of PS. Case No.-135 Year-2018 Thana- DIGHWARA District- Saran

DEEPAK KUMAR @ DEEPAK SINGH S/o Sri Ramji Singh @ Ramjit
Singh R/v- Bastijalal, P.S.- Dighwara, District- Saran at Chapra

... .. Petitioner/s

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Udai Shankar Singh, Adv.
For the Opposite Party/s : Mrs. Sharda Kumari, APP.

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

4 17-04-2023 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

The petitioner apprehends his arrest in a case registered for the offences punishable under Sections 147, 148, 149, 341, 323, 324, 307, 302 & 120B of the Indian Penal Code and Section 27 of the Arms Act.

A supplementary affidavit filed by the petitioner is on record.

From perusal of the record, it appears that earlier the prayer for bail of the petitioner was dismissed as withdrawn vide order dated 12.04.2019 passed in Cr. Misc. No.77278 of 2018 on the request of learned counsel for the petitioner.

Now, the petitioner has renewed his prayer submitting that as he was on police bail, hence on his request on



12.04.2019, the said application was dismissed as withdrawn. He further submits that thereafter the learned C.J.M. took cognizance under Sections 147, 148, 149, 323, 324, 307, 302 & 120B of the Indian Penal Code and Section 27 of the Arms Act against all the accused persons including this petitioner, although the investigation was going on against the petitioner as such he had no knowledge about the said cognizance order. Later on, the police filed charge sheet under Section 147, 148, 149, 341, 323 & 324/34 IPC and the same was perused by the learned A.C.J.M. on 30.09.2019. He further submits that neither summon nor any processes has been served to the petitioner till date and as such he has not misused the privilege of police bail.

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 Cr.P.C. on behalf of the petitioner is not maintainable.

In that view of the matter, the present application is disposed of with a direction to the petitioner 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 had been granted and 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. 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.

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

(Anjani Kumar Sharan, J)

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