

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68424 of 2022

Arising Out of PS. Case No.-209 Year-2022 Thana- JAGDISHPUR District- Bhagalpur

1. Neelam Devi Wife of Sri Dharnidhar Sah R/o Vastu Vihar, Phase-1, Road No.03, House No.04, P.S.- Jagdishpur (O.P.- Bypass), District- Bhagalpur.
2. Anupriya Wife of Sri Mithilesh Kumar R/o Vastu Vihar, Phase-1, Road No.03, House No.04, P.S.- Jagdishpur (O.P.- Bypass), District- Bhagalpur.
3. Mithilesh Kumar Son of Sri Dharnidhar Sah R/o Vastu Vihar, Phase-1, Road No.03, House No.04, P.S.- Jagdishpur (O.P.- Bypass), District- Bhagalpur.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioners	:	Mr. Rajendra Narain, Senior Advocate Mr. Diwakar Upadhyaya, Advocate
For the State	:	Mr. Vinod Shanker Modi, APP

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

3 06-02-2023 Heard both sides.

From perusal of the impugned order, it appears that the petitioner is on 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 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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