

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66771 of 2024

Arising Out of PS. Case No.-8 Year-2024 Thana- MANSAHI District- Katihar

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1. Md Tarique Son of Md Akmal Resident of Village- Pothia Ghat, Ward No. 9, P.S- Mansahi, District- Katihar
 2. Md Akmal Son of Md Ismail Resident of Village- Pothia Ghat, Ward No.9, P.S.- Mansahi, District- Katihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Rajendra Prasad Sah
For the Opposite Party/s : Mr. Dilip Kumar No. 1

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

2 03-10-2024

Heard learned counsel for the parties.

2. The petitioners are apprehending their arrest in a case registered for the offence punishable under Sections 341, 323, 307, 379, 504, 506/34 of the Indian Penal Code.

3. Learned counsel for the petitioners submits that the petitioners are on police bail.

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

5. In that 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 court below 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.

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

(Anjani Kumar Sharan, J)

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