

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77134 of 2024

Arising Out of PS. Case No.-36 Year-2019 Thana- BIBHUTIPUR District- Samastipur

1. Md. Isamul @ Md. Isanul Son of Md. Yasim @ Md. Yasin @ Bhuvan @ Yasin Resident of Village - Raghunichak, P.S. -Bibhutipur, District - Samastipur (Bihar)
2. Md. Azad Son of Md. Akhtar Resident of Village - Raghunichak, P.S. -Bibhutipur, District - Samastipur (Bihar)

... .. Petitioners.

Versus

The State of Bihar.

... .. Opposite Party.

Appearance :

For the Petitioner/s : Mr. Vinay Kumar Mishra, Advocate

For the Opposite Party/s : Mr. Ashok Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

2 14-11-2024 Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. The petitioners apprehend their arrest in a case registered for the offences punishable under Sections 341, 323, 504 & 506/34 of the Indian Penal Code but cognizance has been taken under Sections 307, 323, 341, 504 & 506/34 of the Indian Penal Code.

3. I have gone through the impugned order and find that the learned Magistrate has rightly rejected the prayer for anticipatory 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 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 the conduct while on 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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