
(2011) 10 PAT CK 0026
In the Patna High Court
Case No : Criminal Revision No.389 of 2002

Mahehi Sah and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 323, 427, 447, 452

Citation : (2011) 10 PAT CK 0026

Hon'ble Judges : Amaresh Kumar Lal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ramesh Kr. Datta, J.—Heard learned counsel for the petitioner, learned counsel for the informant and learned A.P.P. for the State. The petitioner prays for anticipatory bail in a case registered under Sections 341, 323, 379, 307 and 34 of the Indian Penal Code and Section 27 of the Arms Act.

2. The admitted position is that the petitioner was on police bail during the course of investigation and subsequently the charge-sheet was submitted under Sections 341, 323, 504 and 34 of the Indian Penal Code. However, the cognizance was taken u/s 307 of the Indian Penal Code also and non-bailable warrant of arrest was issued.

3. In view of the law laid down by this court in the case of Mahendra Prasad Singh Vs. The State of Bihar, , it is evident that the application for anticipatory bail is not maintainable as the facts of the case are the same as the facts of the said case. In the said case, this court has held that when the case is initially for non-bailable offences wherein the accused is taken into custody and then is released on bail by the police, an application for anticipatory bail on the ground that he has an apprehension of arrest in the case cannot be held to be maintainable. The petitioner must honour the terms of the police bail and appear before the court without any delay. In case, the petitioner appears before the

court below within six weeks then the court below shall consider his prayer for bail, keeping in view the well established principle that a person, who is already on bail, shall not be denied such privilege unless there is any allegation of misuse, etc.

4. Learned counsel for the petitioner, however, submits that with respect to another co-accused, Pintu Kumar alias Bothu, who had surrendered in the said case and referred to the aforesaid decision of the High Court, the court below, without considering the same, rejected his prayer for bail and this, he apprehends that he will meet the same fate if he surrenders before the court below.

5. So far as the aforesaid conduct of the court below is concerned in a similar matter in the case of Awadh Mahto @ Awadhesh Prasad @ Awadh Prasad and Others Vs. The State of Bihar, , this court has deprecated the rejection of his prayer for bail by the court below without considering or discussing the guidelines as laid down in the case of Mahendra Prasad Singh (supra), and held that such order reflects either incapacity or abdication of judicial duties, both of which are serious matters. On a consideration of the law laid down by this court the present application is also disposed of with the direction that if the petitioner surrenders before the court below within four weeks from today then the court below shall consider his prayer for bail in accordance with law, keeping in view the well established principle that a person, who is already on police bait, shall not be denied such privilege, unless there is any allegation of misuse, etc. as laid down in the case of Mahendra Prasad Singh (supra).