

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75047 of 2024

Arising Out of PS. Case No.-319 Year-2024 Thana- SUGAULI District- East Champaran

1. Naeem Khan S/o- Late Amanullah Khan Village- Nakardei PS- Sugauli, Dist- East Champaran
2. Md. Nursad Khan @ Md. Noorsad Son of Late Meraj Khan Village- Nakardei PS- Sugauli, Dist- East Champaran
3. Tanveer Khan @ Tanveer Alam Son of Mukhtar Khan Village- Nakardei PS- Sugauli, Dist- East Champaran
4. Saifullah Khan S/o- Yunus Khan Village- Nakardei PS- Sugauli, Dist- East Champaran
5. Afsar Khan Son of Late Samsul Khan Village- Nakardei PS- Sugauli, Dist- East Champaran
6. Irsad Khan @ Irsad S/o- Late Meraj Khan Village- Nakardei PS- Sugauli, Dist- East Champaran
7. Aman Khan Son of Naeem Khan Village- Nakardei PS- Sugauli, Dist- East Champaran
8. Ajam Khan Son of Naeem Khan Village- Nakardei PS- Sugauli, Dist- East Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Anshul, Adv.
		Mr. Rajeev Ranjan, Adv.
For the Opposite Party/s :		Mr. Jagdhar Prasad, APP

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL ORDER

2 05-12-2024 Heard Learned Counsel for the petitioners and
Learned APP for the State.

2. The petitioners are apprehending arrest in connection with Sugauli P.S. Case No. 319 of 2024 lodged on 18.07.2024, for the offences punishable under Sections 191(2), 191(3), 190, 223, 126(2), 115, 132, 352 & 351(2) of the



Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as "BNS, 2023").

3. As per the prosecution, FIR has been lodged against 20 named accused persons (including the present petitioners) and one unknown person against whom there is allegation that during Muharram, they have intervened with police personnel's and abused them and also tried to snatch their weapons with physical force.

4. Learned Counsel for the petitioners submits that the petitioners are innocent and have committed no offence. Counsel submits that the present case in which FIR has been lodged against the petitioners under those sections in which punishment are below seven years. Counsel submits that admittedly, the present case has been lodged under the new law i.e. BNS, 2023 and the procedure for the same has been applicable namely, Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as "BNSS, 2023"). Counsel further submits that for all cases in which punishment is for less than seven years, the protection has been given to Bharatiya Nagarik under section 35 of the BNSS, 2023. Counsel submits that in these cases, the compliance of section 35 of the BNSS, 2023 has not been made and they have great apprehension to arrest even



without compliance of provision of section 35 of the BNSS, 2023.

5. Learned Counsel for the petitioners further submits that in support of his argument, he has placed the bail order of two accused persons who were arrested by the police to whom this Hon'ble Court has pleased to grant bail *vide* order dated 01.10.2024 passed in Cr. Misc. No. 68980 of 2024, even then the Police authority has not complying the provisions laid down under section 35 of the BNSS, 2023 for the petitioners.

6. In this background, this Court hereby grants protection to all the present petitioners that police shall not take any coercive steps against them until and unless, the provisions laid down under section 35 of the BNSS, 2023 shall not be applied against the petitioners.

7. It is hereby directed to the present petitioners to cooperate with the police officials in this matter and only after compliance of the provisions laid down under section 35 of the BNSS, 2023, the authority will take any action.

8. Learned APP for the State submits that BNSS, 2023 is a new law and therefore, a reasonable opportunity be given to the officials for compliance of BNSS, 2023.

9. Office is directed to transmit a copy of this order to the Superintendent of Police, Motihari through fax, e-mail or any



other mode forthwith. Office is further directed to hand over a copy of this order to Learned APP for the State who shall communicate this order to the Superintendent of Police, Motihari at his level.

10. With the aforesaid directions, this bail application is hereby disposed off.

(Dr. Anshuman, J)

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