

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.85768 of 2024**

**In
CRIMINAL MISCELLANEOUS No.57096 of 2024**

Arising Out of PS. Case No.-100 Year-2024 Thana- DUMARIAGHAT District- East
Champaran

Santosh Upadhyay @ Santosh Kr. Upadhyay @ Santosh Kumar Upadhyay
S/o Late Banwari Upadhyay Resident of Village- Navin Gandhinagar, PS-
Dumariya Ghat, District- East Champaran Motihari

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Karandeep Kumar, Advocate

For the Opposite Party/s : Mr. Chandra Bhushan Prasad, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER**

- 2 11-12-2024 1. Heard learned counsel for the petitioner and Mr.
Chandra Bhushan Prasad learned A.P.P. for the State.
2. Learned A.P.P. submits that in the nature of prayer
made in the modification application, it appears that the same is
misconceived for the reason that petitioner has stated that he
had earlier moved this Court seeking anticipatory bail by filing
Cr. Misc. No. 57096 of 2024 and the same was disposed of by
an order dated 06.08.2024 in terms of order dated 13.02.2024 in
Cr. Misc. No. 3536 of 2024 (Naushad Ansari Vs. The State of
Bihar). Learned A.P.P. next submits that from perusal of para 3
of the modification application, it appears that petitioner had
submitted his representation dated 09.08.2024 before the
Superintendent of Police, East Champaran at Motihari and the



Investigating Officer of the case in terms of the order dated 06.08.2024 in Cr. Misc. No. 57096 of 2024.

3. At this stage, learned counsel for the petitioner submits that though petitioner represented before the Superintendent of Police, East Champaran at Motihari and the Investigating Officer of the case but then the petitioner was not issued any notice and all of a sudden, he was arrested on 06.12.2024 and on the same day, the Investigating Officer of the case filed an application before the learned trial court for adding Section 307 of the Indian Penal Code. Learned counsel for the petitioner, thus, submits that even if Section 307 of the Indian Penal Code was required to be added in the FIR but then it was not added till 06.12.2024 as such the petitioner ought to have been given the benefit of Section 41(A) of the Cr.P.C. in terms of the order dated 06.08.2024 in Cr. Misc. No. 57096 of 2024 at least till 05.12.2024. It is further submitted that since the Superintendent of Police, East Champaran at Motihari and the Investigating Officer of the case realized that they have violated the order dated 06.08.2024 in Cr. Misc. No. 57096 of 2024 as such they filed an application before the learned Magistrate seeking permission to add Section 307 of the Indian Penal Code when the same was not required as the police based on



investigation could have added Section 307 of the Indian Penal Code in the FIR itself. It is thus submitted that this amply demonstrates that the police in order to legitimize its illegal action tried to get it legitimized by seeking an order of the court for adding Section 307 of the Indian Penal Code.

4. At this stage, learned counsel for the petitioner seeks permission to withdraw the modification application with liberty to file an appropriate application before an appropriate forum in accordance with law.

5. Permission is accorded.

6. Accordingly, the modification application is dismissed as withdrawn.

(Satyavrat Verma, J)

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