

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21483 of 2025

Arising Out of PS. Case No.-132 Year-2024 Thana- PHULWARISHARIF District- Patna

Md. Firoj S/o- Md. Chhotan Nat, Resident of Village - Murgiyachak, P.S. - Janipur, Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr.Vinod Shanker Modi, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 23-04-2025 Heard learned counsel appearing on behalf of the petitioner and the learned APP for the State.

2. Petitioner seeks pre-arrest bail in connection with Phulwarisharif (Janipur) P.S.Case No.132 of 2024 registered for the offences punishable under Sections 447, 427, 379, 384, 504 and 506/34 of the Indian Penal Code .

3. As per the allegation made in the FIR, the petitioner along with co-accused damaged the boundary wall of the informant. Bricks of Rs.28,000/- & Iron Bar of Rs.6,800/- were stolen by them. The petitioner assaulted the informant and demanded Rs.5 lac as ransom.

4. At the very outset, learned counsel appearing on behalf of the petitioner informs that considering the nature of allegation made against the petitioner and the offences, which



provides for punishment of less than seven years, in view of the law laid down by the Apex Court in ***Paragraph no.11*** of ***Arnesh Kumar v. State of Bihar*** case reported in ***(2014) 8 SCC 273*** and the guidelines laid down by the Apex Court in the case of ***Asfak Alam Vs. State of Jharkhand & Anr.*** in ***Cr. Appeal No.2207 of 2023***, the petitioner seeks to approach the Police for granting benefit of Section 35(3) of Bhartiya Nagrik Surksha Sanhita (BNSS), 2023 in verbatim of Section 41 of Code of Criminal Procedure.

5. Learned APP for the State has vehemently opposed the prayer for grant of pre-arrest bail to the petitioner.

6. I find it appropriate to reproduce ***paragraphs no. 11*** of ***Arnesh Kumar (supra)***, which is reproduced, *inter alia*, as follows:-

“11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. *All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;*

11.2. *All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);*

11.3. *The police officer shall forward the check list*



duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine."

7. Considering the above facts and circumstances of the case, I find that because of the arbitrary action of the concerned Police Officer, the petitioner has been harassed



leading to filing of the present bail application. The Sr.S.P., Patna must see that the law laid down by Apex Court and the guidelines issued in the case of *Arnesh Kumar and Asfak Alam* (supra) must be followed in its true spirit.

8. Since the petitioner has been harassed and has been forced to file the present anticipatory bail application and till date charge-sheet has not been submitted, the petitioner is apprehending his arrest, he is directed to be released on pre-arrest bail in connection with Phulwarisharif P.S.Case No.132 of 2024 pending before the court of the learned Additional Chief Judicial Magistrate XIV, Patna on such terms and conditions as laid down under Section 482(2) of BNSS of 2023.

9. The present bail application is accordingly disposed of.

(Purnendu Singh, J)

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