

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38215 of 2025

Arising Out of PS. Case No.-33 Year-2025 Thana- BANGAWON District- Saharsa

RAJBALI KUMAR SAH @ RAJBALI SAH @ RAJA S/O SUBODH SAH
RESIDENT OF CHAINPUR (CHIKNI TOLA), WARD NO 14, PS-
BANGAON, DISTRICT- SAHARSA

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Diwakar Prasad Singh, Advocate

For the Opposite Party/s : Mr. Nirmal Kumar Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

5 27-08-2025 Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner apprehends his arrest in a case registered for the offences punishable under Sections 126(2), 115(2), 76, 78, 352, 351(2) and 3(5) of the Bharatiya Nyaya Sanhita.

3. The Station House Officer and the Investigating Officer of the case, in compliance of the order dated 25.08.2025, are present in the Court.

4. Learned APP for the State, at the outset, submits that the law is clear that where offences for which an FIR has been instituted carry punishment of seven years and less, the arrest is not automatic. It is further submitted that if the police intend to arrest an accused, who is implicated in a case relating



to offences which carry punishment of seven years or less, in that event the police have to resort to certain procedures as incorporated in the BNSS, i.e., the police first have to give a notice under Section 35 of the BNSS. It is next submitted that anticipatory bail may or may not be maintainable after the accused receives notice under Section 35 of the BNSS as it will depend on the facts and circumstances of the case because the police even after issuance of notice under Section 35 of the BNSS cannot arrest the accused without seeking permission of the learned Magistrate or if some material transpires during the course of investigation which involves offence carrying punishment of more than seven years. It is also submitted that if the police, after issuing notice under Section 35 of the BNSS, seek permission of the learned Magistrate to arrest the accused and the learned Magistrate refuses to grant permission to the police to arrest the accused based on the check list which is submitted in that event also anticipatory bail application will not be maintainable but if the learned Magistrate permits the police to arrest the accused in that event apprehension of arrest will arise and anticipatory bail application would be maintainable.

5. Learned A.P.P. for the State fairly submits that if the police without resorting to procedure as envisaged under the law



arrest the person in breach of the same in that event the police officer will also be held liable in terms of the memo no. 62973 dated 19.09.2023 issued by the Hon'ble Patna High Court as recorded in Cr. Misc. No. 3536 of 2024 (Naushad Ansari Vs. The State of Bihar).

6. Learned A.P.P. for the State further submits that there is no pleading in the anticipatory bail application which could even remotely suggest that notice under Section 35 of the BNSS has been issued to the petitioner.

7. The Station House Officer and the Investigating Officer of the case, who are present in the Court, submit that they are aware of the law that they cannot arrest the accused automatically if he is involved in any offence which carries punishment of seven years or less as the police have to issue notice either in terms of Section 41A of the Cr.P.C. or Section 35 of the BNSS as the case may be.

8. It is submitted that notice under Section 35 of the BNSS shall be served on the petitioner on or before 04.09.2025 on which learned counsel appearing on behalf of the petitioner submits that if any notice under Section 35 of the BNS is served on the petitioner, the petitioner will accept the same and will cooperate in the investigation.



9. At this stage, learned counsel appearing on behalf of the petitioner seeks permission to withdraw this application for grant of anticipatory bail with liberty to file afresh, if need arises.

10. Permission is accorded.

11. Accordingly, this application for grant of anticipatory bail on behalf of the petitioner is dismissed as withdrawn in connection with Bangaon P.S. Case No. 33 of 2025 pending in the Court of learned Chief Judicial Magistrate, Saharsa/Successor Court in view of the submissions made by the Station House Officer and the Investigating Officer of the case.

12. The personal appearance of the Station House Officer and the Investigating Officer of the case is dispensed with.

(Satyavrat Verma, J)

Kundan/-

U		T	
---	--	---	--

