

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39972 of 2025

Arising Out of PS. Case No.-343 Year-2024 Thana- ATRI District- Gaya

Ramjivan Prasad @ Ramjivan Yadav S/o Musafir Yadav Resident Of Village-
Chahal Mudera, P.s.- Atri, District- Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Krishna Deo Raj, Adv.

For the Opposite Party/s : Mr. Rabindra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 27-08-2025 1. 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 115(2), 126(2), 132, 190, 303(2), 317(2), 351(2) and 352 of the BNS, 2023.

3. Learned APP for the State, at the outset, submits that the law is clear that where offences for which an FIR has been instituted carries punishment of seven years and less, the arrest is not automatic. It is next submitted that in the event if the police intends to arrest an accused who is implicated in a case relating to offences which carries punishment of seven years or less, in that event the police has to resort to certain procedures as incorporated in the BNSS, i.e., the police first has



to give a notice under Section 35 of the BNSS. The learned APP next submits that anticipatory bail may or may not be maintainable after the accused receives notice under Section 35 BNSS, as it will depend on the facts and circumstances of the case, because the police even after issuance of notice under Section 35 BNSS cannot arrest the accused without seeking permission of the learned Magistrate. The learned APP further submits that if the police after issuing notice under Section 35 BNSS seeks permission of the learned Magistrate to arrest the accused and the learned Magistrate refuses permission to the police to arrest the accused, 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. The learned APP fairly submits that in the event if the police without resorting to procedure as envisaged under the law arrests the person in breach of the same, in that event the police office is also be held liable in terms in terms of Memo No. 62973 dated 19.09.2023 issued by the Hon'ble Patna High Court as recorded in Criminal Miscellaneous No. 3536 of 2024 (Naushad Ansari Vs. The State of Bihar).

4. It is next submitted that there is no pleading in the



anticipatory bail application which could even remotely suggest that notice under Section 35 BNSS has been issued to the petitioner. The learned APP, thus, submits that since no notice under Section 35 BNSS has been issued to thepetitionoer, as such, petitioner for the present does not have any apprehension of arrest

5. Learned counsel appearing on behalf of the petitioner is not in a position to rebut the submission of the learned A.P.P. for the State and thus seeks permission to withdraw the anticipatory bail application with liberty to file afresh, if need arises.

6. Permission is accorded.

7. Accordingly, the instant anticipatory bail application is dismissed as withdrawn with the liberty aforesaid.

(Satyavrat Verma, J)

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