

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41206 of 2025

Arising Out of PS. Case No.-258 Year-2024 Thana- NAUHATTA District- Rohtas

Subhash Singh S/o Late Haribansh Singh @ Harbansh Singh R/o Village-
Balwaieya, P.S.- Dinara, District- Rohtas at Sasaram

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dharmendra Kumar Singh
For the Opposite Party/s : Mr.Chandra Bhushan Prasad

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 3 22-08-2025 1. Heard learned counsel for the petitioner and learned APP for the State, Shri Chandra Bhushan Prasad.
2. The petitioner apprehends his arrest in a case registered for the offences punishable under Sections 316(2) and 318(4) of the Bharatiya Nyaya Sanhita.
3. The 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 Bharatiya Nagrik Suraksha Sanhita (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. It is thus submitted that if the police after issuing notice under Section 35 BNSS seeks permission of the learned Magistrate to arrest the accused in that event an apprehension may arise. It is also 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.

4. The learned counsel appearing on behalf of the petitioner is not in a position to rebut the submission of the learned APP for the State, but then submits that of late, the police even without issuing notice under Section 35 BNSS is arresting the accused persons mechanically, on which the learned APP 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 officer will also be held liable.



5. At this stage, the learned counsel appearing on behalf of the petitioner seeks permission to withdraw the anticipatory bail application with liberty to file an application before the concerned Superintendent of Police in terms of Section 35 BNSS.

6. Permission is accorded.

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 Accordingly, the present anticipatory bail application is dismissed as withdrawn with the liberty aforesaid.

(Satyavrat Verma, J)

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