

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53019 of 2025

Arising Out of PS. Case No.-583 Year-2024 Thana- PATLIPUTRA District- Patna

Rameshwar Kumar @ Ram Eshwar Kumar S/o Radheshyam Ram At Present House of Mridula Sinha, Gokul Path, North Patel Nagar (Near Gaya Singh Khatal), P.O and P.S-L.B.S. Nagar, District-Patna, Pin 800023 and permanent R/o Village- Punhaura, P.S.- Dumra, District- Sitamarhi

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anshuman, Adv.

For the Opposite Party/s : Ms. Pushpa Sinha, APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 4 01-09-2025 1. Heard learned counsel for the petitioner and learned APP for the State.
2. The petitioner apprehends his arrest in connection with Patliputra (Patna) P.S. Case No.5117069240583, registered for the offences punishable under Sections 317(2), 317(4) & 3(5) of the B.N.S.S.
3. The S.H.O., Patliputra P.S. along with Investigating Officer of the case, in compliance of the order dated 30.08.2025 are present in the Court.
4. The learned counsel appearing on behalf of the petitioner 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 procedures as incorporated in the Bharatiya Nagrik Suraksha Sanhita (BNSS), i.e. the police first has to give notice under Section 35 of the BNSS. The learned counsel for the petitioner 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 next submitted that if the police after issuing notice under Section 35 BNSS seeks permission of the learned Magistrate to arrest the accused, after filling the check list and the learned Magistrate refuses permission to the police to arrest the accused, in that event also anticipatory bail application will not be maintainable, as there will be no apprehension of arrest, but if the learned Magistrate permits the police to arrest the accused, in that event, apprehension of arrest will arise. The learned counsel next submits that in the event if the police without resorting to procedures as envisaged under the law arrest the person in



breach of the same, in that event the police officer will be held liable 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). The learned counsel for the petitioner next submits that of late the police without resorting to procedure as envisaged under Section 35 BNSS/41(A) of the Cr.P.S. is arresting the accused and the learned Magistrate in mechanical manner remands. It is next submitted that the police without giving notice to the accused under Section 35 BNSS, arrested two accused persons in the instant case, as such, the petitioner apprehended arrest, hence moved before this Court, seeking anticipatory bail.

5. The learned APP is not in a position to rebut the submission of the learned counsel appearing on behalf of the petitioner after seeking instruction in the matter from the S.H.O. and the I.O. of the case but then submits that notice under Section 35 BNSS shall be given to the petitioner by 03.09.2025. The learned counsel appearing on behalf of the petitioner submits that in the event if notice under Section 35 BNSS is served on him, he will receive the same and will cooperate in the investigation.



6. At this stage, the learned counsel appearing on behalf of the petitioner seeks permission to withdraw the anticipatory bail application with liberty to file a fresh, if need arises.

7. Permission is accorded.

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

9. The personal appearance of the S.H.O., Patliputra P.S. and the Investigating Officer of the case is dispensed with.

(Satyavrat Verma, J)

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