

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51117 of 2025

Arising Out of PS. Case No.-540 Year-2023 Thana- AURANGABAD TOWN District-
Aurangabad

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Umesh Verma @ Umesh Prasad Vema S/o Late Rameshwar Verma Resident
of Ramnagar, P.S.- Khudwan, District- Aurangabad

... .. Petitioner/s

Versus

1. The State of Bihar
2. Lalan Kumar S/o Late Gopal Mehta R/o vill - Shahpur, P.S. - Nagar, Distt.-
Aurangabad, At present Kanhai Bigha, Lord Budha Public School Road,
Soia More, P.S. - Nagar, Distt.- Aurangabad

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Sinha, Advocate
For the Opposite Party/s : Mr. Rabindra Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 28-08-2025 Heard learned counsel for the petitioner, Mr. Rabindra
Kumar, learned A.P.P. for the State and learned counsel
appearing on behalf of the informant.

2. The petitioner apprehends his arrest in a case
registered for the offences punishable under Sections 147, 148,
149, 406, 420 and 504 of the Indian Penal Code as well as
Sections 3 and 4 of the Dowry Prohibition Act.

3. The defects, as pointed out by the office, are hereby
ignored.

4. Learned APP for the State, at the outset, submits
that the law is clear that where offence for which an FIR has
been instituted carries 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 Cr.P.C., i.e., the police first have to give notice under Section 41A of the Cr.P.C. It is next submitted that anticipatory bail may or may not be maintainable after the accused receives notice under Section 41A of the Cr.P.C. as it will depend on the facts and circumstances of the case because the police even after issuance of notice under Section 41A of the Cr.P.C. cannot arrest the accused without seeking permission of the learned Magistrate. Learned A.P.P. also submits that if the police, after issuing notice under Section 41A of the Cr.P.C., seek 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.

5. Learned A.P.P. for the State further 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 shall 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). It is next submitted that from perusal of the pleadings made in the anticipatory bail application, it would manifest that the same does not even remotely suggest that notice under Section 41A of the Cr.P.C. has been issued to the petitioner.

6. Learned counsel appearing on behalf of the petitioner, at this stage, submits that notices under Section 41A of the Cr.P.C. have been issued to other co-accused persons, who are implicated in the instant FIR, but, then for reasons best known to the police the petitioner has not been given notice under Section 41A of the Cr.P.C. on which learned A.P.P. submits that even if petitioner has antecedent of two cases in that event also the police first will have to give notice under Section 41A of the Cr.P.C. and thereafter if the police intend to arrest then will have to seek permission of the learned Magistrate and if permission is given by the learned Magistrate to arrest the petitioner in such an event the petitioner can file an application seeking anticipatory bail.

7. Learned counsel appearing on behalf of the informant is not in a position to rebut the submissions of the



learned A.P.P. for the State.

8. After hearing the learned counsel for the parties, the anticipatory bail application is disposed of in connection with Aurangabad (Town) P.S. Case No. 540 of 2023 pending in the Court of learned Chief Judicial Magistrate, Aurangabad/Successor Court with a direction to the petitioner to file a representation before the concerned Superintendent of Police in terms of Section 41A of the Cr.P.C. within a period of two weeks from today.

(Satyavrat Verma, J)

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