

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1415 of 2025

Arising Out of PS. Case No.-155 Year-2024 Thana- COMPLAINT CASE - PATNA CITY
District- Patna

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Kunal @ Kunal Yadav S/o Shri Anjani Kumar Resident of Ramlakhan Path,
Ashok Nagar, Road No.8, P.S.- Kankarbagh, District- Patna- 800020 (Bihar),
Presently residing at Serenity, Doddakallasandra, Kanakapura Road, P.S.-
Subramanyapura, District- Bengaluru, (Karnataka)

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Bihar Bihar
2. The Director General of Police, Bihar at Patna Bihar
3. The Senior Superintendent of Police, Patna Bihar
4. The Deputy Superintendent of Police, Patna Bihar
5. Asmita Kumari W/o Shri Kunal D/o Shri Arvind Kumar , resident of
Yusufpur, P.S.,- Khusrupur, District- Patna (Bihar)

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Saket Gupta, Advocate Mr. Vivek Raj, Advocate Mr. Aditya Prakash, Advocate
For the State	:	Mr. Saroj Kumar Sharma, AC to AAG-3
For Respondent No. 5	:	Mr. Arvind Kmar Mouar, Advocate Mr. Ashok Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

3 01-11-2025 The present writ petition has been filed seeking
following relief(s):-

"i. For issuance of an appropriate writ/order/direction including a writ in the nature of Certiorari for quashing and setting aside the order dated 23.07.2024 passed in Patna Complaint Case No. 155 (C) of 2024 titled as Asmita Kumari Versus Kunal Yadav and Others in which the court of learned Judicial Magistrate, 1st Class, Patna City was pleased to



issue non bailable warrant as against all the accused persons ignoring the settled law of the land and of the fact that an application under Section 205 of the Code of Criminal Procedure, 1973 was pending adjudication as against the Petitioner and other co-accused persons.

ii. For issuance of an appropriate writ/order/direction for transfer of the prosecution from Patna City Sub Divisional Court to Patna Sadar court in order to give a fair trial to the Petitioner who has been arraigned as accused in the complaint.

iii. For any other relief to which this Hon'ble Court deems fit and proper."

2. Obviously, relief has been sought against a judicial order. The Hon'ble Supreme Court, in the cases of ***Neeta Singh & Ors. Vs. State of Uttar Pradesh & Ors.*** in Special Leave to Appeal (Crl.) No. 13578 of 2024 and ***Pradnya Pranjali Kulkarni Vs. State of Maharashtra & Anr.*** in Special Leave to Appeal (Crl.) No. 13424 of 2025, has held that against a judicial order no writ petition is maintainable under Article 226 of the Constitution of India. So far as filing of the writ petition under Article 227 of the Constitution of India is concerned, the Hon'ble Supreme Court in the case of ***Shalini Shyam Shetty Vs. Rajendra Shankar Patil, (2010)8 SCC 329*** has also made it clear that under Article 227 of the Constitution of India no writ



could be entertained. So, criminal writ petition under Article 226 and 227 of the Constitution against a judicial order would not lie. Further, Rule 3(v) of Chapter XII of Part A of the Patna High Court Rules provides for filing a petition under Article 227 of the Constitution of India as criminal miscellaneous petition.

3. Learned counsel for the petitioner has referred to Rule 1(vii) of Chapter II of Part A as well as Rule 1(i) of Chapter XXIC of Part A of Patna High Court Rules to persuade this Court that a petition could be filed under Article 226 and 227 of the Constitution of India and the same could be entertained by this Court. But in the light of specific provision of Rule 3(v) of Chapter XII Part A of Patna High Court Rules, the submission is not sustainable.

4. Further, the roster of criminal miscellaneous petition under Article 227 of the Constitution of India has not been assigned to this Bench and therefore, this court would be committing impropriety if it proceeds in the matter assuming the roster under Article 227 of the Constitution if a petition is filed mentioning it to be filed under Article 226 as well as Article 227 of the Constitution of India.

5. At this stage, learned counsel for the petitioner seeks permission to convert the present petition into criminal



miscellaneous petition under Article 227 of the Constitution of India and further prays for placing the same before appropriate Bench. At the same time, learned counsel for the petitioner submits that he may be permitted to delete relief no. 1(ii) which is for a direction to transfer the prosecution from Patna City Sub Divisional Court to Patna Sadar Court as he has already moved before the learned Sessions Judge for transfer of the proceeding.

6. Learned counsel for the petitioner is permitted to delete relief no. 1(ii) in course of the day. Thereafter, learned counsel for the petitioner is directed to convert the present petition into criminal miscellaneous petition under Article 227 of the Constitution of India within two weeks.

7. Office is directed to extend all cooperation towards conversion and after conversion, the matter be immediately placed before appropriate Bench after obtaining necessary permission from Hon'ble the Acting Chief Justice.

8. Interim order dated 01.07.2025 shall continue till the matter is placed before an appropriate Bench.

(Arun Kumar Jha, J)

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