

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47816 of 2025

Arising Out of PS. Case No.-147 Year-2025 Thana- BIBHUTIPUR District- Samastipur

Pankaj Kumar S/o- Deonarayan Prasad Yadav R/o Village - Amwa PO + PS -
Mehsi Dist- East Champaran at Motihari

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Santosh Kumar, Advocate

For the Opposite Party/s : Mr. Chandra Bhushan Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 29-08-2025 Heard learned counsel for the petitioner and Mr.
Chandra Bhushan Prasad, learned APP for the State.

2. The petitioner apprehends his arrest in a case registered for the offence punishable under Section 305 of the Bharatiya Nyaya Sanhita.

3. Learned counsel appearing on behalf of the petitioner submits that at para 3 of the anticipatory bail application, it has been specifically pleaded that petitioner has antecedent of two cases, i.e., Mehsi P.S. Case No. 162 of 2015 and Mehsi P.S. Case No. 163 of 2015 but in the order impugned, it has been inadvertently recorded that Mehsi P.S. Case No. 165 of 2015 was also instituted against the petitioner. It is further submitted that a supplementary affidavit has been filed clarifying the said issue. It is next submitted that copy of the supplementary affidavit is being served on Mr. Chandra



Bhushan Prasad, the learned A.P.P.

4. In view of the submissions made by the learned counsel appearing on behalf of the petitioner, the defects as pointed out by the office, are hereby ignored.

5. Mr. Chandra Bhushan Prasad, learned APP for the State, at the outset, submits that the law is clear that where offences for which an FIR has been instituted carry 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 BNSS, i.e., the police first have to give a notice under Section 35 of the BNSS. It is next submitted that anticipatory bail may or may not be maintainable after the accused receives notice under Section 35 of the BNSS as it will depend on the facts and circumstances of the case because the police even after issuance of notice under Section 35 of the BNSS cannot arrest the accused without seeking permission of the learned Magistrate. It is also submitted that if the police after issuing notice under Section 35 of the BNSS is of the view that arrest of the accused is necessary for investigation in that event the police will seek



permission from the learned Magistrate to arrest the accused after filling the check list.

6. Learned A.P.P. for the State further submits that the learned Magistrate may or may not grant permission to the police to arrest the accused. It is next submitted that if the learned Magistrate refuses permission to the police to arrest the accused in that event no apprehension of arrest will arise but if the learned Magistrate permits the police to arrest the accused in that event apprehension for arrest will arise. It is also submitted that if the police without resorting to procedures as envisaged under the law arrest an accused in breach of the same in that event the police officer shall also 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).

7. It is submitted that there is no pleading in the anticipatory bail application which could even remotely suggest that notice under Section 35 of the BNSS has been issued to the petitioner.

8. Learned A.P.P. for the State, thus, submits that since no notice under Section 35 of the BNSS has been issued to the petitioner, as such, the petitioner, for the present, does not have



any apprehension of arrest.

9. Learned counsel appearing on behalf of the petitioner is not in a position to rebut the submissions of the learned A.P.P. for the State but then submits that notice under Section 35 of the BNSS has not been served on the petitioner.

10. Learned counsel for the petitioner, at this stage, seeks permission to withdraw the anticipatory bail application with liberty to file afresh, if need arises.

11. Permission is accorded.

12. Accordingly, the instant anticipatory bail application is dismissed as withdrawn with the liberty aforesaid in connection with Bibhutipur P.S. Case No. 147 of 2025 pending in the Court of learned Sub-Divisional Judicial Magistrate, Rosera at Samastipur/Successor Court.

(Satyavrat Verma, J)

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