

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52493 of 2025

Arising Out of PS. Case No.-41 Year-2025 Thana- Sarbahada District- Gaya

1. Sujant kumar @ Surjant Kumar Son of Sambhu Sharan Village -Hemra P.S.- Khizersarai District -Gaya State- Bihar
2. Guddu Kumar son of Ramdeo Mahto @ Ramdeo Prasad Village -Hemra P.S.- Khizersarai District -Gaya State- Bihar
3. Ranjit Kumar Son of Kamanand Mahto @ Karmanand Village -Hemra P.S.- Khizersarai District -Gaya State- Bihar
4. Prince Kumar @ Vivek Kumar son of Parmanand Mahto @ Parmanand Prasad Village -Hemra P.S.- Khizersarai District -Gaya State- Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Prithivi Raj Singh, Advocate

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

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 02-09-2025 Heard learned counsel for the petitioners and learned
APP for the State.

2. Petitioners apprehend their arrest in a case registered for the offences punishable under Sections 126(2), 115(2), 132, 352, 351(2) and 3(5) of the B.N.S.

3. 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 next 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 procedure as incorporated in the BNSS, i.e., the police first have 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 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. The learned APP further submits that if the police after issuing notice under Section 35 of the BNSS 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 apprehension of arrest will not arise and thus 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 and anticipatory bail will be maintainable. The learned APP fairly 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 also 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**).

4. The learned APP further submits 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 petitioners when the offences for which the instant FIR has been instituted carry punishment of less than seven years. The learned APP, thus, submits that since no notice under Section 35 of the BNSS has been issued to the petitioners, as such, petitioners, for the present, do not have any apprehension of arrest.

5. Learned counsel appearing on behalf of the petitioner is not in a position to rebut the submission of the learned A.P.P. for the State but then submits that of late, police even without resorting to procedure as envisaged under the Cr.P.C./BNSS with respect to offences carrying punishment of seven years and less is arresting the accused and the learned Magistrates are also mechanically remanding the accused to judicial custody on which the learned APP again submits that the said issue has been taken care of by Memo No. 62973 dated 19.09.2023 issued by the Hon'ble Patna High Court.

6. At this stage, the learned counsel appearing on



behalf of the petitioners seeks permission to withdraw the anticipatory bail application with liberty to file afresh, if need arises and further to file an application before the concerned Superintendent of Police of the district bringing to his notice that petitioners have not been served with notice under Section 35 of the BNSS within a period of three weeks from today.

7. Permission is accorded.

8. Accordingly, the instant anticipatory bail application is dismissed as withdrawn with the liberty aforesaid in connection with Sarbahda P.S. Case No. 41 of 2025 pending in the Court of learned Additional Chief Judicial Magistrate-IV, Gaya/Successor Court.

(Satyavrat Verma, J)

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