

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54409 of 2025

Arising Out of PS. Case No.-244 Year-2025 Thana- KONCH District- Gaya

Mukesh Kumar @ Bitan Singh @ Mukesh Singh S/O Late Bhuneshwar Singh
R/O Village- Dighi, P.S- Konch, Distt.- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mrs. Sunita Kumari, Advocate

For the Opposite Party/s : Mr. Anuj Kumar Shrivastava, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 25-08-2025 Heard learned counsel for the petitioner and Mr. Anuj
Kumar Shrivastava, learned APP for the State.

2. The petitioner apprehends his arrest in a case registered for the offences punishable under Sections 126(2), 115(2), 110, 352 and 3(5) of the Bharatiya Nyaya Sanhita.

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 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/Cr.P.C., i.e., the police first have to give notice under Section 35 of the BNSS/41 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 35 BNSS/41 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 35 BNSS/41 Cr.P.C. cannot arrest the accused without seeking permission of the learned Magistrate. It is also submitted that the learned Magistrate may or may not give permission to the police to arrest the accused. It is, thus, submitted that if the police after issuing notice under Section 35 BNSS/41 Cr.P.C. seek permission of the learned Magistrate to arrest the accused and the learned Magistrate grants permission to the police to arrest the accused in that event an apprehension may arise but if the learned Magistrate does not permit the police to arrest the accused in that event no apprehension arises. It is submitted that there is no pleading in the anticipatory bail application which could even remotely suggest that notice under Section 35 BNSS has been issued to the petitioner.

4. 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, the police even without issuing notice under Section 35 BNSS are arresting the accused persons mechanically on which the learned APP 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 will also be held liable.

5. After hearing the learned counsel for the parties, the anticipatory bail application is disposed of in connection with Konch P.S. Case No. 244 of 2025 pending in the Court of learned Chief Judicial Magistrate, Gaya/Successor Court with a direction to the petitioner to file an application before the concerned Superintendent of Police in terms of Section 35 BNSS within a period of two weeks from today and the Superintendent of Police shall ensure that notice under Section 35 of the BNSS is given to the petitioner.

(Satyavrat Verma, J)

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