

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53687 of 2025

Arising Out of PS. Case No.-120 Year-2025 Thana- SRINAGAR District- West Champaran

1. Chandeshwar Kumar S/O Suresh Sah R/o Village- Bibi Bankatwa, Ward No 11, P.S.- Bathwariya, District- West Champaran
2. Anil Sah S/O Madan Sah R/o Village- Bibi Bankatwa, Ward No 11, P.S.- Bathwariya, District- West Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr. Mithlesh Kumar Khare, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 25-08-2025 Heard learned counsel for the petitioners and learned
A.P.P. for the State.

2. The petitioners apprehend their arrest in a case registered for the offences punishable under Sections 316(2), 318(4) and 3(5) of the BNS.

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 with or without fine 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 seek permission of the learned Magistrate to arrest the accused and the learned Magistrate refuses permission 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. 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 petitioners.

4. Learned counsel appearing on behalf of the petitioners is not in a position to rebut the submission of the learned A.P.P. for the State but then submits that though there is no pleading in the anticipatory bail application that no notice under Section 35 of the BNSS has been issued to the petitioners but then a supplementary affidavit has been filed, which is taken on record, wherein it has been specifically pleaded that notice under Section 35 of the BNSS has not been issued to the petitioners. It is next



submitted that the police of late even without issuing notice under Section 35 of the 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 be held liable in terms of 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).

5. After hearing the learned counsel for the parties, the anticipatory bail application is disposed of in connection with Srinagar P.S. Case No. 120 of 2025 pending in the Court of learned Judicial Magistrate, West Champaran at Bettiah/Successor Court with a direction to the petitioners to file an application before the concerned Superintendent of Police in terms of Section 35 of the 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 petitioners.

(Satyavrat Verma, J)

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