

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54450 of 2025

Arising Out of PS. Case No.-16 Year-2023 Thana- BIHARIGANJ District- Madhepura

Yogesh Jain son of Devendra Jain R/o - Sitapur Road, Ward No.08, P.S -
Chourai, District - Chhindwara, M.P

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N. K. Agrawal- Sr. Advocate Mr. Pankaj Kumar- Advocate
For the Opposite Party/s :		Mr. Rabindra Kumar- A.P.P. Mr. Rahul Kumar Mr. Nagendra Kumar Singh Mr. Raj Kumar Rai

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 2 25-08-2025 1. Heard learned senior counsel for the petitioner,
learned A.P.P. for the State and the learned counsel appearing on
behalf of the informant.
2. The petitioner is apprehending his arrest in
Bihariganj P. S. Case No.16 of 2023 registered for the offences
punishable under Sections 406 and 420 of the I.P.C.
3. The learned A.P.P., Sri Rabindra Kumar, at the outset,
submits that the law is clear that where offences for which an FIR
has been instituted carries punishment of seven years and less, the
arrest is not automatic. It is next submitted that in the event, if the
police intends to arrest an accused, who is implicated in a case
relating to offences which carries punishment of seven years or
less, in that event, the police has to resort to certain procedures as



incorporated in the Cr.P.C./Bharatiya Nagrik Suraksha Sanhita (BNSS), i.e. the police first has to give a notice under Section 41 Cr.P.C./35 of the BNSS. The learned APP next submits that anticipatory bail may or may not be maintainable even after the accused receives notice under Section 41(A) Cr.P.C./35 BNSS, as it will depend on the facts and circumstances of the case, because the police even after issuance of notice under Section 41(A) Cr.P.C./35 BNSS cannot arrest the accused without seeking permission of the learned Magistrate. It is next submitted that if the police after issuing notice under Section 41(A) Cr.P.C./35 BNSS seeks permission of the learned Magistrate to arrest the accused and the learned Magistrate refuses permission to arrest the accused, in that event, the 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 further submitted that there is no pleading in the anticipatory bail application which could even remotely suggest that notice under Section 41(A) Cr.P.C. has been issued to the petitioner.

4. The learned senior counsel appearing on behalf of the petitioner is not in a position to rebut the submission of the learned APP for the State, but then, submits that notice under Section 41(A) Cr.P.C. has not been issued to the petitioner, but then it is submitted that off late the police even without issuing notice under



Section 41(A) Cr.P.C./35 B.N.S.S. is arresting the accused persons mechanically, on which the learned APP submits that in the event, 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 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**).

5. After hearing the learned counsel for the parties, the anticipatory bail application is disposed of with a direction to the petitioner to file an application before the concerned Superintendent of Police in terms of Section 41(A) Cr.P.C. within a period of two weeks from today. The Superintendent of Police, thereafter shall ensure that notice under Section 41(A) of the Cr.P.C. is issued to the petitioner.

(Satyavrat Verma, J)

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