

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54616 of 2025

Arising Out of PS. Case No.-38 Year-2025 Thana- SIMRI District- Darbhanga

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Rajkumar @ Rajkumar Mahto Son of Shyam Mahto @ Shaym Mahto village-
Jalley, Ps- Jalley, dist- Darbhanga

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Ms. Madhubala Verma

For the Opposite Party/s : Mr. Nagendra Prasad

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 27-08-2025 1. Heard learned counsel for the petitioner and
learned APP for the State.

2. The petitioner apprehends his arrest in connection
with Simri P.S. Case No.38/2025, registered for the offences
punishable under Section 303(2) of the B.N.S.S.

3. The learned APP for the State, at the outset, submits
that the law is clear that where offence 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 with or without fine, in that event the police has to
resort to procedures as incorporated in the Bharatiya Nagrik
Suraksha Sanhita (BNSS), i.e. the police first has 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 BNSS, as it will depend on the facts and circumstances of the case, because the police even after issuance of notice under Section 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 35 BNSS seeks permission of the learned Magistrate to arrest the accused and the learned Magistrate refuses to grant permission for arresting 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 further 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. The learned APP further 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 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. At this stage, the learned counsel appearing on behalf of the petitioner seeks permission to withdraw the anticipatory bail application with liberty to file a fresh, if need arises.

5. Permission is accorded.

6. Accordingly, the present anticipatory bail application is dismissed as withdrawn with the liberty aforesaid.

(Satyavrat Verma, J)

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