

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.62481 of 2025**

Arising Out of PS. Case No.-449 Year-2024 Thana- BAHERI District- Darbhanga

Rakesh Kumar S/o Mithila Sharan Singh P.O - Datiyana, P.S- Bikram Shivgarh, District - Patna, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr. Nazia Shabah, Advocate

For the Opposite Party/s : Dr. (Mr.) Kumar Uday Pratap, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA**  
**ORAL ORDER**

4      17-11-2025                      1. Heard learned counsel for the petitioner and learned APP for the State.

2. The petitioner apprehends his arrest in a case registered for the offences punishable under Sections 303(2), 317(5) and 3(5) of the BNS, 2023.

3. Learned APP for the State, at the outset, submits that charge-sheet in the case till date has not been filed and the offences for which the instant 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 procedure 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 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. 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 Cr. Misc. No. 3536 of 2024 (**Naushad Ansari Vs. The State of Bihar**).

4. It is next 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 petitioner when the offences for which the instant FIR has been



instituted carry punishment of less than seven years. Learned APP, thus, submits that since no notice under Section 35 of the BNSS has been issued to the petitioner, as such, petitioner, for the present, does not have any apprehension of arrest.

5. Learned counsel appearing on behalf of the petitioner is not in a position to rebut the submissions 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 are arresting the accused and the learned Magistrates are also mechanically remanding on which 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 petitioner 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 he has 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 Baheri P.S. Case No. 449 of 2024 pending in the Court of learned Additional Sessions Judge-X, Darbhanga/Successor Court.

(Satyavrat Verma, J)

S.KUMAR/-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|

