

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53529 of 2025

Arising Out of PS. Case No.-136 Year-2025 Thana- MAHUA District- Vaishali

1. Shiv Prasad Rai S/o Late Dhanutar Rai R/o Village- Bajitpur Madhaul, PS- Mahua, Distt.- Vaishali
2. Lakshminia Devi W/o Shiv Prasad Rai R/o Village- Bajitpur Madhaul, PS- Mahua, Distt.- Vaishali
3. Pushpa Devi D/o Shiv Prasad Rai R/o Village- Bajitpur Madhaul, PS- Mahua, Distt.- Vaishali
4. Raushan Kumar Rai S/o Shiv Prasad Rai R/o Village- Bajitpur Madhaul, PS- Mahua, Distt.- Vaishali

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rakesh Prabhat, Advocate
For the Opposite Party/s : Mr. Anil Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 22-09-2025 Heard learned counsel for the petitioners and learned
APP for the State.

2. The petitioners apprehend their arrest in a case registered for the offences punishable under Sections 126(2), 115(2), 351, 352, 85 and 3(5) of the Bharatiya Nyaya Sanhita, 2023 as well as Sections 3 and 4 of the Dowry Prohibition Act.

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 in such cases 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 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 thereafter also may or may not be maintainable for the reason that it will depend on the facts and circumstances of the case because the police even after issuing 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 are of the view that arrest of the accused is necessary for investigation in that event the police will fill the check list and thereafter shall seek permission from the learned Magistrate to arrest the accused person.

4. Learned A.P.P. for the State further submits that the learned Magistrate may or may not grant permission to the police to arrest the accused. It is next submitted that if the learned Magistrate refuses permission to the police to arrest the accused in that event no apprehension of arrest will arise but if the learned Magistrate permits the police to arrest the accused in that event apprehension of arrest will arise. It is also submitted that if the police without resorting to procedures as envisaged



under the law arrest an accused 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)**.

5. 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, as such, it is submitted that for the present, the petitioners do not have any apprehension of arrest.

6. Learned counsel appearing on behalf of the petitioners is not in a position to rebut the submissions of the learned A.P.P. for the State but then submits that notice under Section 35 of the BNSS has not been served on the petitioners. It is further submitted that of late the police even without issuing notice under Section 35 of the BNSS or 41A of the Cr.P.C. arrest the accused and the learned Magistrate in mechanical manner remand the accused to judicial custody on which learned A.P.P. submits that if an accused is arrested in breach of the law in that event consequences would follow as mandated in memo no. 62973 dated 19.09.2023 issued by the Hon'ble Patna High Court.



7. Learned counsel for the petitioners, at this stage, seeks permission to withdraw the anticipatory bail application with liberty to file afresh, if need arises.

8. Permission is accorded.

9. Accordingly, the instant anticipatory bail application is dismissed as withdrawn with the liberty aforesaid in connection with Mahua P.S. Case No. 136 of 2025 pending in the Court of learned District and Sessions Judge, Vaishali at Hajipur/Successor Court.

(Satyavrat Verma, J)

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