

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54455 of 2025

Arising Out of PS. Case No.-77 Year-2025 Thana- BEGUSARAI MUFFASIL District-
Begusarai

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1. Kisho Thakur @ Kishor Thakur S/o Ram Badan Thakur R/o Vill- Haibatpur, P.S.- Muffasil, Dist- Begusarai
 2. Dropadi Devi W/o Kisho Thakur @ Kishor Thakur R/o Vill- Haibatpur, P.S.- Muffasil, Distt- Begusarai
 3. Dilkhush Thakur @ Dilkhush Kumar S/o Kisho Thakur @ Kishor Thakur R/o Vill- Haibatpur, P.S.- Muffasil, Distt- Begusarai

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Randhir Kumar No 1, Advocate

For the Opposite Party/s : Mr.Rabindra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL ORDER

2 25-08-2025 1. Heard learned counsel for the petitioners and Mr.
Rabindra Kumar, learned APP for the State.

2. The petitioners are apprehending their arrest in a case registered for the offences punishable under Sections 137(2), 140(3) of the B.N.S.

3. The learned APP for the State, 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 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 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 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 petitioners.

4. The learned counsel appearing on behalf of the petitioners is not in a position to rebut the submission of the learned APP for the State, but fairly submits that notice under



Section 35 BNSS has not been issued to the petitioners, but then it is submitted that police even without issuing notice under Section 35 BNSS 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. At this stage, the learned counsel appearing on behalf of the petitioners seek permission to withdraw the anticipatory bail application with liberty to file an application before the concerned Superintendent of Police in terms of Section 35 BNSS within a period of two weeks from today.

6. Permission is accorded.

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 Accordingly, the present anticipatory bail application is dismissed as withdrawn with the liberty aforesaid.

(Satyavrat Verma, J)

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