

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54551 of 2025

Arising Out of PS. Case No.-57 Year-2025 Thana- BANGAWON District- Saharsa

1. Sanjay Sharma S/O Tuntun Sharma RESIDENT OF VILLAGE-BANGAON SOUTH NEAR BABAJEE KUTI, P.S.- BANGAON, DIST.-SAHARSA.
2. Shambhu Narayan Jha S/O Late Jaynath Jha RESIDENT OF VILLAGE-BANGAON SOUTH NEAR BABAJEE KUTI, P.S.- BANGAON, DIST.-SAHARSA.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Chandra Mohan Jha, Advocate

For the Opposite Party/s : Mr. Mritunjay Kumar Nirala, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 25-08-2025 Heard learned counsel for the petitioners, learned A.P.P. for the State and Mr. Madhav Jha, learned counsel appearing on behalf of the informant.

2. The petitioners apprehend their arrest in a case registered for the offences punishable under Sections 126(2), 115(2), 118(1), 75, 303(2), 352 and 3(5) of the BNS.

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, 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 with



or without fine in that event the police have to 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 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 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 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.

4. Learned counsel appearing on behalf of the petitioners is not in a position to rebut the submission of the learned A.P.P. for the State but fairly submits that notice under Section 35 of the BNSS has not been issued to the petitioners



but then it is submitted that the police of late even without issuing notice under Section 35 of the BNSS are arresting the accused persons mechanically on which the learned APP 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 Cr. Misc. No. 3536 of 2024 (Naushad Ansari Vs. The State of Bihar).

5. At this stage, learned counsel appearing on behalf of the petitioners submits that he has copy of the case case diary wherein at para 8 and 14 it has been specifically recorded that the police have raided the house of the petitioners for arresting them even without issuing notice under Section 35 of the BNSS. It is, thus, submitted that petitioners apprehend that they may be arrested even without issuing notice under Section 35 of the BNSS.

6. After hearing the learned counsel for the parties, the anticipatory bail application is disposed of in connection with Bangaon P.S. Case No. 57 of 2025 pending in the Court of learned Additional Chief Judicial Magistrate-1st Saharsa/Successor Court with a direction to the petitioners to



file an application before the concerned Superintendent of Police in terms of Section 35 of the BNSS within a period of two weeks from today and the Superintendent of Police shall ensure that notice under Section 35 of the BNSS is issued to the petitioners.

(Satyavrat Verma, J)

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