IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58926 of 2025

Arising Out of PS. Case No.-414 Year-2023 Thana- MANER District- Patna

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Kunal Kumar Yadav @ Kunal Kumar @ Kunal Yadav S/O Late Shyam Singh R/O - Jamunipur (Ratantola), P.S. - Maner, District - Patna

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Pankaj Kumar, Advocate
For the Opposite Party/s : Mr. Ganesh Prasad Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL ORDER

2 10-09-2025 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 341, 323, 308, 504, 506, 353 and 34 of the Indian Penal Code in connection with Maner P.S. Case No. 414 of 2023.

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 in that event the police have to resort to certain procedures as incorporated in the Cr.P.C., i.e., the police first have to give a notice under Section 41A of the Cr.P.C. The learned APP next

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submits that anticipatory bail may or may not be maintainable after the accused receives notice under Section 41A of the Cr.P.C. as it will depend on the facts and circumstances of the case because the police even after issuance of notice under Section 41A of the Cr.P.C. cannot arrest the accused without seeking permission of the learned Magistrate. The learned APP also submits that if the police after issuing notice under Section 41A of the Cr.P.C. 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. The 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

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that notice under Section 41A of the Cr.P.C. has been issued to the petitioner when the offences for which the instant FIR has been instituted carry punishment of less than seven years. The learned APP, thus, submits that since no notice under Section 41A of the Cr.P.C. 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 submission 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 the 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

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that he has not been served with notice under Section 41A of the Cr.P.C. 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.

(Satyavrat Verma, J)

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