

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63924 of 2025

Arising Out of PS. Case No.-619 Year-2023 Thana- BARACHATTI District- Gaya

1. Raju Yadav Son of Bandho Yadav Resident of Village - Pareya, P.S.- Barachatti, Distt.- Gaya.
2. Vikki Yadav @ Dipu Kumar Son of Bandho Yadav Resident of Village - Pareya, P.S.- Barachatti, Distt.- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Vijay Kumar

For the Opposite Party/s : Mr.Chandra Bhushan Prasad

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 23-09-2025 1. Heard learned counsel for the petitioners and learned A.P.P. for the State.

2. The petitioners apprehend their arrest in a case registered for the offences punishable under Sections 341, 342, 323, 325, 308, 379/34 of the IPC.

3. Learned APP for the State at the outset submits that the offences for which the instant F.I.R. has been instituted carries punishment of seven years and less, the arrest is not automatic and such submission of learned APP is not disputed by the learned counsel appearing on behalf of the petitioners but then it is submitted that investigation in the case against the petitioner is continuing and the police has not sought permission of the



learned Magistrate for arresting the petitioner nor has issued any notice u/s 41A of the Cr.P.C., on which the learned APP submits that the case be disposed of in terms of order dated 13.02.2024 in Cr. Misc. No. 3526/2024. 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 procedure as incorporated in the Cr.P.C., i.e., the police first has to give a notice under Section 41A of the Cr.P.C.. The learned APP next submits that anticipatory bail may or may not be maintainable after the accused receives notice under Section 41A 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 Cr.P.C. cannot arrest the accused without seeking permission of the learned Magistrate. The learned APP further submits that if the police after issuing notice under Section 41A Cr.P.C. seeks 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 next fairly submits that in the event if the police without resorting to procedure as envisaged under the law arrests 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 Criminal Miscellaneous 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 41A Cr.P.C. has been issued to the petitioner when the offences for which the instant FIR has been instituted carries punishment of seven years and less. 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, is 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 petitioners 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 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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