

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66927 of 2025

Arising Out of PS. Case No.-364 Year-2024 Thana- MADHUBAN District- East Champaran

1. Ajit Kumar @ Ajit Kumar Yadav S/o Ramvilash Rai @ Bilash Rai Resident of village - Rupani, P.S.- Madhuban, Distt.- East Champaran
2. Deepali Kumari W/o Ajit Kumar @ Ajit Kumar Yadav Resident of village - Rupani, P.S.- Madhuban, Distt.- East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Upendra Yadav S/o Gagandev Rai Resident of village - Madhuban Tola Mohanwa, P.S.- Madhuban, Distt.- East Champaran

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Abhishek Kumar, Advocate

Mr. Hemant Ray, Advocate

For the Opposite Party/s : Mr. Ram Priya Sharan Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

5 01-12-2025 1. Heard learned counsel for the petitioners, learned APP for the State and Mr. Vikash Kumar Sharma, learned counsel appearing on behalf of the informant.

2. The petitioners apprehend their arrest in a case registered for the offences punishable under Sections 406, 420 and 506 of the Indian Penal Code.

3. Learned A.P.P. for the State, at the outset, submits that by order dated 20.11.2025, the Superintendent of Police, the Station House Officer and the Investigating Officer of the case were directed to remain physically present before this Court today but the Superintendent of Police, East Champaran at Motihari is on leave and in his place, the SDPO-1, Sadar has



come to represent him along with the SDPO, Pakridayal, Motihari.

4. The SDPO, Pakridayal, Motihari at the outset, submits that he is aware of the law as to what steps have to be taken when an FIR is instituted with respect to an offence which carries punishment of seven years and less but then it is submitted that he joined recently.

5. The SDPO-1, Sadar, the Station House Officer and the Investigating Officer of the case in once voice submit that from now onwards such mistake will not take place and the law in its true letter and spirit with regard to offences carrying punishment of seven years and less shall be adhered to.

6. 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 procedure 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. Learned APP next 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. 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. 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).

7. It is next submitted that there is no pleading in the anticipatory bail application which could even remotely suggest that notice under Section 41A of the Cr.P.C. has been issued to



the petitioners when the offences for which the instant FIR has been instituted carry punishment of less than seven years. Learned APP, thus, submits that since no notice under Section 41A of the Cr.P.C. has been issued to the petitioners, as such, petitioners, for the present, do not have any apprehension of arrest.

8. 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 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 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.

9. 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 they have not been served with notice under Section 41A of



the Cr.P.C. within a period of three weeks from today.

10. Permission is accorded.

11. Accordingly, the instant anticipatory bail application is dismissed as withdrawn with the liberty aforesaid in connection with Madhuban P.S. Case No. 364 of 2024 pending in the Court of learned Judicial Magistrate, 1st Class, East Champaran at Motihari/Successor Court.

12. The personal appearance of the SDPO-1, Sadar, SDPO, Pakridayal, Motihari, Station House Officer and the Investigating Officer of the case is dispensed with.

(Satyavrat Verma, J)

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