

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74401 of 2025

Arising Out of PS. Case No.-122 Year-2025 Thana- GAYA KOTWALI District- Gaya

1. Gauri Devi W/o Tuna Sharma Resident of village - Godiha, P.S - Noorsarai,
District - Nalanda
2. Raj Singh S/o Fateh Singh R/o Village - Khairi, P.S - Gurua, District - Gaya
... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Pawan Kumar Singh, Advocate
For the Opposite Party/s : Mr. Ahmad Ali, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 19-11-2025 1. Heard learned counsel for the petitioners and
learned APP for the State.

2. The petitioners apprehend their arrest in a case
registered for the offences punishable under Sections 318(4) and
351(2) of the BNS, 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 procedure 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 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)**.

4. It is next 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 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 35 of the BNSS has been issued to the petitioners, as such, petitioners, for the present, do not have any apprehension of arrest.

5. 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 A.P.P. 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, 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 35 of the BNSS 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 in connection with Kotwali P.S. Case No. 122 of 2025 pending in the Court of learned Chief Judicial Magistrate, Gaya/Successor Court.

(Satyavrat Verma, J)

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