IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72457 of 2025

Arising Out of PS. Case No.-8 Year-2025 Thana- Cyber P.S. District- Nawada

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Raj Kishor @ Raj Kishore Kumar @ Fantus Kumar @ Fantush Son of Sanjay Singh R/o - Village - Ghosrawan, P.S - Giriyak, District - Nalanda.

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Pankaj Kumar
For the Opposite Party/s : Mr.Sanjay Kumar Tiwary

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL ORDER

2 12-11-2025 **1.** Heard learned counsel for the petitioner and learned APP for the State.

2. The petitioner apprehends his arrest in connection with Cyber P.S. Case No. 8 of 2025 registered for the offences punishable under Sections 303(2) and 318(4) of the BNS, 2023 and Sections 66, 66(D) of I.T. Act.

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 carries punishment of seven years and less, the arrest is not automatic. 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 BNSS, i.e., the police first has

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to give a notice under Section 35 of the BNSS. The learned APP next submits that anticipatory bail may or may not be maintainable after the accused receives notice under Section 35 BNSS, as it will depend on the facts and circumstances of the case, because the police even after issuance of notice under Section 35 BNSS 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 35 BNSS 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

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anticipatory bail application which could even remotely suggest that notice under Section 35 BNSS 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 35 BNSS 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 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 35 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.

(Satyavrat Verma, J)

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