

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73519 of 2025

Arising Out of PS. Case No.-144 Year-2025 Thana- SOHSARAI District- Nalanda

Vishal Kumar S/o Anil Mahto @ Anil Kumar R/o vill - Ashanagar, P.S.-
Sohsarai, Distt.- Nalanda, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Shrawan Kumar, Senior Advocate Mr.Pramod Kumar Pandey, Advocate
For the Informant	:	Mr.Saurav Kumar, Advocate
For the State	:	Mr.Vinod Shanker Modi, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 31-10-2025 Heard Mr. Shrawan Kumar, learned Senior Advocate

along with Mr. Pramod Kumar Pandey, learned counsels
appearing on behalf of the petitioner; Mr. Saurav Kumar,
learned counsel for the informant and Mr. Vinod Shankar Modi,
learned APP for the State.

2. Petitioner seeks pre-arrest bail in connection with
Sohsarai P.S.Case No.144 of 2025, registered for the offences
punishable under Sections 303(2), 126(2), 115(2), 109, 308(2),
352, 351(2) and 3(5) of BNS, 2023.

3. As per the allegation made in the FIR, the petitioner
along with the other co-accused persons snatched gold chain
weighing 15 gram from the informant and they assaulted him
with iron rod and the belt.



4. The petitioner along with the other two accused persons had earlier moved before this Court for grant of anticipatory bail filing Cr. Misc. No. 50651 of 2025, however, the prayer of the petitioner and co-accused Vicky Kumar was rejected by this Court *vide* order dated 11.08.2025.

5. The petitioner has renewed his prayer for grant of pre-arrest bail on the grounds assigned in the present bail application.

6. Today, Mr. Shrawan Kumar, learned Senior Advocate along with Mr. Pramod Kumar Pandey, learned counsel have submitted that from bare perusal of the FIR allegation against the petitioner in respect of alleged allegation that he had assaulted the informant and extorted money. He submitted that in absence of any demand of money, no case is made out against the petitioner. So far as the allegation made under Section 303(2), 126(2), 109, 352, 351(2) and 3(5) of BNS, 2023 are concerned, the same are bailable. Learned counsels on these grounds submitted that the petitioner for the said reason has not been apprehended till date and he seeks to be released on pre-arrest bail.

7. Learned Senior Advocate further asserted that the informant has entered into a compromise with the petitioner,



which was filed in the court of the learned Judicial Magistrate Ist Class, Nalanda. He further submitted that recently, the Apex Court in the case of ***Naushey Ali & Ors. Vs. State of Uttar Pradesh & Anr.*** reported in ***(2025) 4 SCC 78*** in para-11 to 20, has held as under:

“11. Before we apply this judgment to the facts, it will be worthwhile to recall the observations of Sikri, J. in Narinder Singh (supra):-

"26. Having said so, we would hasten to add that though it is a serious offence as the accused person(s) attempted to take the life of another person/victim, at the same time the court cannot be oblivious to hard realities that many times whenever there is a quarrel between the parties leading to physical commotion and sustaining of injury by either or both the parties, there is a tendency to give it a slant of an offence under Section 307 IPC as well..."

12. Coming back to Laxmi Narayan (supra), this Court has held that mere mention of Section 307 IPC in the FIR or the charge-sheet should not be the basis for adopting a hands-off approach. It has further held that it would be open for the court to examine as to whether incorporation of Section 307 IPC is there for the sake of it or whether there is evidence to back it. It has been held that the courts may go by the nature of injuries sustained; as to whether the injuries are inflicted on the vital/ delicate parts of the body and the nature of weapon used. It has also been clarified that such an exercise would be permissible after investigation and filing of chargesheet/framing of charges or during the trial. [See 15.4 of Laxmi Narayan (supra)].

13. Coming to the facts of the case, admittedly, there is a settlement between the parties. The case filed by the appellants' party which was prior in point of time and that too on the same day of occurrence, has been settled.

14. It should be recalled that, at the outset, after investigation, the police actually closed the case in its final report of 07.09.1991. It was the trial Court, which by its order of 05.09.1992, refused to accept the same and summoned the appellants. The incident is of 11.08.1991, i.e. about 33½ years back. No doubt, there is a reference to the firing in the FIR but admittedly there was no injury. The allegation is that firing was done by Abdul Waris. He is



since deceased. The facts, assuming to be true, also do not make out a case of common object for the appellants under Section 149 IPC insofar as the offence of Section 307 is concerned.

15. *The role attributed to the seven members, including the five appellants is not specific. General allegation was that they abused in filthy language and assaulted Mahmood with lathi and iron bars. The specific individual role was only attributed to Adbul Waris, who is since deceased.*

16. *In any event, the police who investigated disbelieved the entire story. No recoveries have been made of any pellets. What engaged the attention of the High Court was only the fracture of the head of the distal phalanx of left finger of respondent No.2.*

17. *We have seen the injuries sustained by Mahmood (R-2) from the medical evidence collected. From the injury report, it is clear that while the first four injuries were contusions and abrasions, injury Nos. 5, 6 and 7 pertained to incised lacerated wound and swelling on the middle finger of the left hand. We have also seen the x-ray report which shows that in the left hand there was a fracture of the head of distal phalanx of left ring finger. Assuming that this was the result of injury with lathis or iron bar, applying the test in Laxmi Narayan (supra), considering the injury and the nature of the weapon used, certainly no offence under Section 307 IPC is made out.*

18. Section 307 of IPC reads as under:-

"307. Attempt to murder.-

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.- When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death."

19. *Keeping in mind the surrounding circumstances, the nature of the weapon and the nature of the injury, on facts, we are inclined to conclude that the overt act attributed to the appellants does not bring the case within the four corners of the Section 307 of IPC, either on a stand-alone basis or as held above with the aid of Section 149 of IPC.*



20. We are also inclined to conclude that considering the overall circumstances, the nature of the weapon and the nature of the injury (fracture of the head of distal phalanx of left ring finger), the offence alleged, on facts, does not fall in that category of cases where the court should deny relief in the event of a settlement. At the highest, the offence alleged could be one under Section 326 of IPC. It could not be said, on facts, considering all the circumstances that this is a crime which has such a harmful effect on the public and that it has the effect of seriously threatening the well-being of the society. We make it clear that we are saying so on the facts of the present case. We are also firmly of the opinion that proceeding with the trial, when parties have amicably resolved the dispute in the present case, would be futile and the ends of justice require that the settlement be given effect to by quashing the proceedings. It would be a grave abuse of process to let this trial remain pending under the above circumstances, particularly when the dispute is settled and resolved.”

8. In the present case, in absence of money having been forcibly realized from the informant, no case under Section 308(2) of the BNS is made out and in absence of any injury, any criminal case under Section 109 of BNS is not made out against the petitioner.

9. Mr. Saurav Kumar, learned counsel for the informant informs that the informant has entered into a compromise with the petitioner.

10. Learned APP has vehemently opposed the prayer of the petitioner. He submitted that the petitioner has tampered with the investigation by coercing the informant signed on a joint compromise petition.

11. Heard the parties.



12. Having considered the rival submissions made on behalf of the parties, as well as, the fact that earlier the petitioner's bail application was rejected, vide order dated 11.08.2025, by which the co-accused Saurabh Kumar was granted pre-arrest bail, while the bail application of co-accused Vicky Kumar and Vishal Kumar (the present petitioner) was rejected, I find that in absence of any specific allegation of assault having been committed by the petitioners and in absence of any ingredients of Section 308(2) of BNS, the petitioner has *prima facie* made out a case to be released on pre-arrest bail, who has not been apprehended till the date of filing of the present bail application.

13. The petitioner is directed to be released on pre-arrest bail, in the event of his arrest or surrender before the learned district court within a period of four weeks from today, on furnishing bail bond of Rs.10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned CJM/Judicial Magistrate Ist, Nalanda, Bihar Sharif/concerned court, in connection with Sohsarai PS Case No.144 of 2025, subject to conditions as laid down under Section 482(2) of BNSS of 2023.

14. The learned district court is directed to verify the



criminal antecedent of the petitioner and if it is found that the petitioner is involved in some other cases as what has been stated in paragraph No.3 of the bail application, this order will automatically lose its force.

(Purnendu Singh, J)

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