

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77718 of 2025

Arising Out of PS. Case No.-168 Year-2025 Thana- PUNPUN District- Patna

1. Manoj Goswami @ Manoj Gosai S/o- Late Ram Taran Goswami Village- Jahidpur Post-Punpun PS- Punpun District- Patna
2. Umashankar Goswami @ Umashankar Gosai s/o- Late Ram Ratan Goswami Village- Jahidpur Post-Punpun PS- Punpun District- Patna
3. Rampravesh Goswami S/o- Late Aditya Goswami R/v- Fatehpur Po0- Samardiha Ps- Sasaram Dist- Rohtas
4. Most. Kamla Devi W/o- Late Ram Ratan Goswami Village- Jahidpur Post-Punpun PS- Punpun District- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr.Saroj Kumar Sharma, Adv
For the Opposite Party/s :	Mr.Dilip Kumar No. 1, APP
	Mr. Sanjay Kumar Sinha
	Mr. Om Prakash Nagmani
	Mr. Amit Anand

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 2 02-12-2025 1. Heard learned counsel for the petitioners, learned APP for the State and the learned counsel appearing on behalf of the informant.
2. The petitioners apprehend their arrest in connection with Punpun P.S. Case No. 168 of 2025 registered for the offences punishable under Sections 316(2), 334(1), 334, 334(2), 336, 61, 351(2), 253, 351(3) of the BNS, 2023.
3. Learned counsel for the petitioners, at the outset, punishment described for offence under Section 316(2) BNS is



10 years, but then the said punishment is to be inflicted only if criminal breach of trust is committed by public servant, banker, merchant or agent, but then petitioners do not fall in any of the aforesaid category. It is next submitted that for other category, the punishment is in between 5-7 years.

4. Learned APP for the State, at this stage, 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 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).

5. It is next submitted that there is no pleading in the 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 petitioners, as such, petitioners for the present do not have any apprehension of arrest.

6. 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, 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.

7. 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 35 BNSS, within a period of three weeks from today.

8. Permission is accorded.

9. Accordingly, the instant anticipatory bail application is dismissed as withdrawn with the liberty aforesaid.

(Satyavrat Verma, J)

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