

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76558 of 2025

Arising Out of PS. Case No.-325 Year-2024 Thana- BIBHUTIPUR District- Samastipur

1. Pankaj Sahni Son of Late Lala Sahni R/o Village - Pandit Tol Tabhaka, P.S. - Bibhutipur, Dist. - Samastipur.
2. Rajesh Sahni Son of Late Lala Sahni R/o Village - Pandit Tol Tabhaka, P.S. - Bibhutipur, Dist. - Samastipur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dilip Kumar Roy, Advocate

For the Opposite Party/s : Mr. Rajendra Nath Jha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL ORDER

2 01-12-2025 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 323, 365, 447 and 506/34 of the Indian Penal Code.

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 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).

4. 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.

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 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 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.

7. Permission is accorded.

8. Accordingly, the instant anticipatory bail application is dismissed as withdrawn with the liberty aforesaid in connection with Bibhutipur P.S. Case No. 325 of 2024 pending in the Court of learned Sub-Divisional Judicial Magistrate, Rosera/ACJM, Rosera/Successor Court.

(Satyavrat Verma, J)

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