

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14831 of 2026

Arising Out of PS. Case No.-268 Year-2025 Thana- SULTANGANJ District- Patna

Asish Kumar S/O Dayanand Mehta Resident of Village- Musallahpur
Mahavir Lane, P.S- Pirbahore, Distt.- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Binod Kumar Gupta, Advocate
For the Opposite Party/s : Mr.Shahabuddin Azeem @ S. Azeem

CORAM: HONOURABLE MR. JUSTICE RITESH KUMAR
ORAL ORDER

4 20-05-2026 Heard the learned counsel for the petitioner and the
learned A.P.P. for the State.

2. The petitioner apprehends his arrest in connection with Sultanganj P.S. Case No. 268 of 2025 registered for the offences punishable under sections 318(4), 319(2) of the B.N.S, 2023 and section 63 of the Copyright Act and section 103/104 of the Trade Marks Act.

3. As per the prosecution case, which has been lodged on the basis of a written report submitted by the informant to the effect that the informant is working as Manager in Ashish Publication and on the direction of the Managing Director of the said publication, he came to know that in Mohalla-Sultanganj counterfeit books of Ashish Publication were being illegally published and sold by the owner of Amar Enterprises. On the



said information, the informant along with police party reached there and in presence of witnesses several books were found printed which the informant alleges to be duplicate of the books being printed by the Ashish Publication. On the basis of the said information, given by the informant, the present case has been lodged against the petitioner.

4. The learned counsel for the petitioner submits that during course of investigation the petitioner was granted the benefit of Section 35(3) of the B.N.S.S., 2023 and he submitted bond before the police to that effect. He further submits that now since the chargesheet has been submitted against the petitioner, he has got apprehension of arrest, therefore, the present anticipatory bail petition has been filed.

5. Per contra, the learned A.P.P. for the State opposes the prayer for bail of the petitioner and submits that once the petitioner has been granted protection under Section 35(3) of the B.N.S.S., there is no question of applying for anticipatory bail.

6. Having heard the learned counsel for the parties and after going through the records, it appears that the petitioner was made an accused in publishing duplicate books of Ashish Publication and during course of investigation, the petitioner has been granted protection under Section 35(3) of the B.N.S.S., by



the concerned police station. Since he has already been granted the protection under the provisions contained in Section 35(3) of the B.N.S.S., this Court is of the opinion that, it would be appropriate for the petitioner to move before the concerned court, where the case is pending. The concerned court should take steps in terms of the directions given by the Hon'ble Supreme Court of India in a case reported in **2026 SCC OnLine SC 162 (Satender Kumar Antil vs. Central Bureau of Investigation and Anr.)** bearing Case No. M.A. No. 2034 of 2022 IN M.A. No. 1849 of 2021 IN Special Leave Petition (Crl.) No. 5191 of 2021, whereby after considering the entire aspect with regard to the applicability of Section 35(3) of the B.N.S.S., 2023, the Hon'ble Supreme Court in paragraph no. 31 has observed as under:-

“31. Hence, we have no hesitation to hold that a notice under Section 35(3) of the BNSS, 2023 to an accused or any individual concerned, *qua* an offence punishable with imprisonment up to 7 years, is the rule, while an arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023, is a clear exception.”

Further, after considering the same, the Hon'ble Supreme Court concluded in paragraph no. 32 as under:-



“32. The power of arrest under Section 35(6) read with Section 35(1) (b) of the BNSS, 2023 must be interpreted as a strict objective necessity, and not a subjective convenience for the police officer. It does not mean the police officer can arrest to simply ask questions. However, it means that the police officer must satisfy himself that the investigation, *qua* an offence punishable with imprisonment up to 7 years, cannot proceed effectively without taking the concerned individual into custody. Any interpretation to the contrary would clearly frustrate the purpose and legislative intent of Sections 35(1)(b) and Sections 35(3) to 35(6) of the BNSS, 2023.”

In terms of paragraph no. 32 of the judgment in paragraph no. 33 (a) to (f) the Hon’ble Supreme Court concluded as under:-

“33. On the basis of the interpretation given by us, we conclude as follows:

a. An arrest by a police officer is a mere statutory discretion which facilitates him to conduct proper investigation, in the form of collection of evidence and, therefore, shall not be termed as mandatory.

b. Consequently, the police officer shall ask himself the question as to whether an arrest is a necessity or not, before



undertaking the said exercise.

c. For effecting an arrest, *qua* an offence punishable with imprisonment up to 7 years, the mandate of Section 35(1)(b)(i) of the BNSS, 2023 along with any one of the conditions mentioned in Section 35(1)(b)(ii) of the BNSS, 2023 must be in existence.

d. A notice under Section 35(3) of the BNSS, 2023 to an accused or any individual concerned, *qua* offences punishable with imprisonment up to 7 years, is the rule.

e. Even if the circumstances warranting an arrest of a person are available in terms of the conditions mentioned under Section 35 (1)(b) of the BNSS, 2023, the arrest shall not be undertaken, unless it absolutely warranted.

f. Power of arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023, pursuant to a notice issued under Section 35(3) of the BNSS, 2023 is not a matter of routine, but an exception, and the police officer is expected to be circumspect and slow in exercising the said power.”

7. Accordingly, the petitioner will approach the concerned court and the concerned court is obliged to consider the case of the petitioner in terms the directions given in paragraph no. of 33(a) and (c) of the Judgment of the Hon’ble



Supreme Court of India in the case of Satender Kumar Antil
(supra).

8. With the above-mentioned observations and
directions, the anticipatory bail petition is disposed of.

(Ritesh Kumar, J)

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