

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41776 of 2026

Arising Out of PS. Case No.-139 Year-2026 Thana- BARHARIA District- Siwan

Mohammad Majid @ Majid Ali @ Majid, S/o Late Saijd Ali, R/o Village-
Kudwa, P.S.- Barharia, Dist.- Siwan.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s :	Mr. Sanjeev Kumar, Advocate Mr. Aman Kumar, Advocate
For the Opposite Party/s :	Mr. Ram Priya Sharan Singh, APP
For the Informant :	Mr. Devashish Giri, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

2 06-07-2026 Heard learned counsel for the petitioner and

learned Additional Public Prosecutor for the State duly

assisted by learned counsel appearing for the informant.

2. The accused/petitioner is named in the FIR and
apprehending his arrest in connection with Barharia P.S.
Case No.139 of 2026 registered under Sections 126(2),
115(2), 117(2), 118(1), 109, 303(2), 351(3) and 352 read
with 3(5) of the Bhartiya Nyaya Sanhita, 2023 (in short
'B.N.S.').

3. Allegation against petitioner is to assault the
informant along with other co-accused persons during the
course of occurrence, causing head injury, having intention



to cause his death, where occurrence was alleged to be arising due to drainage issues.

4. It is submitted by learned counsel appearing for petitioner that the occurrence was free fight in nature, where both parties received injuries and, therefore, it can be safely said that the petitioner was not under intention to cause death of the injured. It is submitted by learned counsel that petitioner specifically alleged to assault Jakir Hussain during the occurrence by *fersa* on his head, which upon medical examination, found grievous in nature. It is submitted that the allegation is not appears repeated and too in want of any intervening circumstances, which further suggest that the petitioner was not under intention to cause death. It is also argued that the allegation is to make assault by using *fersa*, which is a sharp-edged weapon but, upon medical examination, the nature of injury was found to be caused by hard and blunt substance, which also not appears corroborating with the nature of weapon alleged to cause assault and, therefore, allegation is appearing doubtful on its face *qua* petitioner.



5. Arguing further, it is submitted by learned counsel that only the nature of injury is not a consideration to make out a case under Section 109 of the BNS, as several factors are required to be taken care of as, nature of injuries, manner of assault, the body part where assault was made, the conduct of the accused/petitioner during the occurrence, etc. In support of his submission, learned counsel has relied upon legal report of Hon'ble Supreme Court as available through **State of Himachal Pradesh vs. Shamsher Singh [2025 SCC OnLine SC 807]**.

6. Arguing further, it is submitted by learned counsel for the petitioner that admittedly the process under Section 83 of the CrPC was initiated against petitioner but, time and again, this Court granted anticipatory bail despite of issuance of process under Section 83 of the CrPC/Section 84 of the BNSS even in murder case and in support of his submission, learned counsel relied upon the legal report of this Court as available through **Mangni Devi vs. State of Bihar [2025 SCC OnLine Pat.309]** and also relied upon the order dated 06.09.2024 as passed in Cr. Misc.



No.16818 of 2024, which was passed after dealing with **Srikant Upadhyay and Ors. vs. State of Bihar and Anrs. [(2024) 12 SCC 382]** and other legal reports of the Hon'ble Supreme Court.

7. In the background of aforesaid legal reports, learned counsel for the petitioner submitted that in the present case, the petitioner filed his prayer of anticipatory bail on 24.04.2026 before the learned District Judge, whereafter, the NBW was issued on 05.05.2026 in this case. It is pointed out that on 11.05.2026, the process under Section 82 of the CrPC was initiated, where the process under Section 83 of the CrPC was initiated on 19.06.2026. In this context, it is also pointed out by learned counsel that the process was wrongly initiated under the provision of Criminal Procedure Code, as the occurrence took place only after the implementation of BNSS and, therefore, the procedure must be initiated under the provision of BNSS and, as such, any process initiated under wrong provision of law, which is not available in statute book presently, it cannot be said that the petitioner was avoiding from the



court proceedings. It is submitted that finally, on 19.05.2026, the prayer of anticipatory bail of petitioner was rejected by the learned Sessions Judge, whereafter, immediately, getting the certified copy of the order, the petitioner preferred the present anticipatory bail on 17.06.2026. The petitioner claimed clean antecedent.

8. Learned APP duly assisted by Mr. Devashish Giri, learned counsel appearing for informant while opposing the prayer of bail submitted that the issuance of process under CrPC is a typographical error. It is submitted that after lodging the FIR, the petitioner left the country for gulf country and still he is in gulf country. It is submitted further that the allegation to cause grievous head injury is specifically available against this petitioner by using *fersa* and, therefore, it is not a case where anticipatory bail can be granted to the petitioner considering the ratio of **Srikant Upadhyay Case (supra)**, in the interest of justice, as no exception carved out to exercise such power in present matter.

9. Learned counsel for the petitioner could not



disputed the fact that the petitioner has left country for gulf and it was submitted that as he was in gulf country in connection with professional engagement prior to the occurrence, therefore, after the occurrence, he left country and it was not with intention to avoid any proceedings of the court.

10. In view of aforesaid, without going into merit *qua* proceeding initiated u/s 82/83 of the CrPC, as specific allegation is available against this petitioner to cause grievous head injury by using *farsa* during the course of occurrence, accordingly, the prayer of anticipatory bail of petitioner stands rejected.

(Chandra Shekhar Jha, J.)

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