

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45425 of 2026

Arising Out of PS. Case No.-2909 Year-2024 Thana- EAST CHAMPARAN COMPLAINT
District- East Champaran

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Brij Kishore Tiwari S/o Late Mahendra Tiwari Resident of Village-
Bhagwatpur Bhaluwahiya, P.S.-Shikarganj, District- East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar
2. Sheela Devi W/o Brij Kishore Tiwari Resident of Mohalla - Rajendra Nagar,
Ward No.-12, P.S.- Chhatauni, District - East Champaran. Mobile No.-
7462066844

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sitesh Kashyap, Advocate.

For the Opposite Party/s : Mr. Chandra Bhushan Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 14-07-2026 1. Heard learned counsel for the petitioner and the

learned APP for the State, Sri Chandra Bhushan Prasad.

2. The petitioner apprehends his arrest in connection

with Complaint Case No. 2909 of 2024, registered for an

offence punishable under Section 85 of the BNS, 2023.

3. Learned counsel for the petitioner submits that

petitioner is a person with clean antecedent and being husband

has been falsely implicated in the instant case by the

complainant. It is next submitted that complainant instituted

Complaint Case No. 2909 of 2024, in which, cognizance was

taken under section 85 of the BNS and thereafter summons were

issued.



4. At this stage, the learned APP, Sri Chandra Bhushan Prasad, submits that from perusal of the pleadings made in the anticipatory bail application, it would manifest that cognizance in the case has been taken, hence the petitioner is apprehending arrest and thus has moved before this Court seeking anticipatory bail, it is next submitted that after cognizance is taken, summons are issued and if petitioner based on the summons appears before the learned trial court, the petitioner will not be arrested rather will join the proceedings before the learned trial court.

5. Learned APP next submits that Hon'ble Jharkhand High Court in ABA No. 2319 of 2025 (*Om Prakash Chhawnika @ Om Prakash Chabnika @ Om Prakash Chawnika vs. the State of Jharkhand*) had rejected the the anticipatory bail of Om Prakash Chhawnika @ Om Prakash Chabnika @ Om Prakash Chawnika in connection with Complaint Case No. 6181 of 2021 whereby cognizance was taken under Sections 323, 420, 467, 468, 471, 120B and 34 of the IPC, it is next submitted that cognizance in Complaint Case No. 6181 of 2021 was taken under non-bailable sections as such Om Prakash Chhawnika fearing arrest moved the Hon'ble Jharkhand High Court, but then his anticipatory bail came to be rejected, thereafter Om



Prakash Chhawnika moved before the Hon'ble Supreme Court by filing SLA (Crl.) No.16221 of 2025 assailing the order of the Hon'ble Jharkhand High Court dated 4-7-2025 in ABA No. 2319 of 2025 arising out of Complaint Case No. 6181 of 2021. It is further submitted that Hon'ble Supreme Court after discussing the case laws on the issue recorded at para-7 of the order dated 23-4-2026 in SLA (Crl.) No.16221 of 2025 -

“ We have noticed that there is a serious problem in two States, viz. the State of Bihar and State of Jharkhand, respectively. We fail to understand that in a private complaint how does the Police involve itself or is concerned, in any manner. What was the basis for the accused to express apprehension that the police would arrest them.”,

thereafter at para-8, it is recorded --

“In a private complaint when cognizance is taken and process is issued all that the Court would do is to issue summons. We have explained many times in the past the purport of Section 87 of the Criminal Procedure Code, 1973 (for short, “the Cr.PC.”) The Section 87 of the Cr.PC. reads thus:-

“87. Issue of warrant in lieu of, or in addition to, summons.—A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest—

(a) if, either before the issue of such summons, or



after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.”

At para-9, it is recorded --

“[Section 87](#) empowers the Court to issue warrant in lieu of, or in addition to, summons. However, this power has to be exercised only in two contingencies as explained by the provision itself, i.e, (a) and (b) referred to above respectively.”

It is further submitted that at para-10 it is recorded--

“Once the Court takes cognizance and issues summons, all that the accused has to do is to appear before that Court and join the proceedings. Why should the accused go before the Sessions Court or the High Court, as the case may be, and pray for anticipatory bail? Police has no power to arrest the accused in a complaint case unless there is a non bailable warrant issued by that Court along with the summons.”

6. At this stage, the learned counsel appearing on behalf of the petitioner submits that no doubt the law on the issue is clear as decided by the Hon’ble Supreme Court but then in practice in the State of Bihar, the learned Magistrates in



mechanical manner on appearance of the accused based on summons, relegate them to judicial custody, on which the learned APP submits that it is difficult to appreciate what has been submitted by learned senior counsel for the petitioner as it cannot be presumed that the learned Magistrate will not appreciate the orders of this Court and the Hon'ble Supreme Court.

7. At this stage, learned counsel for the petitioner fairly submits that since only summons have been issued in the case, as such in view of the order of the Hon'ble Supreme Court dated 23-4-2026 in SLA (Crl.) No.16221/2025, the instant anticipatory bail application is not maintainable at this stage, hence seeks permission to withdraw the anticipatory bail application and submits that the petitioner will appear before the learned trial court and will join the proceedings. It is also submitted that the learned Magistrate also has to take note of the order of the Hon'ble Supreme Court, on which the learned APP submits that it is the duty of the petitioner to ensure that the order of the Hon'ble Supreme Court is also produced at the time when the petitioner appears before the learned Trial Court.

8. Since the petitioner has prayed for withdrawing the anticipatory bail application at this stage, as such permission is



accorded and the anticipatory bail application is dismissed as withdrawn with the liberty to the petitioner to appear before the learned trial court with an order dated 23-4-2026 in Special Leave to Appeal (Crl) No. 16221 of 2025 passed by the Hon’ble Supreme Court.

9. At this stage, learned counsel appearing on behalf of the petitioner submits that till date non-bailable warrant of arrest has not been issued against the petitioner.

(Satyavrat Verma, J)

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