

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38822 of 2025

Arising Out of PS. Case No.-51 Year-2025 Thana- PHENHARA District- East Champaran

Navneet Kumar Singh, Son of Umesh Prasad Singh, resident of Village
-Bishunpur Basant, P.S- Phenhara, District- East Champaran

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Vishal Prasad Srivastava, Advocate
For the State : Mr. Anand Kishore Choudhary, APP
Amici Curiae : Mr. Ajay Kumar Thakur, Advocate
Mr. Anil Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

Date : 08-08-2025

The petitioner seeks anticipatory bail, apprehending his arrest, in connection with Phenhara P.S. Case No.51 of 2025, dated-14.03.2025, registered for the offences punishable under Sections 126(2), 115(2), 118(1), 352 and 351(2) of the Bharatiya Nyaya Sanhita, 2023 and Sections 25(1-b)a and 26 of the Arms Act.

2. The prosecution case, as emerging from the written report, is that when Shivam Kumar, son of the informant was coming back after shopping, the Petitioner attacked him with



pistol and knife. However, he was overpowered by his son and two nephews, who were just behind his son. Even a co-villager, Abhinandan Singh also reached the place of occurrence and pistol was snatched from the Petitioner. However, the Petitioner fled away leaving behind his motorcycle bearing Registration No. BR05-BG-9485. The pistol, knife and the motorcycle were handed over to the police.

3. Learned counsel for the petitioner submits that the Petitioner is innocent and has falsely been implicated in this case. He further submits that the Petitioner first moved the Court of Sessions Judge, East Champaran, Motihari by way of anticipatory bail petition bearing no. 1523 of 2025, which was disposed of by learned Sessions Judge in terms of the observation made by a co-ordinate Bench of this Court in **Asha Baitha vs. State of Bihar** bearing **Criminal Miscellaneous Case No.44659 of 2024** as reported in **2024 SCC Online Pat 5670**. The observation made in **Asha Baitha case** (supra) is as follows:

“The petitioner would be at liberty to file a representation within a period of three weeks from today before the concerned Superintendent of Police of the district and the Investigating Officer of the case with a web copy of the order dated 13.02.2024 in Cr. Misc. No. 3536/2024 (**Naushad Ansari Vs. State of Bihar**) and the Superintendent of Police shall ensure that Investigating Officer of the case strictly adhere to the direction contained in the said order.”



4. I heard learned counsel for the petitioner, learned APP for the State and learned *Amici Curiae*.

5. Learned counsel for the Petitioner submits that the Petitioner is innocent and has falsely implicated in this case. He should have been granted anticipatory bail by the Sessions Court, instead of referring him to the police to represent.

6. Even, learned APP for the State and learned *Amici Curiae* also submit that there was no justification of abdication of duty on the part of the Sessions Court, who instead of deciding the bail petition, has only disposed it of by giving him liberty to represent to the police.

7. I considered the submissions of learned counsel for the Petitioner, learned APP for the State and learned *Amici Curiae* and perused the materials on record.

8. I find that the anticipatory bail petition bearing no. 1523 of 2025 was filed by the Petitioner before learned Sessions Judge for anticipatory bail. However, the same has been only disposed of without rejecting or allowing the prayer of the Petitioner for anticipatory bail, and, instead, he has been given liberty to make representation within a period of three weeks to the concerned Superintendent of Police and the Investigating Officer of the case, with a web copy of the order dated



13.02.2024 passed in Criminal Miscellaneous No.3536 of 2024 titled **Naushad Ansari Vs. State of Bihar**, passed by a coordinate Bench of this Court. The Superintendent of Police has been also directed to ensure that the Investigating Officer of the case strictly adheres to the direction contained in the said order.

9. I further find that in **Naushad Ansari case** (supra), the operative part of the order is as follows:

“12. After hearing the learned APP and the learned counsel for the petitioner, the present anticipatory bail application is disposed of with a direction that the concerned Superintendent of Police of every district and investigating officers of the case shall forthwith comply with the direction of the Hon'ble Supreme Court as contained in the case of **Arnesh Kumar (supra) and Md. Asfak Alam (supra)**.

13. It is made clear that if any breach of the direction of the Hon'ble Supreme Court is brought to the notice of this court, the police and the learned Magistrate shall be dealt in terms of the Memo No. 62973 dated 19.9.2023 issued by this Court under the signature of the learned Registrar General.

14. Let a copy of this order be sent to the DGP, Bihar, Principal Secretary (Home), Government of Bihar and all the learned District Judges for its onward communication to all the Superintendents of Police, Investigating Officers and the learned Magistrates.

15. The Court directs that the police and the learned Magistrate shall completely adhere to the directions given by the Hon'ble Supreme Court in the case of **Arnesh Kumar (supra) and Md. Asfak Alam (supra)**.”

10. I further find that Hon'ble Apex Court in **Arnesh Kumar Vs. State of Bihar (2014) 8 SCC 273** has issued the following directions to the Police and Judicial Magistrate:



"11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b) (ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years,



whether with or without fine."

11. I further find that the direction given by Hon'ble Apex Court in **Arnesh Kumar case** (supra) has been reiterated by Hon'ble Supreme Court in **Mohd. Asfak Alam v. State of Jharkhand** as reported in **(2023) 8 SCC 632**. The direction reads as follows:

"16. The impugned order of rejecting the bail and directing the appellant, to surrender and later seek bail, therefore, cannot stand, and is hereby set aside. Before parting, the Court would direct all the courts seized of proceedings to strictly follow the law laid down in **Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273** and reiterate the directions contained thereunder, as well as other directions.

16.1.(I) Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273

"11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrates do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-AIPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41CrPC;

11.2. All police officers be provided with a checklist containing specified sub-clauses under Section 41(1)(b) (ii);

11.3. The police officer shall forward the checklist duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the



date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine."

16.2.(II) The High Court shall frame the above directions in the form of notifications and guidelines to be followed by the Sessions Courts and all other and criminal courts dealing with various offences.

16.3.(III) Likewise, the Director General of Police in all States shall ensure that strict instructions in terms of the above directions are issued. Both the High Courts and the DGPs of all States shall ensure that such guidelines and Directives/Departmental Circulars are issued for guidance of all lower courts and police authorities in each State within eight weeks from today.

16.4.(IV) Affidavits of compliance shall be filed before this Court within ten weeks by all the States and High Courts, through their Registrars."

12. However, it is pertinent to note that Hon'ble Supreme Court in **Arnesh Kumar Case** (supra) and **Mohd. Asfak Alam case** (supra) has nowhere held that anticipatory bail



is not maintainable in view of Section 41A Cr.PC (Equivalent Section 35 of B.N.S.S.). In fact, in both the cases Hon'ble Apex Court has granted anticipatory bail to the Petitioners, besides issuing directions to the police and Judicial Magistrate against unnecessary and arbitrary arrest and illegal remand in offence punishable up to seven years of imprisonment.

13. I also find that learned Coordinate Bench of this Court has also nowhere held in **Naushad Ansari Case (supra)** that the anticipatory bail petition under Section 438, Cr.PC/Section 482 B.N.S.S. is not maintainable in view of the provisions as provided under Section 41A, Cr.PC/Section 35, B.N.S.S.

14. However, learned coordinate Bench of this Court was concerned with the violation of the direction of Hon'ble Apex Court in **Arnesh Kumar Case (supra)** and **Mohd. Asfak Alam case (supra)** by the police and Judicial Magistrates leading to unnecessary and arbitrary arrest and remand in offence punishable up to seven years of imprisonment, resulting into flood of bail applications before the Sessions Court as well as this Court. Hence, he has strictly directed the police and Judicial Magistrates to comply with the directions of Hon'ble Supreme Court as given in **Arnesh Kumar Case (supra)** and



Mohd. Asfak Alam case (supra).

15. However, I find that in view of **Nausad Ansari case** (supra) the impression is doing round in District Judiciary that in view of Section 41A Cr.PC/Section 35, B.N.S.S., anticipatory bail petitions are not required to be decided, if they are filed before the Court of Sessions and the Court is only required to refer the Petitioners to the police for representation, and it is due to this impression that the impugned order has been passed by learned Sessions Judge in the case on hand. Such impression is urgently required to be dispelled, otherwise, such impression would render the provisions for pre-arrest bail otiose and nugatory, jeopardizing the life and liberty of the people by making it dependent upon the discretion of the police. This is not permissible under our constitutional scheme and statutory provisions.

16. Right to life and liberty is fundamental to human life and it has been obtained by the mankind after a long struggle and sacrifice. Hence, our Constituent Assembly has given utmost importance to this right by incorporating it as a fundamental right by way of Article 21 of the Constitution and by making provisions for enforcement of such right under Articles 32 and 226 of the Constitution.



17. Even the Parliament has provided various provisions in the Criminal Procedure Code to protect this fundamental right of life and liberty of the people. The provisions of pre-arrest and post-arrest bail, Section 41 and 41A Cr.PC/Section 35, BNSS, refusal to remand by Judicial Magistrate, discharge of the accused by Trial Court and even acquittal for want of proof beyond reasonable doubts - all are the means to achieve the broad goal to prevent curtailment of liberty without legal necessity. However, these provisions are not substitutes for each other. All work concurrently. All the provisions operate in their own way in the situations as contemplated for their application. The competent Courts vested with jurisdiction to exercise their power under the aforesaid provisions are duty bound to protect the liberty of the people. They can not shut their doors and refer the petitioners to go to other fora for protection of their liberty. Accordingly, Court seized with anticipatory bail petitions can not ask the petitioners to go to Police for relief under the provisions as provided under Section 41 and 41-A of the Cr.PC/ Section 35 of the B.N.S.S. Similarly, the Court seized with a petition for post arrest bail can not ask the petitioners to move judicial Magistrate for refusal of remand. Similarly, the Judicial Magistrate cannot



say to the accused that he cannot refuse to remand the accused and the accused would have to wait for stage of Discharge. Similarly, the Trial Court at the stage of framing of charge cannot say that he would frame charge against him and he would have to wait for conclusion of the trial to get his liberty. The statutory Provisions of the Criminal Procedure have been deliberately introduced to prevent curtailment of liberty without legal necessity by giving relief to the accused persons in different situations and at different stages, if they fulfill their requirements and conditions.

18. If the Courts which are vested with jurisdiction to hear pre-arrest bail petitions, shut their doors and refer the petitioners to Police to get relief under Sections 41 and 41A of the Cr.PC, it would be a dooms day for the right of the people to life and liberty. Such closure of doors would blow a death knell to the edifice created against curtailment of liberty without necessity.

19. It is also equally important to point out that the Parliament has also trusted the Police to conduct proper investigation without unnecessarily curtailing the liberty of the people facing accusation. They have been given discretionary power to arrest under certain circumstances without warrant



from Judicial Magistrate as stipulated under Section 41 of the Cr.PC, but Parliament had expected that our Police would be sensitive to the fact that right to arrest is one thing but necessity to exercise such right is another and they would not misuse their discretionary power of arrest without legal necessity. As a matter of guidance, the Parliament has subsequently inserted 41A into the Cr.PC for guidance to the Police how to avoid unnecessary arrest of the accused and what procedure should be followed to complete the investigation under such circumstances. But unfortunately, it has been found that the Police is not working to the expectation of the legislature. Even the Judicial Magistrates are failing in their duty to prevent illegal detention by authorizing unnecessary arrests by passing remand orders casually and mechanically. They are not refusing remand even in deserving cases. Hence, Hon'ble Apex Court was constrained to issue a direction to the Police and Judicial Magistrates in **Arnesh Kumar case** (supra) in the context of Section 41A Cr.PC and same has been reiterated by Hon'ble Apex Court in **Md. Asfak Alam case** (supra).

20. The misuse of discretionary power by the Police to arrest without warrant and dereliction of duty on the part of the Judicial Magistrates in regard to remand of the accused persons



has led to flooding of Courts with pre-arrest and post arrest bail petitions, because people apprehending arbitrary arrest by the Police are rushing to the Courts by way of anticipatory bail petitions and those who are arbitrarily arrested are filing regular bail petitions. The result is that District Courts as well as the Constitutional Courts, including Hon'ble Apex Court, are flooded with bail petitions, clogging the justice delivery system. If the Police come to the expectation of the Parliament and avoid unnecessary arrest, and Judicial Magistrates exercise their right to remand properly, this problem of flood of bail petitions would heavily come down, and it could have been a great service to our society by making the judiciary free of unnecessary litigations. Hence, the Police and the Judicial Magistrates are expected to follow the direction of the Hon'ble Apex Court in **Arnesh Kumar case** (supra) and **Md. Asfak Alam case** (supra) in true letter and spirit of the directions. On their failure to comply with the directions, even Contempt Proceedings may be initiated.

21. Now coming back to the statutory provisions regarding the pre-arrest bail and Section 41A Cr.PC/ Section 35 of B.N.S.S., it is pertinent to point out that Section 438 Cr.PC/Section 482 B.N.S.S. provides for pre-arrest bail and the accused are given right to move Sessions Court or High Court if



they are apprehending arrest in face of accusation and in such situation, the competent Courts are empowered to grant or refuse anticipatory bail to the petitioner.

22. However, Section 41(1)(b) Cr.PC deal with power of the police to arrest without warrant from Judicial Magistrate in case of cognizable offence punishable up to seven years of imprisonment subject to the conditions as provided therein. It is also provided therein if the police is satisfied that such arrest is necessary in view of the situations as mentioned therein, the police is required to record the reasons in writing for such arrest. However, when the police is satisfied that arrest is not necessary, the police is required to follow the procedure as provided under Section 41A Cr.PC which has been introduced in the year, 2009 by way of amendment. As per Section 41A, the police is required to issue notice to the accused, directing him to appear before him at such places as specified by the police and in the event of such notice being issued to the accused, it is duty of the accused to comply with the terms of the notice and if the accused complies and continues to comply with the notice, he is not required to be arrested in respect of the offence referred to in the notice unless, for the reasons to be recorded by the police, the police opines that the accused is to be arrested. In the event



of non-compliance of the terms of the notice and unwillingness of the accused to identify himself, the police is again empowered to arrest the accused for the offence as mentioned in the notice. Even otherwise, under Section 170 Cr.PC/190 of the B.N.S.S., the police is empowered to take the accused in custody after completion of the investigation if evidence is found to be sufficient to forward him to the Jurisdictional Magistrate.

23. In view of the aforesaid provisions of Section 41A Cr.PC/35 of the B.N.S.S. and Section 170 Cr.PC/190 of the B.N.S.S., apprehension of arrest to the accused never vanishes completely, even if notice is issued by the Police and all the conditions of the notice are complied with by the accused. Hence, the pre requisite for filing pre-arrest bail petition is always available to such accused to move competent Courts under Section 438 Cr.PC/482 B.N.S.S. Hence, anticipatory bail petition is maintainable despite the provisions of Section 41A Cr.PC/35 of the B.N.S.S., even if police gives notice to the accused in the event of his opinion that the arrest is not necessary for completing the investigation. This is the reason, this Court has consistently held that the anticipatory bail petitions are maintainable despite the provisions of Section 41A Cr.PC/35 of the B.N.S.S. Here one may refer to **Gauri Shankar**



Roy v. State of Bihar, 2015 SCC OnLine Pat 2165 (2015) 3

PLJR 618 wherein a coordinate Bench of this Court has held as follows:

“40. Hence, a person gets apprehension of being arrested in two situations:- firstly when a ‘Notice’ is issued to him under Section 41A(1) of the Code and secondly, after complying the terms of ‘Notice’ the police officer forms an opinion that such person ought to be arrested or in a situation, such person fails to comply the terms of ‘Notice’ or is unwilling to ‘identify’ himself.

41. In view of this Court, in all the above three situations such person can maintain an anticipatory bail application as Section 41A of the Code does not stipulate the specific condition of notice of appearance. To take a contrary view (police bail) will give a long rope to the police to deprive any person to avail the remedy under Section 438 of the Code.

.....
44. Section 41A of the Code operates in a situation where there is no arrest and prescribes the course of option to be adopted by a police officer in case he decides not to arrest any person. Till the time any person is not arrested, he is entitled to maintain an application for grant of anticipatory bail subject to, of course, the applicability of any other law to the contrary.

.....
46. If the logic of non-maintainability of anticipatory bail application under Section 438 Cr.P.C. on the score is to be accepted, then startling anomaly resulting in serious consequences would arise and virtually Section 438 of the Cr.P.C. will become otiose because in all cognizable cases either there has to be arrest or there has to be no arrest or there has to be a notice by the police officer. In case there is arrest, jurisdiction under Section 438 Cr.P.C. is automatically ousted and in case of non arrest, the requirement of notice is there and if issuance of notice and appearing in pursuance thereof is deemed to be in police custody, then also Section 438 Cr.P.C. would be ousted. This can certainly never be the legitimate interpretation of the scope of Section 41A Cr.P.C.”

(Emphasis supplied.)

24. The same view was reiterated by Coordinate



Bench of this Court in **Sona Kunwar v. State of Bihar** as reported in **2021 SCC OnLine Pat 45** holding as follows:-

“6. In reply, learned counsel appearing for the appellants submitted that in **Gauri Shankar Roy v. State of Bihar**, since reported in **(2015) 3 PLJR 618**, this Court has already held that if a person has appeared upon notice issued to him under Section 41-A(1) of the Cr.P.C and when the police officer forms an opinion that such person ought not be arrested, the apprehension of arrest does not completely vanish and under such circumstances, an application under Section 438 of the Cr.P.C would be maintainable. He further contended that since the ingredients of the offence punishable under the Act are not attracted against the appellants, Section 18 of the Act would not be a bar for maintainability of an application under Section 438 of the Cr.P.C.”

(Emphasis supplied.)

25. Similar view has been taken by Karnataka High Court in **Sri. Ramappa @ Ramesh Vs. the State of Karnataka through Range Forest Officer, Bagalkote**. In this case also, notice under Section 41A Cr.PC was issued to the Petitioner. However, the Petitioner had not appeared before the police and he had filed anticipatory bail petition before the High Court. Here, Karnataka High Court has held as follows:-

“18. The conclusion which emerges from the conjoint reading of Section 41 and 41A of the Code is as follows : In connection with allegation of commission of offence punishable up to 7 years with or without fine, the Police Officer can arrest - (i) only if he has reasons to believe regarding commission of the offence by the person concerned, coupled with (ii) the existence of one or more of the circumstances provided in the Section rendering arrest necessary.

19. In case the Police Officer decides not to arrest, he has



to record the reasons to that effect and thereafter is mandatorily required to issue notice to the person concerned under Section 41A(1). The notice is required to comply with the terms of the notice and till the time the notice observes and adheres to the undertaking under the notice, he shall not be arrested unless for the reasons to be recorded, the Police Officer is of the opinion that he ought to be arrested. The use of word 'shall' in Section 41 A(1) of the Code reflects that the provision is mandatory in nature.

20. Where there is any failure on the part of the notices to comply with the terms of the notice, it is always incumbent upon the Police Officer to arrest the notice subject to such orders as may have been passed by a competent Court in this behalf. The use of the term 'subject to such orders' is of significance as the legislature is not expected to waste the words or use them casually without any intention of a specific interpretation being given to them. The term subject to such orders as may have been passed refers to orders relating to grant of anticipatory bail which the notice may have obtained interregnum the issuance of notice and before actual arrest.

21.1. Section 41A of the Cr.P.C. which was inserted by Act 5 of 2009 was made effective from 01.11.2010 and was introduced by the Legislature for purposes of giving notice of appearance to a person whose arrest is not required under provisions of Section 41(1) of Cr.P.C., directing the person against whom a reasonable complaint has been made or creditable information has been received or reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the Notice.

21.2. Under Section 41A (2) of the Code the person concerned to whom the Notice has been issued is duty bound to comply with the terms of notice.

21.3. Section 41A (3) stipulates about the person who complies with the Notice, shall not be arrested unless for reasons recorded by the Police that he ought to be arrested and one of such contingencies when such person can be arrested as stipulated under Section 41A (4) which prescribes the arrest of such person if he fails to comply the terms of Notice or is unwilling to identify himself if then the Police Officer subject to such orders as may have been passed by a competent Court, may arrest him for the offences mentioned in the Notice.

22. Hence, a person gets apprehension of being arrested in



two situations:— firstly when a ‘Notice’ is issued to him under Section 41A (1) of the Code and secondly, after complying the terms of ‘Notice’ the police officer forms an opinion that such person ought to be arrested or in a situation, such person fails to comply the terms of ‘Notice’ or is unwilling to ‘identify’ himself.

23. In all the above three situations such person can maintain an anticipatory bail application as Section 41A of the Code does not stipulate the specific condition of notice of appearance.

24. Section 41A of the Code operates in a situation where there is no arrest and prescribes the course of option to be adopted by a police officer in case he decides not to arrest any person. Till the time any person is not arrested, he is entitled to maintain an application for grant of anticipatory bail subject to, of course, the applicability of any other law to the contrary.

25. Section 41A of the Cr.P.C. defers the arrest until and unless sufficient evidence is collected, so as to produce or forward the accused to the custody of the Court. The apprehension of arrest, thus, does not completely vanish away on the issuance of notice of appearance under Section 41 A of the Cr.P.C., and hence, the question being raised in maintainability of an application under Section 438 Cr.P.C., during the pendency of notice being issued under Section 41A Cr.P.C. or during the compliance of the terms of such notice, is completely unwarranted and is not in tune with the provisions of law. The apprehension of arrest always does exist even after issuance of notice of appearance under Section 41A Cr.P.C. and under such circumstance the Courts cannot evade to entertain an application under Section 438 Cr.P.C.”

(Emphasis supplied.)

26. In Pinapala Uday Bhushan vs State of AP (2024

SCC OnLine AP 790) High Court of Andhra Pradesh has also held that apprehension of arrest exists even after issuance of notice under Section 41A Cr.PC.

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Present case

27. Now coming to the case on hand, I find that the Petitioner is accused of offence punishable under Sections 126(2), 115(2), 118(1), 352 and 351(2) of the Bharatiya Nyaya Sanhita, 2023 and Section 25(1-b)a and 26 of the Arms Act for which maximum punishment prescribed for the alleged offences is up to seven years of imprisonment. It also transpires that even notice was not received by the Petitioner from the police under Section 41A Cr.PC/35 of B.N.S.S., and hence, he had moved the Sessions Court for anticipatory bail, but the same has been disposed of only by giving liberty to the Petitioner to represent to the police. It also transpires that the Petitioner had not previously moved any similar application before the Sessions Court or this Court and he has also no criminal antecedent and it is claimed by the Petitioner that he is innocent and has falsely been implicated.

28. In such circumstances, the Petitioner should have been allowed pre-arrest bail subject to the conditions as may have been stipulated by Sessions Court.

29. Hence, the manner of disposal of the anticipatory bail petition by the Sessions Court is no way justified. In fact, he has abdicated his duty as enjoined under Section 438 Cr.PC/482



of the B.N.S.S. This is nothing less than dereliction of duty as judicial officer holding office of the highest Court at the District level.

30. Considering the aforesaid facts and circumstances, **this petition is allowed**, directing the petitioner, above-named, to be enlarged on bail, in the event of his arrest or surrender before the court below within a period of eight weeks from the date of receipt / production of a copy of this order, on his furnishing bail bonds in the sum of Rs. 10,000 /- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned concerned Court below, in connection with Phenhara P.S. Case No. 51 of 2025, subject to the conditions as laid down under Section 482 (2) of the B.N.S.S., 2023 and on the following conditions:

(i) In case, it is brought to the notice of the court below that the petitioner has any criminal antecedents, learned court below shall cancel the bail bonds of the petitioner after hearing him and getting satisfied that the petitioner has concealed his criminal antecedents despite his knowledge of the same.

(ii) In case, it is brought to the notice of the court below that statement regarding previous bail petition is wrong,



learned court below shall cancel the bail bonds of the petitioner.

31. The assistance as provided by learned *Amici Curiae*, Shri Ajay Kumar Thakur, Advocate and Shri Anil Singh, Advocate is highly appreciated. The Secretary, Patna High Court Legal Services Committee, is directed to pay honorarium of Rs.7,000/- each to both of the *Amici Curiae*.

32. Learned Registrar General is directed to circulate a copy of this judgment amongst all the Judicial Officers of Bihar District Judiciary and a copy of this Judgment be also sent to the Director, Bihar Judicial Academy to discuss it in the training programmes for the Judicial Officers.

33. A copy of this judgment be also sent to the Director General of Police, Patna, to circulate amongst all the Police Officers of the State of Bihar.

(Jitendra Kumar, J.)

Chandan/Ravishankar-

AFR/NAFR	A.F.R.
CAV DATE	28.07.2025
Uploading Date	08.08.2025
Transmission Date	08.08.2025

