

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CRIMINAL MISCELLANEOUS No.14855 of 2025**

Arising Out of PS. Case No.-215 Year-2024 Thana- SAMASTIPUR District- Samastipur

1. Nirmala Devi @ Nimala Devi widow of Late Basant Kumar Singh @ Basant Singh by faith Hinduism, by occupation-Housewife, resident of near MSKG College, Kashipur. P.S.-Town, Dist.- Samastipur, Bihar, Pin code- 848101
2. Kunal Kumar son of Lalbaboo Singh by faith- Hinduism, by occupation-Business, resident of. Sultanpur, PS-Mohiuddin Nagar, Dist.- Samastipur, Bihar, Pin code-848501
3. Nitisha Singh wife of Kumar Saurabh by faith- Hinduism, by occupation-Housewife, resident of Flat no. 501, Dream Nest, Plot no. 124/B, Sector no. 13, Chikhali Pradhikaran, P.S-Mundhwa Pune City, District - Pune, Maharashtra, Pin code-411019
4. Nishika Singh @ Nishika wife of Santosh Kumar Singh by faith Hinduism, by occupation private employment, resident of 9048, wing 9, Sobha Dream Acres, Panathur Main Road, Balagere, VTC, P.S.- Varthur, P.O.- Varthur, District- Bengaluru, Karnataka, Pin code-560087
5. Priyanka Singh @ Priyanka wife of Prakash Kumar Singh by faith Hinduism, by occupation-Housewife, resident of Kashipur, PS- Town, District -Samastipur, Bihar, Pin code-848101
6. Bandana Kumari @ Bandana Singh wife of Aashit Kumar Singh by faith-Hinduism, by occupation-Housewife, resident of E 404 Ashok Nagar, Handewadi Road, Hadapsar, Pune City, PS Kalepadal, District Pune, Maharashtra, Pin code-411028
7. Sarojani Rakesh @ Sarojani W/O Rakesh Kumar by faith- Hinduism, by occupation- House-wife, resident of Richmond-19, Palace Orchard Society, Nibm Undri Road, Undri, Pune City, P.S. Kandhwa, District -Pune, Maharashtra, Pin code-411060

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

|                        |                                                           |
|------------------------|-----------------------------------------------------------|
| For the Petitioner/s : | Mr. N.K. Agrawal, Sr. Adv.<br>Mr. Abhijeet Abhigyan, Adv. |
| For Informant          | Mr. Piyush Kr. Pandey, Adv.<br>Mrs. Aditi Shahi, Adv.     |
| For the State :        | Mr. Madan Kumar, APP                                      |

**CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA**  
**CAVJUDGMENT**

**Date : 18-07-2025**

Heard Mr. N. K. Agarwal, Learned senior counsel

for the petitioners, learned APP for the State and learned counsel

for the informant.



2. Seven petitioners have approached this Court for the grant of anticipatory bail under Section 482 of the BNSS 2023 on the ground that they apprehend arrest in connection with Samastipur Town P.S. Case No. 215 of 2024 under Sections 126(2), 115(2), 338, 339, 340(2), 344, 61(2), 308(5) and 3(5) of the B.N.S.

3. The striking feature of the present application is that it has been preferred directly before the High Court for grant of anticipatory bail, to which, a preliminary objection has been raised with regard to the maintainability of the same by the learned APP for the State and also the learned counsel appearing for the informant. Without going into the merits of the case, this Court would first take into consideration the judicial pronouncements referred to on behalf of the petitioners in order to buttress their submission that since the Session Court and the High Court have concurrent jurisdiction under section 438 of the Cr.P.C./482 of B.N.S.S., the petitioners have a right to choose their forum and hence, the present application is not only maintainable but even fit to be allowed.

4. The learned APP for the State and the learned counsel appearing for the informant have, however, opposed the said prayer on the ground that the petitioners have approached



the High Court directly for grant of anticipatory bail without exhausting the remedy before the court of the Session's Judge, the forum which was available to them for seeking the said remedy.

5. Learned senior counsel appearing on behalf of the petitioners has relied upon several judgements including the judgement of the Hon'ble Apex Court in the case of **Barun Chandra Thakur Vs. CBI reported in AIR 2017 Supreme Court 5735** wherein no fault was found in the applicants approaching the High Court directly for grant of Anticipatory/interim bail u/s 438 of Cr.P.C., that too when the High Court has concurrent jurisdiction and hence, the appeal against grant of protection by way of interim bail till the presentation of challan by the C.B.I., has been dismissed by the Hon'ble Apex Court.

6. Learned senior counsel has next relied upon the order dated 9<sup>th</sup> June 2023 rendered by the Delhi High Court in the case of **Pankaj Bansal vs State (Government of NCT of Delhi) in bail application No. 2031 of 2023 CRL. M.A. 16390-16391/2023** wherein a number of judgements have been referred and discussed and the interim protection was granted to the petitioner in the interest of justice as well as considering the entirety of the matter for a limited purpose without being



prejudiced by the final outcome in any manner. The Court had taken a view as stated in paragraph 45 & 46 thereof, that the High Court had the jurisdiction to entertain the bail application under Section 438 of the Cr.P.C even when the applicant has not approached the Court of sessions first. It was considered that Section 438 (1) of Cr.P.C gives concurrent jurisdiction to both the courts in entertaining an anticipatory bail application and there is no bar on approaching the High Court directly under section 438 of the Cr.P.C. for the purpose of anticipatory bail. It was held that Section 438 of the Cr.P.C. is a procedural provision that is considered with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail.

7. Further reliance has been placed on the order dated 02.11.2018 passed by the High Court of Uttarakhand in the case of **Mubarik & Anr. Vs. State of Uttarakhand & Ors (Criminal writ Petition No. 2059 of 2018)**. In this case the concerned High Court, considering paragraph 15 of the case of **Barun Chandra Thakur Vs. C.B.I. & Ors. reported in 2018 12 SCC 119**, has held that the High Court and the Court of



Sessions have concurrent jurisdiction u/s 438 Cr.P.C and it is for accused to choose the forum and the same cannot be restricted by construing the provision of Section 438 Cr.P.C. narrowly.

8. The background and brief facts of the case, necessitating the passing of abovementioned order may now be discussed. In the case of **Barun Chandra Thakur (Supra)**, the facts of the case related to the murder of a 7 year old child in the school premises which received wide coverage in media and the investigation of the same had been transferred to C.B.I. Further, a resolution was passed by the District Bar Association, Gurugram and Sohna condemning the brutal and dastardly act of the accused, unanimously resolving that no member of the bar would appear/represent the accused before the court or any other forum. In order to clarify the position, paragraph 9 of the said order is being quoted as hereunder:

*“ Further, we cannot lose sight of the fact that this incident had received wide coverage in the media, both electronic and print. In fact, it can be said that there was a trial by media, therefore, when the private respondents have directly approached the High Court for grant of anticipatory/interim bail under Section 438 of the Code, that too when*



*the High Court has concurrent jurisdiction, we cannot find any fault with the action of the private respondents.”*

9. It thus, becomes apparent that it was a case of special circumstances coupled with the High Court having concurrent jurisdiction, which weighed with the Hon'ble Supreme Court while justifying the direct approach to the High Court for grant of anticipatory/interim bail. The case of **Pankaj Bansal** (Supra) arose out of P.M.L.A. matter wherein, in the background, 13 FIRs were registered for residential projects and therefore in the interest of justice as well as considering the entirety of the matter and the mandate of Article 21 of Constitution of India, the applicant was granted interim protection till the next date of hearing and in paragraph-56 of the said order, it was clarified that all the observations contained therein were only for the limited purpose of adjudication *qua* interim protection and shall not prejudice the final outcome in any manner. So far as the case of **Mubarik & Anr. (Supra)** is concerned, the High Court has reached the conclusions while relying upon paragraph 15 of **Barun Chandra Thakur (Supra)** which considered the special circumstances of media coverage etc. for justification of the applicants to have directly



approached the High Court for grant of anticipatory/interim bail u/s 438 Cr.P.C.

10. Besides the above mentioned orders referred to on behalf of petitioners, there are orders of few other High Courts too who have given their own reasons for entertaining an application for anticipatory bail directly filed before them considering the concurrent jurisdiction of the High Court and Sessions Court.

11. However, at this juncture, reference to a different set of judicial pronouncements becomes imperative, wherein and whereunder, even after considering the factum of concurrent jurisdiction of the High Court and the Sessions Court, direct approach to the High Court for grant of anticipatory bail has been confined to existence of special facts and circumstances of the case. In the case of **Harendra Singh Vs. State of U.P.** reported in **2019 SCC Online All. 4571**, the learned single judge of the Allahabad High Court had dealt with the issue and has concluded in paragraphs-21 to 26 that the application under Section 438 of the Cr.P.C. is not maintainable before the High Court without exhausting remedy before the Court of Sessions which has got concurrent jurisdiction. However, for special reasons, the High Court can also exercise



such power for grant of the aforesaid remedy. The Court has also considered that when an application is made before the Subordinate Court first, the higher Court would have the advantage of apprising itself of the basic facts.

12. The aforesaid order in **Harendra Singh Vs. State of U.P. (supra)** was considered in another order dated 06.12.2019 passed in the case of **Vinod Kumar Vs. State of U.P. and another**, reported in **2019 SCC Online All. 4821** wherein the Allahabad High Court formulated the questions in paragraph-9 and has completely agreed to the view taken in **Harendra Singh's case (supra)** in paragraph-38 of the said order. The observations made by the Full Bench of Allahabad High Court in the case of **Onkar Nath Agrawal and others Vs. State** reported in **1976 CRI. L.J. 1142** has also been referred wherein it has been held by the Full Bench that there exists no fetter or restrictions upon the approach to the High Court directly and it would ultimately depend upon the discretion of the judge, in the facts and circumstances of each case and upon finding special circumstances which warrant the High Court to invoke its jurisdiction in the first instance rather than relegate the party to the Court of Sessions. Paragraph-54 of the order in the case of **Vinod Kumar (supra)**, the conclusions have been



recorded stating that there have to be strong, cogent, compelling and special circumstances in approaching the High Court directly for grant of anticipatory bail. The view taken in the case of **Vinod Kumar (supra)** was upheld by five judges Bench of Allahabad High Court in the case of **Ankit Bharti Vs. State of U.P. and Another** with analogous cases **reported in 2020 SCC Online All. 1949** and in paragraphs-20, 21 and 22 thereof, the Hon'ble Court has held, upon reference, that the decision in **Vinod Kumar (supra)** does not merit any reconsideration or explanation and there can be no exhaustive or general exposition of circumstances in which the applicant may be held entitled to approach the High Court directly. However, emphasis has been laid on the existence of special circumstances, before the jurisdiction of the High Court is invoked directly.

13. So far as the orders of other High Courts are concerned, the **Madhya Pradesh High Court in the case of Dainy @ Raju Vs. State of M.P. reported in 1989 J.L.J. 232** had also held that even though there being a concurrent jurisdiction, the application should be filed first before the Court of Sessions and upon not succeeding in getting relief before that Court, the application should be filed before the High Court accompanied with the first order of the Sessions Court. Justice



R.C. Lahoti had given detailed reasons in paragraphs-19, 20 and 21 of the said order referring them to be rules of discipline which have to be treated as imperative and failure to observe them may be destructive of the very purpose sought to be achieved. In the case of **Manisha Neema Vs. State of M.P. reported in (2003) 2 crimes 402**, the High Court had expressed the opinion that an application should be filed before the Court of Sessions first and then upon rejection of the same, the High Court ought to be approached.

14. The present question was also dealt in the case of **Chajju Ram Godara Vs. State of Haryana reported in 1978 Cri LJ 608(P&H)** and it was held that it is normally to be presumed that the Court of Sessions would be first approached for grant of anticipatory bail unless an adequate reason for not approaching the said court has been made out. The desirability of the ordinary practice of the lower court being first moved and the High Court entertaining an application in extra ordinary or special circumstances was also observed by the High Court of Rajasthan in the case of **Hajialisher Vs. State of Rajasthan reported in 1976 Cri LJ 1658 (Raj)**.

15. Further, in the case of **Rameshchandra Kashiram Vora Vs. State of Gujarat reported in 1988 Cri LJ**



**210 (Guj)**, the present question also fell for consideration and it was held that it would only be in exceptional cases or special circumstances that the High Court may entertain such an application directly and every application ought not to be entertained at the cost of by-passing the Court of Sessions.

16. The issue of concurrent powers in grant of anticipatory bail also came up before the Karnataka High Court in the case of **K.C. Iyya Vs. State of Karnataka reported in 1985 Cri LJ 214 (Kant)** wherein it was held that a person seeking anticipatory bail should, at the first instance, approach the Court of Sessions as the same would serve the interest of justice and also the administration of justice.

17. The aforementioned issue also received consideration before the Patna High Court, not directly, but in a connected manner in the case of **Meena Devi and another Vs. State of Bihar reported in 1985 PLJR 596** wherein the Hon'ble Court had concluded that any person having reasonable apprehension of arrest can move both the High Court or the Court of Session and the High Court cannot decline to entertain the application only on the ground that he has not moved the Court of Session, but while holding inquiry in course of hearing the application of anticipatory bail, the High Court may hold



that the petitioner should have first moved the Sessions Judge. This order was relied upon by another order of Patna High Court dated 25.02.2009 in the case of **Md. Shohrab Ali @ Sohrab and another Vs. State of Bihar reported in 2009(2) PLJR 301** wherein after considering the facts of the case, the Hon'ble Court had directed the petitioners to move the Sessions Judge/Special Judge for grant of anticipatory bail before moving the High Court under Section 438 of the Cr.P.C.

18. It is also a fact that an appeal from the Gauhati High Court was filed before the Hon'ble Supreme Court of India vide **Cr. Appeal No. 1562 of 2017 in the case of Gauhati Bar Association Vs. The State of Assam and others** raising the same question as to whether the High Court exercising the jurisdiction under Section 438 of the Cr.P.C. has discretion not to entertain such an application on the ground that the applicant must first apply to the Court of Sessions. The Hon'ble Supreme Court of India vide order dated 01.03.2023, deemed it appropriate to implead Union of India as respondent, in view of the issue having wide ramification. The matter is still pending adjudication before the Hon'ble Supreme Court.

19. Before proceeding further, Section 482 B.N.S.S (corresponding to Section 438 Cr.P.C.) may be quoted



here for ready reference:

482 B.N.S.S.( corresponding to 438 Cr.P.C

“ When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.”

20. After going through all the aforementioned judicial pronouncements rendered by the different High Courts one thing which clearly emerges is that there can be no ambiguity on the existence of concurrent jurisdiction of both the High Court and the Sessions Court on the issue of consideration of an application for anticipatory bail u/s 438 of the Cr.P.C./ u/s 482 of the B.N.S.S. Hence, so far as the maintainability question is concerned, there would be no restraint cast upon the applicant to approach the High Court directly under Section 438 of the Cr.P.C./ u/s 482 of the B.N.S.S for the purpose of anticipatory bail. However, it would be in the interest of justice that the applicant should ordinarily first move the Court of Sessions for grant of anticipatory bail and only after exhausting the said



remedy he should approach the High Court with the said prayer. This Court also feels that Section 438 of the Cr.P.C./ u/s 482 of the B.N.S.S makes no restriction or provides no bar upon approaching the High Court directly for grant of anticipatory bail but notwithstanding the concurrent jurisdiction of the High Court and the Sessions Court, taking into consideration the concept of practice and propriety both, this Court feels that it would always be proper to move the Sessions Court first and only after exhausting the said remedy, the High Court be approached. However, there is no denial or dispute on the issue that if there are special or unusual reasons and circumstances having enough justification for approaching the High Court directly, the same should be taken into consideration and such question should be left to judicial discretion, prudence and wisdom of the concerned judge who is faced with such question and situation.

21. Another fact which weighs with the mind of this Court is that it has been a long and usual practice, in the State of Bihar and most of the other states that applications under Section 438 Cr.P.C./ u/s 482 of the B.N.S.S are first moved before the Sessions Court and only upon rejection of the same, the High Court is approached with the said prayer and



there appears no compelling reason to upset the said position. One may also not lose sight of the fact that once the matter travels up from the Sessions Court to the High Court, some basic and foundational facts as also some other facets for consideration, viz, the stage of the case with respect to investigation etc. also becomes available for assistance of the Court leading to a better and smoother process of adjudication. Further, it also saves the High Court from a docket exposure to several applications by opening a floodgate. It is also a fact that when a litigant approaches the High Court after first approaching the Sessions Court, he can avail two forums while making such prayer, however, if a person approaches the High Court directly and if the case is dismissed on merits, he may not be able to get any relief on the same facts by the Sessions Court as the same may be against the principles of judicial discipline and judicial propriety. Thus, taking a holistic view of the entire issue and a careful analysis of the pros and cons of the question of directly approaching the High Court for grant of anticipatory bail, this Court reaches a considered conclusion that an individual has an unfettered right to his liberty as envisaged under Article 21 of the Constitution of India and also there being an unambiguous legal proposition of concurrent



jurisdiction of both High Court and Sessions Court, the issue of maintainability of a petition under Section 438 of the Cr.P.C./ u/s 482 of the B.N.S.S filed directly before the High Court cannot be questioned. However, both the practice and propriety demands that for approaching the High Court directly under Section 438 Cr.P.C./ u/s 482 of the B.N.S.S, special or extraordinary circumstances be shown, for justifying the same by demonstrating that it would either not have been possible or it would have been far too difficult and cumbersome for the applicant on account of some very concrete or substantial reasons for moving before the Sessions Court under the said provision of law.

22. Now coming to the fact situation of the present case, it appears that seven petitioners have approached this Court directly under Section 482 of the B.N.S.S (corresponding to Section 438 of the Cr.P.C.) seeking anticipatory bail in a case registered under Sections 126(2), 115(2), 338, 339, 340(2), 344, 61(2), 308(5) and 3(5) of the B.N.S. which arises out of a complaint that the accused persons have committed a fraudulent act of transferring the property of the informant/complainant to some other accused persons by way of a forged registered sale deed. In the entire application filed on behalf of the petitioners



there appears no special or extraordinary reasons for by-passing the Sessions Court and approaching the High Court directly, save and except some very vague indications, which are of no consequence. As a matter of fact, learned counsel for the petitioners has made an unequivocal submission upon the query of this Court relating to existence of any special circumstances necessitating the direct approach before this Court, that the present application has been filed before the High Court as the petitioners have exercised their choice to move before the High Court by dint of the concurrent jurisdiction of the courts in exercise of power under Section 482 of the B.N.S.S (corresponding to section 438 of the Cr.P.C.).

23. This Court would not question the maintainability of the present application, in view of the absence of any express bar, the clarity of the law on the subject of concurrent jurisdiction, but in accordance with the view taken by this Court as enumerated above, this Court finds that the petitioners, have not been able to demonstrate any special or extraordinary reasons or circumstances for approaching the High Court directly for grant of anticipatory bail and hence, without going into the merits of the case, this Court does not deem it proper to grant the relief as prayed for. The present



application is thus dismissed with the liberty to the petitioners to first approach the Court of Sessions with the prayer for anticipatory bail and after exhausting the said remedy, the petitioners would be well within their rights to approach the High Court for the prayer aforesaid.

24. Accordingly, with the aforementioned liberty, the present application is disposed off.

(Soni Shrivastava, J)

devendra/-

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