

ITEM NO.81

COURT NO.5

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition for Special Leave to Appeal (Crl.) No. 1893/2026

[Arising out of impugned final judgment and order dated 03-11-2025 in CRLM No. 16069/2025 passed by the High Court of Judicature at Patna]

HIMANSHU KUMAR VERMA

Petitioner(s)

VERSUS

THE STATE OF BIHAR & ANR.

Respondent(s)

IA No. 34210/2026 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT, IA No. 34208/2026 - EXEMPTION FROM FILING O.T.

Date : 09-02-2026 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Petitioner(s) : Mr. Vatsalya Vigya, AOR

For Respondent(s) : Mr. Samir Ali Khan, AOR
Mr. Pranjal Sharma, Adv.

UPON hearing the counsel the Court made the following
O R D E R

1. The petitioner has been denied anticipatory bail by the High Court of Patna in connection with Complaint Case No. 11328

of 2023 filed in the Court of the Learned Chief Judicial Magistrate for the offence punishable under Sections 406 and 420 of the Indian Penal Code, 1860 (for short, "the IPC"), respectively.

2. We fail to understand what necessitated the petitioner to go before the High Court and pray for anticipatory bail in a case arising from a private complaint lodged by the complainant in the court of the Chief Judicial Magistrate.

3. The order passed by the Magistrate taking cognizance upon the private complaint, reads thus:-

"Order

Date 03/07/2024

Appearance was marked on behalf of the Complainant. Records were produced before the Court for Order.

Heard. Records were examined. It is apparent from the examination of the records that the present complaint was filed by Drools Pet Food Private Limited before the Learned Chief Judicial Magistrate under Sections 403, 406, 409, 415, 420, 468, 467, 499, 120B of the Indian Penal Code, 1860. Records transferred from the Learned Chief Judicial Magistrate was received by this Court. During the inquiry the complainant has submitted his sworn statement and two witnesses namely 1. Siddarth Raj and 2. Vineet Kumar Rai have been presented before this court as evidence for inquiry. The complainant and the two witnesses have supported the occurrence of such event during the inquiry.

On perusal of the complaint petition, the deposition of witnesses and the documents filed on behalf of the complainant, a prima facie case of offences punishable under section 406 and 420 of the IPC appears to be made out against the accused Himanshu Kumar Verma (as) named in the complaint petition. Therefore, an order to issue summon against Himanshu Kumar Verma is pronounced.

The office is directed that upon filing of necessary requisitions by the Complainant; the office shall issue summon to the accused.

Date 18/07/2024 is set for filing process fee."

4. The plain reading of the order, referred to above, would indicate that the magistrate took cognizance upon the complaint and issued process under Section 204 of the Criminal Procedure Code, 1973 (for short, "Cr.P.C."). Once summons is issued, the petitioner has to appear before the court concerned. We fail to understand the basis of the apprehension expressed that once the petitioner would appear before the court of the Judicial Magistrate, he would be taken in custody and sent behind bars.

5. The petitioner shall appear before the court concerned in pursuance of the summons issued by the court of the Magistrate, referred to above. Thereafter, it is for the court concerned to proceed further in accordance with the provision of the Cr.P.C.

6. At this stage, we may give a fair idea as regards the provisions of Section 87 of the Cr.P.C. Section 87 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."

7. Section 87 provides that the court may, while issuing summons for the appearance of any person, issue a warrant for his arrest for the reasons to be recorded in writing. Such warrant of arrest can be issued in two contingencies as explained in (a) and (b) respectively. In the case at hand, while issuing summons, the Court has not taken recourse to Section 87 of the Code. Had the Court issued a warrant for the arrest of the petitioner while taking cognizance and issuing process, then in such circumstances, perhaps the petitioner would have been justified in praying for anticipatory bail, as on the strength of the warrant the police would arrest him.

8. The Trial Court shall now proceed in accordance with Chapter XIV of the Cr.P.C., i.e., cases instituted otherwise than on a police report.

9. With the aforesaid, the Special Leave Petition stands disposed of.

10. Pending application(s), if any, stands disposed of.

(CHANDRESH)
ASTT. REGISTRAR-cum-PS

(POOJA SHARMA)
COURT MASTER (NSH)