

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41585 of 2026

Arising Out of PS. Case No.-54 Year-2024 Thana- Gaura P.S. District- Saran

Mainuddin Mansoori, S/o Hazrat Ali, R/o Village - Salimpur, P.S- Gaura,
District - Saran at Chapra.

... .. Petitioner

Versus

The State of Bihar

.. .. Opposite Party

Appearance :

For the Petitioner	:	Mr. Md. Shamimul Hoda, Advocate Mr. Anuj Kumar, Advocate
For the State	:	Mr. Dilip Kumar No. 1, APP
For the Informant	:	Mr. Narendra Kumar, Advocate Mr. Akash Ambuj, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 25-09-2026

The present petition has been preferred by the Petitioner seeking anticipatory bail in connection with Gaura P.S. Case No. 54 of 2024 registered for the offences punishable under Section 384 of the Indian Penal Code.

2. It transpires that vide order dated 02.04.2025 passed by this Court in Cr. Miscellaneous No. 18332 of 2025, the Petitioner was already directed to be released on anticipatory bail in regard to Gaura P.S. Case No. 54 of 2024, on merit. However, one of the conditions therein was if the Petitioner had concealed any criminal antecedent(s) despite his knowledge of the same, his bail bond might be cancelled by the Court below.

3. It further transpires that the Petitioner had following three criminal antecedents - (i) Marhaura P.S. Case No.425 of 2021, (ii) Marhaura Gaura P.S. Case No.99 of 2022



and (iii) Complaint Case No.2274 of 2021. But, inadvertently, the Petitioner could not mention the said Complaint Case No.2274 of 2021 in his bail petition. Hence, his bail bond has been cancelled and N.B.W. has been issued by learned Court below against him. Thereafter, the Petitioner preferred Criminal Revision bearing No.426 of 2025 in the Court of learned Sessions Judge, Chhapra at Saran against the cancellation of the bail bond. However, the same was withdrawn on 06.01.2026, and thereafter, the Petitioner has moved this Court seeking anticipatory bail.

4. I heard learned counsel for the Petitioner, learned APP for the State and learned counsel for the Informant.

5. Learned counsel for the Petitioner submits that the failure of the Petitioner to mention the third criminal antecedent was neither willful nor negligent, but on account of inadvertence and the same may be condoned.

6. He further submits that the Petitioner is a Government Servant and in case he is taken into custody, he may face some trouble in his service.

7. However, learned APP for the State as well as learned counsel for the Informant submit that the anticipatory bail petition of the Petitioner is not maintainable, because in



pursuance of the order dated 02.04.2025 passed by this Court granting the Petitioner anticipatory bail, the Petitioner had surrendered before the Court below and submitted his bail bond and hence, he was released on bail. As such, the accused is already in constructive custody of the Court and It is settled principle of law that if the Petitioner is in custody or constructive custody, anticipatory bail cannot lie on behalf of such accused.

8. I considered the submissions advanced by both the parties and perused the material on record.

9. I agree with the submissions of learned counsel for the Informant and learned APP for the State that once the Petitioner surrenders before the Court and submits his bail bond and gets released, he is in constructive custody of the Court through his sureties, and thereafter, anticipatory bail petition of the Petitioner can not be maintainable. Here, it would be profitable to refer to binding judicial precedents.

10. In **Manish Jain v. Haryana State Pollution Control Board**, as reported in (2020) 20 SCC 123, Hon'ble Supreme Court has clearly held in para-2 of the judgment that a person released on bail is already in the constructive custody of law. If the law requires him to come back to custody for



specified reasons, an application for anticipatory bail apprehending arrest will not lie. There cannot be an apprehension of arrest by a person already in the constructive custody of the law and hence, Hon'ble Supreme Court rejected the prayer of the petitioner for anticipatory bail and Hon'ble Supreme Court gave liberty to the petitioner to surrender within two weeks and seek regular bail to be decided on its own merits.

11. In Kanaksinh Mohansinh Mangrola v. State of Gujarat, as reported in **(2006) 9 SCC 540**, Hon'ble Supreme Court has again held in para-4 of the judgment that on the day of the appearance before the Court, the appellant was in custody as he was on interim bail for 15 days. Hence, his application for regular bail under Section 439 Cr.PC was maintainable.

12. Hon'ble Supreme Court in Niranjan Singh and Anr. v. Prabhakar Rajaram Kharote and Ors., as reported in **(1980) 2 SCC 559**, has held as follows, explaining the meaning of custody:

“7. When is a person in custody, within the meaning of Section 439 CrPC? When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence. No lexical dexterity nor precedential profusion is needed to come to the realistic conclusion that he who is under the control of the court or is in the physical hold of an officer with coercive power is in *custody* for the purpose of Section 439. This word is of



elastic semantics but its core meaning is that the law has taken control of the person. The equivocatory quibblings and hide-and-seek niceties sometimes heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law. We need not dilate on this shady facet here because we are satisfied that the accused did physically submit before the Sessions Judge and the jurisdiction to grant bail thus arose.

8. Custody, in the context of Section 439, (we are not, be it noted, dealing with anticipatory bail under Section 438) is physical control or at least physical presence of the accused in court coupled with submission to the jurisdiction and orders of the court.

9. He can be in custody not merely when the police arrests him, produces him before a Magistrate and gets a remand to judicial or other custody. He can be stated to be in judicial custody when he surrenders before the court and submits to its directions. In the present case, the police officers applied for bail before a Magistrate who refused bail and still the accused, without surrendering before the Magistrate, obtained an order for stay to move the Sessions Court. This direction of the Magistrate was wholly irregular and maybe, enabled the accused persons to circumvent the principle of Section 439 CrPC. We might have taken a serious view of such a course, indifferent to mandatory provisions, by the subordinate magistracy but for the fact that in the present case the accused made up for it by surrender before the Sessions Court. Thus, the Sessions Court acquired jurisdiction to consider the bail application. It could have refused bail and remanded the accused to custody, but, in the circumstances and for the reasons mentioned by it, exercised its jurisdiction in favour of grant of bail. The High Court added to the conditions subject to which bail was to be granted and mentioned that the accused had submitted to the custody of the court. We, therefore, do not proceed to upset the order on this ground. Had the circumstances been different we would have demolished the order for bail. We may frankly state that had we been left to ourselves we might not have granted bail but, sitting under Article 136, do not feel that we should interfere with a discretion exercised by the two courts below.”

(Emphasis supplied)



13. Hon'ble Supreme Court in Sunil Fulchand Shah v. Union of India and Ors., as reported in **(2000) 3 SCC 409**, has held as follows, explaining the meaning of bail and constructive control of the Court over the accused released on bail:

“24. Bail and parole have different connotations in law. Bail is well understood in criminal jurisprudence and Chapter XXXIII of the Code of Criminal Procedure contains elaborate provisions relating to grant of bail. Bail is granted to a person who has been arrested in a non-bailable offence or has been convicted of an offence after trial. The effect of granting bail is to release the accused from internment though the court would still retain constructive control over him through the sureties. In case the accused is released on his own bond such constructive control could still be exercised through the conditions of the bond secured from him. The literal meaning of the word “bail” is surety. In Halsbury's Laws of England [Halsbury's Laws of England, 4th Edn., Vol. 11, para 166.] , the following observation succinctly brings out the effect of bail:

The effect of granting bail is not to set the defendant (accused) at liberty but to release him from the custody of law and to entrust him to the custody of his sureties who are bound to produce him to appear at his trial at a specified time and place. The sureties may seize their principal at any time and may discharge themselves by handing him over to the custody of law and he will then be imprisoned.”

(Emphasis Supplied)

14. Hon'ble Supreme Court in Sunita Devi v. State of Bihar and Anr., as reported in **(2005) 1 SCC 608**, has again held as follows, explaining the meaning of custody:

“15. Since the expression “custody” though used in various provisions of the Code, including Section 439, has not been defined in the Code, it has to be understood in the setting in which it is used and the provisions contained



in Section 437 which relate to jurisdiction of the Magistrate to release an accused on bail under certain circumstances which can be characterised as “in custody” in a generic sense. The expression “custody” as used in Section 439, must be taken to be a compendious expression referring to the events on the happening of which the Magistrate can entertain a bail petition of an accused. Section 437 envisages, inter alia, that the Magistrate may release an accused on bail, if such accused appears before the Magistrate. There cannot be any doubt that such appearance before the Magistrate must be physical appearance and the consequential surrender to the jurisdiction of the court of the Magistrate.

20. For making an application under Section 439 the fundamental requirement is that the accused should be in custody.....”

(Emphasis supplied)

15. Hence, I find that the present anticipatory bail petition of the Petitioner is not maintainable. It is dismissed accordingly.

16. However, the Petitioner is given liberty to surrender before the the Court below within two weeks and file regular bail petition. In case of surrender of the Petitioner in the Court below and filing of regular bail application, learned Court below is requested to consider the application of the Petitioner on the same day of its filing.

(Jitendra Kumar, J.)

Chandan/-

AFR/NAFR	A.F.R.
CAV DATE	N.A
Uploading Date	29.09.2026
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