

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1850 of 2025

Arising Out of PS. Case No.-403 Year-2025 Thana- GANDHIMAIDAN District- Patna

1. Sita Sahu, W/O Late Baidyanaith Prasad R/O Bari Patan Devi, Sri Mahabir Jee Mills, Badi Patan Devi Galli, Maharajganj, Gulzarbagh, Patna, Bihar-800007.
2. Shishir Kumar, S/O Late Baidyanath Prasad R/ Behind Badi Patan Devi Mandir, Maharajganj, Patna City, Alamganj, Distt.- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar. Bihar
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar. Bihar
3. The Secretary, Department of Home, Government of Bihar. Bihar
4. The Director General of Police, Bihar. Bihar
5. The Senior Superintendent of Police, Patna. Bihar
6. The Minicipal Commissioner, Patna Municipal Corporation. Bihar
7. Mr. Prakash Sharma, D.S.P. (Town) Bihar
8. Mr. Rajesh Kumar, P.S In-Charge Gandhi Maidan Police Station. Bihar
9. Mr. Rahul Thakur, P.S. In-Charge, Alamganj Police Station. Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ansul, Sr. Adv. Ms. Mayuri, Adv. Mr. Krishna Chandra, Adv. Mr. Kamleshwar Pandey, Adv.
For the State	:	Mr. Prabhu Narayan, AC to AG
For the PMC	:	Mr. Amarnath Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

4 14-08-2025 Heard Mr. Ansul, learned senior counsel appearing for the petitioners, and Mr. Prabhu Narayan, learned AC to AG appearing for the State.

2. The instant criminal writ jurisdiction case, which has been assigned to another Bench, is taken up by this Bench in



view of the urgent mentioning notice and considering the prayer of the petitioners made by their learned senior counsel through mentioning.

3. Mr. Ansul, learned senior counsel appearing for the petitioners, submits that the instant petition has been filed under Articles 226 and 227 of the Constitution of India by the petitioners, namely, Sita Sahu and Shishir Kumar. Petitioner No. 1 is the Mayor of the Patna Municipal Corporation (in short, 'PMC'), and Petitioner No. 2 is the son of Petitioner No. 1. His wife is also a councillor of PMC, as such, the said petitioner is associated with the affairs of the corporation as a representative of the chief councillor. Both petitioners belong to a family engaged in various political and social activities and are always in the public eye.

4. The learned counsel further submits that the brief background of the events leading to the alleged false implication of the petitioners in the instant matter is that on 11.07.2025, a meeting of the general body of the PMC was convened at Hotel Panache, Gandhi Maidan. In that meeting, there was an altercation in between the councillors, as a few of them were not in agreement with the proposals being passed. Consequently, they walked out of the meeting. The Municipal Commissioner



of PMC, who is O.P. No. 6, despite being an officer of the municipality, walked out of the said meeting along with the councillors, although almost 80% of the councillors remained there under the presiding officer, i.e., the Mayor.

5. Learned senior counsel further submits that the Municipal Commissioner made several unfounded statements against the Mayor and alleged that she was indulging in corruption, despite the fact that the resolutions were being passed not by the Mayor alone, but with the consent of almost 80% of the councillors. Petitioner No. 2 was not present in the seminar hall where the meeting was being conducted and was seated outside in the corridor along with representatives of other councillors, which is evident and can be checked from CCTV footage of the cameras installed in that area.

He next submits that while the Municipal Commissioner and the councillors were leaving the venue, they started raising slogans against Petitioner No. 2, shouting “Super Mayor Murdabad” and hurling abuses at him. However, with the intervention of the representatives of other councillors and people present in the corridor, the situation was diffused, and the Municipal Commissioner left the venue along with the councillors. While leaving, he allegedly threatened Petitioner



No. 2 with dire consequences. Thereafter, due to the said incident, one of the ward councillors, namely Jeet Kumar, filed a false case on 11.07.2025 at the instance of the Municipal Commissioner against both petitioners, alleging that Petitioner No. 2 had attacked him with the intention to cause his death at the venue. It was further alleged that when the Municipal Commissioner, along with a few councillors, was leaving the meeting, Petitioner No. 2 attacked them along with his armed security guards.

6. Learned counsel further submits that the complaint filed by the said Jeet Kumar, on the basis of which Gandhi Maidan P.S. Case No. 403 of 2025 was registered, was signed by two other ward councillors, namely Vinay Kumar and Rahul Yadav. However, the said Rahul Yadav was not present at the place of the alleged scuffle, which can be verified from the CCTV footage. On the basis of the complaint, Gandhi Maidan P.S. Case No. 403/2025 was registered for offences under Sections 126, 115, 352, 351(3), and 3(5) of the Bharatiya Nyaya Sanhita, 2023 (in short, 'BNS'). Among these, only Section 126 is a cognizable offence while the others are non-cognizable and bailable. Section 126 deals with wrongfully restraining a person, which is a minor offence and also bailable. Despite all these



being bailable offences, a large number of police personnel arrived in six vehicles (Gypsies), led by the Station In-Charge of Gandhi Maidan, at the residence of the petitioners at approximately 12:00 midnight. They attempted to break the Mayor's door and created a disturbance for nearby residents. During this process, all the streetlights were turned off by the authorities, causing the local people to remain indoors. The police remained outside the house until 7:00 A.M. The incident was published in newspapers, a cutting of which has been filed as Annexure-2 series.

It is further submitted that on 13.07.2025 at about 10:55 A.M., the police again forcefully entered the petitioners' house despite their absence, which had been conveyed to the police by their staff. These acts of the police clearly demonstrate malicious intent and constitute police excesses in respect of the bailable offences under investigation.

It is also submitted that on 04.08.2025, when the instant case was taken up, it was informed by the State that the investigating officer had filed an application before the Magistrate seeking to add penal provisions of the Arms Act to the FIR, which is still pending. The said move was initiated only after the submission made in the court on 04.08.2025, indicating



a malicious intention of the police. Moreover, the mandatory provisions of Section 41A of Cr.P.C. (now Sections 35(3)(4)(5) (6) of BNSS) regarding the issuance of notice to the petitioners were not complied with, and the principles laid down by the Hon'ble Apex Court in *Arnesh Kumar v. State of Bihar & Anr.* reported in (2014) 8 SCC 273, were ignored, even though all offences in the FIR are bailable.

7. It is lastly submitted that although Petitioner No. 2 has five criminal antecedents but he has obtained bail in four cases. In the fifth case, he filed an anticipatory bail petition No. 2465/2025 before the Sessions Judge, Patna, which was dismissed, primarily because he had complied with the notice issued under Section 35(3) of BNSS and thus did not have apprehension of arrest at that time. Hence, the Kotwali P.S. Case No. 207/2025 cannot be made a ground for conducting extensive raids on his house, particularly when he is on bail in other cases and the present matter involves only bailable offences.

8. On the other hand, Mr. Prabhu Narayan, learned AC to AG, submits that serious allegations exist against Petitioner No. 2, including the use of firearms by his bouncers, who allegedly threatened the Municipal Commissioner and



councillors. He argues that the provisions of the Arms Act are attracted and that appropriate steps have been taken to add the offences of the Arms Act to the FIR. He further submits that all search, seizure, and raids conducted during the course of investigation are considered to be part of the investigation process. In view of the Petitioner No. 2's criminal antecedents, the police action cannot be termed illegal. In support of these submissions, reliance is placed on *Manubhai Ratilal Patel through Ushaben v. State of Gujarat & Ors.*, reported in (2013) 1 SCC 314, particularly para '28'. It is also submitted that the principles laid down in *Arnesh Kumar (supra)* apply only at the stage of arrest, and any violation of Section 41A Cr.P.C. (now Section 35 of BNSS) would be considered by the concerned Magistrate or trial court.

9. Heard both sides and perused the relevant materials. When asked whether the alleged raids at the petitioners' residences were conducted at midnight or not, if yes then under what authority or direction such raids were conducted, the learned counsel for the State cannot give a satisfactory answer. In past three years while dealing with thousands of criminal matters, I have often come across the casual and negligent approach of the investigating officer in



collecting the material evidences and in many offences such as loot, dacoity, theft, etc. the accused is chargesheeted solely on the basis of confessional statements without taking any pain to collect the admissible evidence even the investigating officer does not avail the provision of police remand to gather information from the accused by interrogating him particular in the offence of loot, dacoity, etc. In a criminal matter involving only bailable offences over activism like the present matter on the part of the police during the course of investigation is never seen, so, the alleged conduct of the investigating officer in Gandhi Maidan P.S. Case No. 403/2025 can be deemed a reasonable reason for arising a question in the mind of the petitioners with regard to fairness and impartiality of the investigating officer while doing the investigation in connection with Gandhi Maidan P.S. Case No. 403/2025. Considering this aspect and mainly the genesis of the occurrence, the petitioners' background, the informant's background, and the nature of the offences under which Gandhi Maidan P.S. Case No. 403/2025 has been registered, I find some substance in the submissions advanced by the petitioners' counsel, particularly with regard to the alleged misuse of police machinery.

10. However, it would be appropriate to consider all



facts stated by the State's counsel on affidavit. Therefore, he is directed to file counter affidavit of State detailing the facts and evidences upon which he is opposing the petitioners' prayer and also produce the CCTV footage relevant to the alleged occurrence, as allegedly committed by Petitioner No. 2, in a pen drive. One week's time is granted for this purpose.

11. The Director General of Police, Bihar, is directed to ensure a fair and impartial investigation in relation to Gandhi Maidan P.S. Case No. 403/2025 and ensure compliance with the provisions of Section 41A Cr.P.C. (now Sections 35(3)(4)(5)(6) of BNSS) and the principles laid down by the Hon'ble Apex Court in *Arnesh Kumar* (supra). Strict compliance with the provisions of BNSS relating to search, seizure, and arrest, keeping in view the nature of the offences, bailable or non-bailable, shall also be ensured. For achieving this, the investigation of Gandhi Maidan P.S. Case No. 403/2025 may be supervised by a senior police officer up to the rank of Superintendent of Police, or any other appropriate direction may be issued in this regard. Since the offences in the FIR are bailable and no additional offences have been added as of now, so, the provisions of Section 436 Cr.P.C. (now Section 478 of BNSS) must be strictly complied with if the petitioners are



taken into custody.

12. Till the next date of hearing, i.e., 22.08.2025, **no coercive action** shall be taken against the petitioners in connection with Gandhi Maidan P.S. Case No. 403 of 2025.

13. List this matter on 22.08.2025 under the appropriate heading.

(Shailendra Singh, J)

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