



SLP (CrI.) No.11260/2026

ITEM NO.36 COURT NO.2 SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

PETITION FOR SPECIAL LEAVE TO APPEAL (CRL.)
NO.11260/2026

[Arising out of impugned final judgment and order dated 05-05-2026 in CRLM No. 51375/2025 passed by the High Court of Judicature at Patna]

RAM PUKAR YADAV & ANR. Petitioner(s)

VERSUS

THE STATE OF BIHAR & ANR. Respondent(s)

IA No. 178757/2026 - EXEMPTION FROM FILING C/C OF
THE IMPUGNED JUDGMENT, IA No. 178758/2026 -
EXEMPTION FROM FILING O.T.

Date : 16-06-2026 This matter was called on for
hearing today.

CORAM : HON'BLE MR. JUSTICE UJJAL BHUYAN
 HON'BLE MR. JUSTICE ARUN PALLI

[PARTIAL COURT WORKING DAYS BENCH]

For Petitioner(s) : Mr. Prabhat Ranjan Raj, AOR

SLP(CrL.) No.11260/2026

For Respondent(s) : Mr. Manish Kumar, AOR
Mr. Ayush Tiwari, Adv.
Mr. Divyansh Mishra, Adv.

UPON hearing the counsel the Court made the following

O R D E R

1. We have heard learned counsel for the petitioners and also learned counsel for the State who has appeared on advance notice.
2. This anticipatory bail application arises out of a Complaint Case No. 410 of 2023 pending on the file of Learned Chief Judicial Magistrate, Division, Madhubani, State of Bihar.
3. This Court has already held in SLP (CrL.) No.16221/2015 that in a complaint case the police has hardly any role to play. Relevant portion of the order passed in SLP(CrL.) No.16221/2025 reads thus:

"7. We have noticed that there is a serious problem in two States, viz. the State of Bihar and State of Jharkhand, respectively. We fail to understand that in a private complaint how does the Police involve itself or is concerned, in any manner. What was the basis for the accused to express apprehension that the police would arrest them.

8. In a private complaint when cognizance is taken and process is issued all that the Court would do is to issue summons. We have explained many times in the past the purport of Section 87 of the Criminal Procedure Code, 1973 (for short, "the Cr.PC.") The Section 87 of the Cr.PC. 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."

9. Section 87 empowers the Court to issue warrant in lieu of, or in

addition to, summons. However, this power has to be exercised only in two contingencies as explained by the provision itself, i.e, (a) and (b), referred to above, respectively.

10. Once the Court takes cognizance and issues summons, all that the accused has to do is to appear before that Court and join the proceedings. Why should the accused go before the Sessions Court or the High Court, as the case may be, and pray for anticipatory bail? Police has no power to arrest the accused in a complaint case unless there is a

non bailable warrant issued by that Court along with the summons.

11. We may give one another simple illustration. Take a case wherein on a private complaint, the magistrate deems fit to take cognizance under Section 200 of the Cr.PC. but postpones the issue of process till the conclusion of the magisterial inquiry under Section 202 of the Cr.P.C. If a magistrate orders a Police inquiry under Section 202 and asks the police to give a report, then whether in the course of such inquiry, the police can arrest the accused. The answer is an emphatic "NO", Police has no powers to

arrest even during the course of the inquiry under Section 202 of the Cr.PC.”

4. That being the position, there is no question of the petitioners being taken into custody by the police.

5. Consequently, the impugned order dated 05.05.2026 is set aside.

6. The special leave petition is, accordingly, allowed.

7. Pending application(s), if any, shall stand disposed of.

(KAVITA PAHUJA)
ASTT. REGISTRAR-cum-PS

(SAPNA BANSAL)
COURT MASTER (NSH)