

IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE, SAHARSA

Saharsa, Dated: - 07.05.2026

Present: - Dinesh Sharma, P.D. & S.J., Saharsa

Criminal Revision No. 37/2026

Gajendra Poddar & 3 Others Vs. The State of Bihar & Anr.

IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE,
SAHARSA

Dated, Saharsa, the 07th May 2026

Present: - Dinesh Sharma, Principal Sessions Judge, Saharsa

Criminal Revision No. 37/2026

Gajendra Poddar & 3 Others Vs. The State of Bihar & Anr.

In the matter of: -

1. Gajendra Poddar, aged about 48 years, S/o Late Krishnadeo Poddar,
 2. Hira Kumar @ Himanshu, aged about 46 years, S/o Late Krishnadeo Poddar
 3. Ankit Kumar, aged about 22 years, S/o Hira Kumar Himanshu
 4. Anand Kumar, aged about 20 years, S/o Hira Kumar Himanshu
- All residents of Village-Rasalpur, P.S. Banma Itahari, District- Saharsa.

..... **Petitioners**

Vs

1. The State of Bihar
2. Onkar Poddar aged about 65 years S/o Late Jagdish Poddar
Resident of Village Rasalpur, P.S. Banma Itahari, District Saharsa.

..... **Opposite Parties**

Appearance :-

For the Petitioners	:- Sri Krishna Mohan Prasad, Ld. Advocate
For the State (O.P. No. 1)	:- Sri Krishna Murari Prasad, Ld. P.P.
For the O.P. No. 2	:- None

ORDER

1. The instant revision petition has been filed by the petitioners/revisionists challenging the correctness, legality and propriety of the order dated 11.02.2026 passed by Ld. S.D.M., Simri Bakhtiyarpur Saharsa passed in Misc Case No. 57/2026 whereby and whereunder the revisionists were directed to appear in person on 25.02.2026 in the court and to file show-cause as to why they should not be directed to furnish bonds/security in the sum of Rs. 10,000/- with two sureties in the like amount each to keep the peace for a period of one year.

2. Heard the submissions of Learned counsel for the petitioner and Ld. P.P. for the State. The learned counsel for the petitioners/revisionists has

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submitted that the order dated 11.02.2026 is bad in law and against the facts and circumstances of the case. The impugned order has been passed by the learned court in mechanical way and the learned court did not applied its judicial mind while passing the impugned order. It is further submitted that the impugned order is vague, indefinite and does not disclosed any specific overt act to ascertain the unlawful act. It is further submitted that the learned court below has not assigned any satisfactory reason in the impugned order. Upon the above grounds, it is submitted by the learned counsel for the petitioner that the instant revision petition may kindly be admitted for hearing and the impugned order may kindly be set-aside. The Ld. Counsel for the petitioner has placed reliance on **Lalan Prasad Singh Vs. The State of Bihar through the Principal Secretary, Food and Civil Supply Department, Government of Bihar, Criminal Writ Jurisdiction Case No.-1119 of 2021, decided on 07.04.2026.**

3. On the other hand, the Ld. P.P. for the State has vehemently opposed the prayer made in the petition submitting that the impugned order is interlocutory one and Section 397(2) of Cr.P.C./ section 438(2) BNSS bars the filing of revision petition against the interlocutory orders.

4. Rival submissions considered. Record perused. The judgment relied upon by the learned counsel for the petitioner is also carefully gone through.

5. The petitioner has relied upon **Lalan Prasad Singh Vs. The State of Bihar through the Principal Secretary, Food and Civil Supply Department, Government of Bihar, Criminal Writ Jurisdiction Case No.-1119 of 2021, decided on 07.04.2026.** Perused the judgment of the Hon'ble Court. The Hon'ble Court in the said decision was exercising its writ jurisdiction and in the exercise of that writ jurisdiction has quashed the

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Criminal Revision No. 37/2026

Gajendra Poddar & 3 Others Vs. The State of Bihar & Anr.

proceedings pending before Ld. SDM, Naugachia, Bhagalpur under section 107 of the Cr.PC. The Hon'ble Court is a Constitutional Court and has vast powers of issuing various kinds of writs, inherent powers under section 482 of the Cr.PC and supervisory powers under Article 227 of the Constitution of India and is not bound by the bar of section 397(2) of Cr.P.C./ section 438(2) BNSS. Be it noted that the Hon'ble Court in the above judgment at paragraph No.-34. **“has observed the petitioner could have challenged the interlocutory order dated 03.04.2021 passed by the learned Executive Magistrate under section 482 Cr.PC invoking inherent jurisdiction of this Court...”** The above shows that the Hon'ble Court has treated the order of the Ld. Executive Magistrate as interlocutory. Had this court been given power under Section 482 of the Cr.P.C. This court also would have quashed the impugned notice. In the case of **Brahmdeo Singh Vs. State of Bihar, 1979 SCC OnLine Pat 172**, the Hon'ble Court had quashed the entire proceeding started by the Ld. Executive Magistrate using Hon'ble Courts inherent powers. In view of the above discussions, the Judgment relied upon by the Ld. Counsel for the petitioner is of no help to the petitioners. **[Emphasis added].**

6. In view of the above, in the humble understanding of this court, the above judgment of the Hon'ble High Court is not applicable on the facts and circumstances of the case. As the Hon'ble Court has quashed the proceedings using its power of writ which the Hon'ble Court is having being a constitutional Court **However, the judgment is binding on the learned S.D.M., Simri Bakhtiyarpur and he cannot proceed further with the miscellaneous case once the judgment of the Hon'ble Court is brought into its notice.** The Hon'ble Court in par 44 of the judgement has

IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE, SAHARSA

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Criminal Revision No. 37/2026

Gajendra Poddar & 3 Others Vs. The State of Bihar & Anr.

directed the Ld. Registrar General to send a copy of the order to the Court of Ld. Executive Magistrate concerned. Ld. Registrar General was also directed to send a copy of this order to Chief Secretary, Government of Bihar for circulating this order amongst the Executive Magistrates for their information. [Emphasis added]

7. The petitioners/revisionists have challenged the preliminary notice issued by the Executive Magistrate calling upon them to show cause why they should not be required to furnish security for keeping the peace. At the outset, this Court must address the maintainability of this petition in light of the bar contained in Section 397(2) of the Cr.PC/section 438 (2) of the BNSS.

8. Reverting back to the facts of the case, be it noted that the impugned show cause notice, issued under the mandate of Section 126 of the BNSS, cannot be elevated to the status of a revisable order, as it fundamentally constitutes nothing more than statutory Information and a preliminary communication of executive apprehension. The notice serves as a status report of apprehension; the learned Magistrate, at this nascent stage, has neither affirmed the truth of the allegations nor adjudicated upon any facts, but has merely shared the substance of information received to invite a response from the petitioners/revisionists. There exists a total absence of Lis or a contested issue; the notice is merely the preface to the book of inquiry, and until the petitioners/revisionists files a reply, no legal conflict has been formally arisen for this Court to resolve. The show cause notice acts as a protective shield rather than a sword, providing the petitioners/revisionists with a important opportunity of purging, a window of natural justice where they may dissolve the cloud of suspicion by showing the notice to be legally

IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE, SAHARSA

Saharsa, Dated: - 07.05.2026

Present: - Dinesh Sharma, P.D. & S.J., Saharsa

Criminal Revision No. 37/2026

Gajendra Poddar & 3 Others Vs. The State of Bihar & Anr.

stillborn or factually misplaced. In the opinion of this Court the notice possesses a non-executory and non-coercive character; it does not curtail physical liberty, mandate financial liability, or alter the petitioners/revisionist's legal status in any capacity. It merely requires an explanation. Consequently, as the notice does not transit from the realm of procedural information into the domain of adjudication, it remains purely interlocutory. To interfere at this stage would be to adjudicate upon a hypothetical grievance and bypass the exhaustion of remedies at the grassroots level, thereby violating the express legislative mandate and systemic discipline intended by section 397(2) of the Cr.PC/ section 438 (2) of the BNSS.

9. The Hon'ble Supreme Court in the case of **Amarnath Vs The State of Haryana (1977) 4 SCC 137**, *has held that interlocutory orders are those which are purely interim or temporary and do not decide the important rights or liabilities of the parties.* The impugned order, in view of the discussions made herein above and in the light of the judgement of the Hon'ble Supreme Court, in the considered opinion of this Court, is an interlocutory order and revision against such orders is barred under Section 397(2) of Cr.P.C./438(2) of BNSS.

10. If the petitioners/revisionists believe the notice is legally stillborn, vague, or the Ld. Executive Magistrate was not competent to issue, the proper and most efficacious remedy is to appear before the learned Executive Magistrate and raise these specific preliminary objections. The law presumes that the Ld. Executive Magistrate, upon being shown a valid legal flaw or a lack of factual basis, will exercise his power under section 137 BNSS to discharge the notice and drop the proceedings.

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Criminal Revision No. 37/2026

Gajendra Poddar & 3 Others Vs. The State of Bihar & Anr.

11. To entertain a revision at this premature stage would not only result in a piecemeal inquiry but would also frustrate the very objective of preventive justice by stalling the inquiry through litigious maneuvers. The revisional Court should not be converted into a forum of first impression for procedural flaws that the subordinate court is fully competent to correct.

12. **However, it is clarified that if, after the petitioners/revisionist have appeared and shown valid cause, be it on grounds of law, jurisdiction, or fact, the learned Magistrate fails to consider the same and arbitrarily decides to proceed further with the inquiry, such a decision would then ripen into an Intermediate Order. In such a contingency, where a formal decision to proceed is made despite a patent legal bar, the petitioners/revisionist shall be at liberty to approach this Court again, as the bar of Section 438 (2) of the BNSS would no longer impede the corrective jurisdiction of this Court. [Emphasis added]**

13. Consequently, as the impugned order is currently purely interlocutory in nature, the present revision is hit by the bar of section 397(2) of the Cr.PC/ section 438 (2) of the BNSS. The revision petition is, therefore, **dismissed as not maintainable.**

14. The petitioners/revisionist are advised to approach the Court of the learned Executive Magistrate and file a detailed reply showing cause against the notice. It is expected that the learned Magistrate shall consider all legal and factual objections raised by the petitioners/revisionist with an independent application of mind before proceeding further with the inquiry. The learned Executive Magistrate, Simri Bakhtiyarpur, Saharsa shall keep in mind the ratio of the judgment of the Hon'ble High Court reported as **Lalan Prasad Singh Vs. The State of Bihar through the Principal Secretary,**

IN THE COURT OF PRINCIPAL DISTRICT & SESSIONS JUDGE, SAHARSA

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Criminal Revision No. 37/2026

Gajendra Poddar & 3 Others Vs. The State of Bihar & Anr.

Food and Civil Supply Department, Government of Bihar, Criminal Writ Jurisdiction Case No.-1119 of 2021, decided on 07.04.2026 before proceeding further with the inquiry.

15. A copy of this order be sent to the court concerned for information and needful.

16. Announced in open Court today on this 07th May 2026. File be consigned to Record Room, as per rules.

Dictated & corrected by:

Sd/-

(DINESH SHARMA)

Principal Sessions Judge, Saharsa
07.05.2026

Order passed by:

Sd/-

(DINESH SHARMA)

Principal Sessions Judge, Saharsa
07.05.2026

Date of Judgement/Order	07.05.2026
Date of Reserving Judgement/Order	07.05.2026
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Uploaded by	Javed Haider Steno