

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.36269 of 2015

Arising Out of PS.Case No. -5 Year- 2013 Thana -GOVERNMENT OFFICIAL COMP. District-
BHABHUA (KAIMUR)

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1. Rajesh Singh, S/o Shri Rang Bahadur Singh
2. Kunwar Singh, S/o Late Chhabinath Singh
Both resident of village- Mokari, P.S.- Bhabua, District- Kaimur
.... Petitioner/s

Versus

1. The State of Bihar
2. Shashi Bhushan Prasad, S/o Not known, Forest Range Officer, Forest
Range Bhabua, District- Kaimur
.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prabhakar Singh, Advocate

For the Opposite Party/s : Mr. Murlidhar(App)

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**

ORAL ORDER

3 22-09-2015 Heard learned counsels for the petitioners and
the State.

The petitioners are apprehending their arrest in a
complaint case filed with accusations under Sections 9,
27, 32, 51, 52 of The Wild Life Protection Act 1972
(hereinafter called 'Act' for brevity) and Section 33 of
Indian Forest Act, 1927.

The prosecution case is that during patrolling of
Karakat Reserve Forest, on 02.09.2009, the informant saw
5-6 persons on jeep with arms hunting small animals,
then informant, forestor reached the spot on hearing the
gunshot firing and seized one D.B.B.L. gun, one S.B.B.L.
gun, 15 live cartridges, one spent cartridge, one spot light,
one dead wild rabbit with injuries and one jeep. Four

persons were apprehended, who disclosed their names as Amar Singh, Seva Rai, Nagina Rai and Babban Rai. The apprehended accused persons admitted of having killed the said wild rabbit.

Initially Forest Case No. 62 of 2009 was filed against all the four apprehended accused persons under the provisions of Wildlife (Protection) Act and Forest Act. The apprehended accused persons challenged the order of cognizance dated 11.08.2010 vide Cr. Misc. No. 15622 of 2011. The same was allowed since the informant, being forestor was not competent to lodge the criminal case under the Act with a liberty to take appropriate steps under the Act. Consequently, the second prosecution being Forest Case No. 05 of 2013 was filed wherein for the first time, the petitioner along with four apprehended persons were made accused since petitioner no.1 filed a petition before learned court below for release of the seized jeep as the same was registered in his name and petitioner no. 2 filed a petition for released of the seized guns being licensee.

It is submitted by learned counsel for the petitioners that admittedly neither they were present at the spot, nor they had killed the wild rabbit. Moreover while wild rabbit is not specified in the Schedule-IV, hence the case does not come under purview of the Act. The



guns and the jeep were seized from KUHUHIRA DAM adjacent to the place of seizure where the uncle and brother of the petitioners having a fisheries lease right, hence the guns and jeep were kept by the petitioners. It has further been submitted by the petitioners that even if someone has misused the guns or the vehicles of the petitioners, they cannot be prosecuted under the provisions of the Act. The autopsy report of the killed rabbit does not suggest of any injury caused by firearms. Statement has been made in para-3 of the present application that the petitioners have no criminal antecedents.

Learned counsel for the State on the other hand submits that the petitioners' guns and jeep were used for killing wild rabbit.

Considering the rival submissions of the parties, the Court is of the view that 'wild rabbit' is not a wild animal as it is not specified under the Schedule-IV of the Act; though "heirs" has been specified as item no. 4 in the schedule but under Section 2 of the Act only such animals can be treated as wild animals which are specified in Schedule I to IV of the Act.

Since petitioners were not found hunting in the forest area, hence no offence in any of the provisions of the Wild Lift (Protection) Act is made out against the petitioners.

In view of the discussions above, let the above named petitioners be released on bail in the event of their arrest or surrender before the learned court below within a period of twelve weeks from today, on furnishing bail bonds of Rs. 10,000/- (Ten Thousand) each with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Bhabua in connection with Complaint Case No. 5(O) of 2013, subject to conditions as laid down under Section 438(2) of the Cr.P.C.

(Dinesh Kumar Singh, J)

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