

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1103 of 2016

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Vinay Kumar Dubey, S/o Binod Dubey, Resident of village- Masanthana,
P.S.- Yadopur, District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Home Department, Government of Bihar, Patna.
2. The District Magistrate, Gopalganj, District- Gopalganj.
3. The Superintendent of Police (S.P.), Gopalganj.
4. Brajesh Singh, A.S.I. Gopalganj Police Station Gopalganj, District- Gopalganj.
5. Santosh Kumar, S.I. Gopalganj Police Station Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harendra Prasad
For the Respondent/s : Mr. Partha Sarthy

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 04-01-2018 Heard learned counsel for the petitioner and learned counsel representing the State.

Petitioner is seeking writ in the nature of mandamus directing the respondents to release the licensee arm (Pistol) with 13 cartridges and a mobile set which were allegedly seized from him while he had gone to the premises of District Court, Gopalganj. There are allegations against the police officials and according to the petitioner the seizure was made at the instance of a sworn enemy of the petitioner.

Learned counsel for the petitioner points out that the petitioner had moved before the court of learned CJM, Gopalganj



by filing an application dated 09.09.2016 for release of arms and ammunitions and vide order dated 9.09.2016 the learned CJM had called for a report from the local police station which is annexed as Annexure-2 to the writ application. He submits that despite there being a direction to the local police station to submit a report no such report was ever submitted, but when a counter affidavit was filed in this case before this Court, the investigating officer has brought on record a copy of the report submitted in the court of learned CJM, Gopalganj. A copy of the said report has been annexed as Annexure-A to the counter affidavit filed on behalf of the respondent nos.3 and 5.

Learned counsel has drawn the attention of this Court towards the contents of the said report and submits that no doubt there are five criminal cases against the petitioner, but in two of them he has been exonerated by the police and final form has been submitted in the court below.

In the concluding part of the report it has come that pursuant to seizure of the loaded revolver from this petitioner information was sent to the senior police officer and guidelines were asked for and arms licence of the petitioner was suspended with immediate effect by the District Arms Magistrate vide letter dated 1217 dated 19.9.2016 because the petitioner was found



moving in the prohibited area with arms and ammunitions. Still learned counsel for the petitioner submits that this being a malafide kind of prosecution against the petitioner, Court may direct for release of the arms and ammunitions of the petitioner.

On query made by this Court, learned counsel for the petitioner informs that the order of suspension of the arms licence is still in-force and the petitioner has though challenged the said order but the challenge has yet not been finally decided.

On the other hand, learned counsel representing the State submits that in the facts and circumstances of the case it is apparent that the arms and ammunitions of the petitioner has been seized while he was moving in the prohibited area inside the court premises at Gopalganj and he had been involved in five cases, therefore, if the arms and ammunitions have been seized by the investigating officer the allegation of malafide against him has no basis to stand. Learned counsel further submits that seizure has been made in connection with the present case which is still pending and once this has become clear that the arms licence of the petitioner has already been suspended, the arms and ammunitions in question cannot be restored in his favour.

Having heard learned counsel for the parties and the materials on record, I am of the considered opinion that no case



for release of arms and ammunitions in question is made out. The petitioner was found moving in a prohibited area with arms and ammunitions and therefore his arms and ammunitions was seized and seizure has been made by a police officer. The petitioner was produced before the learned court below while he was arrested in connection with other case, but according to learned counsel for the petitioner upon seizure of the arms and ammunitions no case in that connection has been registered against the petitioner and no seizure list has been prepared by the police. To that extent the submission of the learned counsel for the petitioner is correct. The investigating officer has definitely erred and acted in breach of law inasmuch as he failed to prepare a seizure list and submit the said seizure list before the appropriate court of law. This conduct of the investigating officer in not reporting the matter to the Court is required to be looked into by the S.P., Gopalganj.

Since the arms licence of the petitioner is lying under suspension, for the present, no order for release of arms and ammunitions can be passed by this Court. The S.P., Gopalganj shall ensure that the arms and ammunitions seized from the petitioner be kept in safe custody in accordance with law and the petitioner will be at liberty to move an application before S.P., Gopalganj seeking direction for release of the mobile.



It is needless to say that since the arms licence of the petitioner is under suspension at present, he will have a liberty to move fresh application for restoration of arms and ammunitions in accordance with law only after the suspension order is duly revoked and licence is restored to the petitioner. No order for release may be passed presently.

The application stands disposed of.

(Rajeev Ranjan Prasad, J)

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