

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.7011 of 2016

Arising Out of PS.Case No. -92 Year- 2015 Thana -SIRDALA District- NAWADA

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1. Devendra Prasad @ Devendra Prasad Yadav, s/o late Ganauri Yadav, resident of Chiriyani (Goriadda), P.S. - Sirdalla, District - Nawada.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Mithilesh Pandit, S/o Darwari Pandit, r/o Chiriyani, P.S. Sirdalla, District - Nawada.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bhaskar Shankar, Advocate
For the Opposite Party No.1:Mr. B. Bhushan, APP
For the Opposite Party No.2:Mr. Md. Kamaluddin, Advocate
Mr. Shashi Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 21-08-2018

The petitioner is aggrieved by the order dated 26.08.2015 passed by the Additional Chief Judicial Magistrate, V, Nawada, in Sirdala P.S. Case No.92 of 2015 as well as order dated 23.11.2015 passed by the Sessions Judge, Nawada, in Cr. Revision No.64 of 2015, by which Courts below have refused to release the rifle in favour of the petitioner.

Heard counsel for the parties.

Counsel for the petitioner submits that he was holding valid licence of the aforesaid rifle. Licence has been renewed till 2018, which would be apparent from Annexure-4. A Supplementary



Affidavit has been filed stating that no proceeding has been initiated for cancellation of licence of the arm by the District Magistrate. Counsel for the petitioner further submits that there is no allegation in the written report that any injury has been caused to any body by aforesaid rifle. The police has not registered any case against this petitioner for the offence under Section(s) 25(1-b)a, 26, 35 of the Arms Act.

The prosecution case, as per written report, is that during measurement of land by *Ameen*, some difference arose between the parties. The informant told to get the land measured by government *Ameen* upon which the petitioner and his family members became infuriated. They abused and assaulted the informant. It is further alleged that the petitioner brought the licensee rifle and shot at him, but it did not hit the informant. Supporters of the informant snatched rifle from the possession of the petitioner and handed over the same to the police along with cartridges.

In this manner, from the written report itself, it appears that petitioner was holding valid licence for the aforesaid rifle. It further appears that no injury has been caused to anybody. Rifle was snatched from the possession of the petitioner by the supporters of the informant and the same was handed over to the police.



The Court below has rejected the petition for release of aforesaid rifle only on the ground that the same is material exhibit in the case. It further appears from Annexure-4 that licence has been renewed up to the year 2018. It further appears from the statement made in para 2 of the Supplementary Affidavit that no any proceeding has been initiated for cancellation of licence of the arm of the petitioner by the District Magistrate, who is competent authority under the Act to cancel the licence.

Therefore, this Court is of the view that keeping rifle with valid licence of the petitioner in the police station will only cause damage to the rifle.

In view of such, impugned orders dated 26.08.2015 passed by the Additional Chief Judicial Magistrate, V, Nawada, in Sirdala P.S. Case No.92 of 2015 as well as order dated 23.11.2015 passed by the Sessions Judge, Nawada, in Cr. Revision No.64 of 2015 are hereby quashed.

The Court below will release the aforesaid rifle in favour of the petitioner after proper verification of paper with regard to licence on executing bond of rupees fifty thousand with two sureties of the like amount each to the satisfaction of the Court below itself. The petitioner will file an Affidavit in the Court below that he will not sell or dispose of the same during the pendency of



the case without permission of Court and will produce the same as and when required by the Court. It will also be mentioned in the affidavit that petitioner will not misuse the rifle in any manner during pendency of the case.

This application is, accordingly, **allowed.**

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	01-09-2018
Transmission Date	01-09-2018

