

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 6853 of 2015**

Arising Out of P.S. Case No.-210 Year-2013 Thana- BARAULI District- Gopalganj

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Arun Soni @ Arun Kumar Soni @ Bahadur Son of Ashok Prasad Soni,
Village - Barauli Bazar, P.S. - Barauli, District - Gopalganj.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Bishwajeet Singh, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 15-04-2019

Heard learned counsel for the petitioner and learned
APP for the State.

2. The petitioner has moved the Court under Section
482 of the Code of Criminal Procedure, 1973 for the following
relief:

*“That this is an application for quashing
of the order taking cognizance dated 24.05.14
passed in connection with Barauli P.S. Case no. 210/
13, Tr. No. 1349/14 by Learned Chief Judicial
Magistrate, Gopalganj, whereby and whereunder the
Learned Trial Court, pleased to take cognizance
against the petitioner and other accused under
section 25(1-B)a, 26, 35 Arms Act, though admittedly
neither petitioner was apprehended on spot nor there
any recovery from his possession and has been
implicated in the case on the basis of confessional
statement of co-accused Ajay Rai and further that
during whole investigation no material came
showing complicity of the petitioner in the alleged
occurrence.”*



3. The allegation against the petitioner and others is of possessing fire arms and ammunition with the intention of carrying out dacoity/loot in a jewellery shop.

4. Learned counsel for the petitioner submitted that the cognizance taken under Section 25(1-B)(a), 26 and 35 of The Arms Act, 1959 (hereinafter referred to as the 'Act') is unsustainable, as far as the petitioner is concerned. It was submitted that there has been no recovery, either from the personal possession of the petitioner or the house from where he was arrested the next day of the occurrence. Learned counsel submitted that cognizance has been taken against the petitioner only on the basis of confessional statement of co-accused, who was caught at the spot.

5. Learned APP submitted that the contention of learned counsel for the petitioner is misconceived. It was submitted that at the initial stage, when the co-accused, who was caught, has specifically taken the name of the petitioner as the person to whom the country made pistol recovered in a yellow bag belonged, the innocence of the petitioner can only be looked into during a full fledged trial where the parties shall have the opportunity to adduce evidence on the point. It was submitted that once there is a specific allegation of the petitioner owning a



country made pistol, which is obviously an offence under the Act, it cannot be said that such cognizance itself is bad in law.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any merit in the application. As has been submitted by learned APP, the stage for such defence to be looked into would only arise during trial where the innocence of the petitioner can be proved by him. However, for the present, once specifically the person arrested has stated that the petitioner had in his possession country made pistol, the Court having taken cognizance on the basis of materials produced by the police and chargesheet submitted, cannot be said to be lacking sufficiency for taking cognizance.

7. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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