

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47871 of 2019

Arising Out of PS. Case No.-112 Year-2019 Thana- TEKARI District- Gaya

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MUKUL KUMAR Son of Sakaldev Paswan Resident of Village- Daulatpur,
P.O.- Dharmshala, P.S.- Tekari Panchanpur, District- Gaya.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Bijendra Prasad Sinha
For the Opposite Party/s : Mr. Satyavrat Verma

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 01-08-2019 Heard learned counsels for the petitioner and

the State.

The petitioner is apprehending arrest in a case registered for the offences punishable under Sections 25(1-B)a and 26 of the Arms Act, 1959 (hereinafter referred to as the Act).

The prosecution case as per the written report of Sunil Kumar dated 23.3.2019 submitted to the S.H.O., Panchanpur O.P. Gaya is to the effect that on 22.3.2019 at 5.00 P.M. the petitioner was noticed carrying country made pistol in his waist, whereafter, on the call of Baleshwar Yadav, Pintu kumar, Suraj Kumar and Birendra Kumar snatched the country made pistol from the petitioner but he managed to escape from the scene. Thereafter, the information was given



to Panchanpur O.P. and the recovered country made pistol was handed over to the police.

It is submitted by learned counsel for the petitioner that he has wrongly been framed in the case, nothing has been recovered from the petitioner. Hence, malicious accusation has been levelled against the petitioner. It is further submitted that no case under Sections 25(1-B)a and 26 of the Act is made out against the petitioner since nothing has been recovered from his possession. Moreover, statement has been made in paragraph 3 of the petition that the petitioner is not having any criminal antecedent.

Learned counsel for the State submits that on recovery of the country made pistol from the petitioner, it was handed over to the police official, hence, the offence under Sections 25(1-B)a and 26 of the Act is made out.

Chaper VI of the Arms Act is labelled as Miscellaneous chapter. Section 37 of the Act deals with arrest and search from any person by a private person other than police or Magistrate. Section 37 of the Act reads as follows:

“37. Arrest and searches – Save as otherwise provided in this Act, -

(a) all arrests and searches made under this Act



or under any rules made thereunder shall be carried out in accordance with the provisions of the 1[Code of Criminal Procedure, 1973 (2 of 1974)], relating, respectively, to arrests and searches made under that Code;

(b) any person arrested and any arms or ammunition seized under this Act by a person not being a magistrate or a police officer shall be delivered without delay to the officer-in-charge of the nearest police station and that officer shall-

(i) either release that person on his executing a bond with or without sureties to appear before a magistrate and keep the things seized in his custody till the appearance of that person before the magistrate; or

(ii) should that person fail to execute the bond and to furnish, if so required, sufficient sureties, produce that person and those things without delay before the magistrate.”

From plain reading of Section 37 of the Act, it appears that when any person is arrested and any arms or ammunition is seized under this Act by a person not being Magistrate or a police officer, then such arm shall be delivered without delay to the officer in charge of the nearest police station and that officer shall either release that person



on his executing a bond with or without sureties to appear before a Magistrate and to keep the things seized in his custody till the appearance of that person before the Magistrate or in case such person fails to execute bond and fails to furnish, if so required, sufficient sureties, produce that person and seized arm without delay before the Magistrate having jurisdiction. Meaning thereby, that if a seizure is made from a person by a private person other than a Magistrate or a police officer as envisaged under Sections 19 and 22 of the Act, then that person will be released by the police on his executing a bond without surety.

In the present case, no doubt, the seizure of country made pistol has been made by a private person. In such a situation, it is difficult to ascertain whether recovery has actually been made from the petitioner.

Keeping in view of recovery by private person, the petitioner being not apprehended on the spot coupled with statement in paragraph no. 3 of the petition that the petitioner is not having any criminal antecedent, let the petitioner be released on anticipatory bail in the event of arrest or surrender within 12 weeks on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like



amount each to the satisfaction of the learned ACJM VI,
Gaya in connection with Tekari P.S. Case No. 112 of 2019.

Accordingly, this application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-Anil/

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