

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51137 of 2021

Arising Out of PS. Case No.-148 Year-2018 Thana- KOTWALI District- Patna

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1. VIJAY SING S/O Jai Ram Singh Resident of Village - Budhanpurwa, P.S. - Buxar (T), District - Buxar.
 2. Sumit Kumar Singh @ Sumit Kumar S/O Rajendra Singh Resident of Village - Amirpur, P.S. - Nawanagar, District - Buxar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bachan Jee Ojha, Advocate

For the Opposite Party/s : Mr. Navin Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

6 20-09-2023 1. Heard learned counsel for the petitioners and learned A.P.P. for the State.

2. The present quashing application has been filed seeking quashing of the order dated 08.04.2021 passed in Cr. Revision No. 28 of 2021 by the learned Sessions Judge, Patna whereby the revision application has been dismissed and the order dated 07.11.2020 passed in Kotwali (Patna) P.S. Case No. 148 of 2018, G.R. No. 1623/2018 passed by the learned Chief Judicial Magistrate, Patna has been affirmed whereby the petition filed by the petitioners under Section 451 of the Code of Criminal Procedure (hereinafter referred to as the 'Cr.P.C.') for releasing their licensed weapon was rejected.



3. Learned counsel for the petitioners submits that an F.I.R. being Kotwali P.S. Case No. 148 of 2018 came to be instituted wherein it was alleged that on 11.03.2018 at about 14.40 Hours, while the informant was checking vehicles with other police personnel, when one white color Fortuner was coming from the side of the Planetarium and was going towards Bailey Road, Patna through Income Tax side in full speed. It is next alleged that on suspicion, the police personnel tried to stop the vehicle, but the vehicle sped away, accordingly the higher officials were informed and the police started chasing the vehicle and ultimately it was stopped near Bihar Museum and during checking of the vehicle, five persons were found inside the vehicle carrying rifle, further in front of two witnesses, the vehicle was searched and from the possession of the petitioner no. 1 a rifle bearing number AB 05-5611 - .314 bore with 20 live cartridges was recovered, further from the possession of petitioner no. 2 one 1.315 rifle number AB 06-0719004 along with 23 live cartridges was recovered, next from possession of Santosh Kumar one pistol along with twenty live cartridges was recovered and from possession of Dinesh Kumar one licensed rifle no. 374AB 1403848 along with ten live cartridges was recovered. It is



further alleged that on query regarding the seized weapon and cartridges, accused Md. Khalid disclosed that they are involved in purchase and sale of land with the help of hired gunmen by creating fear and they used to indulge in sale and purchase of land and they were going to Janipur, Chirora for purchasing land for which the four accused with arms were hired, it is next alleged that on demand, the accused persons, including the petitioners, were not able to produce original valid license. It is next alleged that Md. Khalid and Santosh Kumar were criminals having criminal antecedents.

4. Learned counsel for the petitioners submits that from perusal of the allegation as alleged in the F.I.R., it would manifest that the informant himself has stated that on demand the license with respect to the weapons was not produced, which amply demonstrates that had the petitioners produced the license at the time when it was asked then perhaps the weapon would not have been seized. It is next submitted that petitioners are persons with clean antecedent and they had filed an application before the learned Chief Judicial Magistrate, Patna for getting the arms released under Section 451 of the Cr.P.C., but the same was rejected, accordingly the petitioners moved in revision and the learned District &



Sessions Judge, Patna remanded the matter back to the learned Chief Judicial Magistrate to adjudicate the same afresh, but thereafter also after seeking a report from the police, the learned Chief Judicial Magistrate again rejected the application against which the present criminal revision was filed which was also rejected mechanically. Learned counsel next submits that from perusal of the order passed by the learned District & Sessions Judge, it would manifest that the learned court did not appreciate the facts of the case in its correct perspective, it is further submitted that it is not in dispute that the petitioners are having valid license and are persons with clean antecedent i.e., against them no criminal cases are pending or instituted. It is next submitted that as far as the allegations in the F.I.R. is alleged, the same is in the realm of allegations i.e., the allegations are to be adjudicated by a Court of competent jurisdiction in a duly constituted trial.

5. Learned counsel for the petitioners next submits that in trial the petitioners either may get convicted or get acquitted and in the event, if the petitioners get acquitted then the entire allegation as alleged in the F.I.R. would stand falsified and if they are convicted, they will serve the sentence, it is further submitted that the sole ground on which



the learned District & Sessions Judge, Patna proceeded to dismiss the criminal revision application is that the police has sent letter to the competent authority to cancel the license of the petitioners, at this stage the learned counsel submits that till date the license of the petitioners has not been cancelled, it is further submitted that the issue which arises for consideration, in the present case, is that if the petitioners are persons with clean antecedent and they had a valid license for carrying arms then whether merely because they were found in company of some accused against whom there is allegation in the F.I.R. and the police officer has sent letter for cancellation of their license, would disentitle the petitioners from getting their arms released.

6. The learned counsel for the petitioners next submits that a counter affidavit has been filed by the Senior Superintendent of Police, Patna and from perusal of the counter affidavit, it would manifest that the same does not even remotely dispute that the petitioners do not have a valid license nor the fact that they are persons with clean antecedent. It is further submitted that merely for the reason that an application has been sent before the competent authority for cancelling the license which till date has not



been cancelled, can never be a ground for not releasing the weapon if the petitioners are valid license holders and were carrying the arms in accordance with the terms of the license.

7. The learned counsel for the petitioners next submits that till date the arms have not been confiscated and the petitioners undertake that the arm would be produced in the trial as and when required and in the event if the same is not produced, when required, the petitioners will face the consequences.

8. The learned counsel next relies on a decision of the Hon'ble Supreme Court in the matter of ***Sunderbhai Ambalal Desai Vs. State of Gujarat reported in 2002 10 SCC 283*** to contend that if the arms would remain in *Malkhana* the chances are bright that the arm may get destroyed along with the cartridges.

9. The learned counsel next relies on Paragraph-7 of the Judgment in the case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat (Supra):-***

“In our view, the powers under Section 451 Cr.P.C. should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of



its remaining unused or by its misappropriation;

2. court or the police would not be required to keep the article in safe custody;

3. if the proper *Panchanama* before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the properly in detail; and

4. This jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

10. The learned counsel for the petitioners, thus, summarizes his submission and submits that what is not in dispute rather stands admitted is that the weapons which the petitioners were alleged to have been carrying are licensed weapon and even the cartridges which were seized, were in terms of the license, the weapon and the cartridges till date have not been confiscated nor the license of the weapon, till date, has been cancelled, but still in a mechanical manner, the revisional Court as well as the Court of the learned Chief Judicial Magistrate, Patna rejected the application filed under Section 451 of the Cr.P.C. for releasing the arms.

11. The learned A.P.P for the State is not in a



position to rebut the submission of the learned counsel for the petitioners based on the averments made in the counter affidavit filed on behalf of the Senior Superintendent of Police, Patna.

12. Considering the submissions and facts recorded hereinabove, the order dated 08.04.2021 passed in Cr. Revision No. 28 of 2021 by the learned Sessions Judge, Patna whereby the revision application has been dismissed and the order dated 07.11.2020 passed in Kotwali (Patna) P.S. Case No. 148 of 2018, G.R. No. 1623/2018 passed by the learned Chief Judicial Magistrate, Patna has been affirmed whereby the petition filed by the petitioners under Section 451 Cr.P.C. for releasing their licensed weapon was rejected, **is hereby quashed.**

13. The arms along with the cartridges shall be released in favour of the petitioners on the following conditions:-

(i) the petitioners shall furnish personal bond of Rs. 2,00,000/-(Rupees Two Lakhs) each with one solvent surety in the like amount to the satisfaction of the learned trial court, thereafter the aforesaid weapon along with the



cartridges shall be handed over to the petitioners on producing the license of the weapon, the Court will also verify whether the cartridges seized was in terms of the license or not and if it is found that the cartridges recovered from the petitioners were not in consonance with the license in that event the cartridges shall not be released;

(ii) whenever required by the competent court, the weapon and the cartridges shall be produced on petitioners' expense at the place directed;

(iii) at the time of release of the weapon and the cartridges, the authorities shall ensure to take note of the number inscribed on the weapon in presence of the petitioners and obtain their signature and keep the same on record;

(iv) the petitioners shall not alter or change the condition of the weapon in any manner during pendency of the case;

(v) the petitioners shall not create any third party right over the said weapon/cartridges; and

(vi) if in the event, all or any of the aforesaid conditions are found to be violated, the respondent



shall be at liberty to move this Court for seeking modification of the order passed by this Court releasing the weapon and the cartridges.

14. Accordingly, the present quashing application stands allowed.

(Satyavrat Verma, J)

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