

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64946 of 2021**

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

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Dinesh Kumar S/O Janardan Choudhary R/O Village- Bijhaura, P.O.-
Kukurahan, P.S.- Itarhi, District- Buxar, Pin Code- 802123

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr.Rudrank Shivam Singh, Advocate

For the Opposite Party/s : Mr.Satyendra Prasad, APP

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 06-02-2025

Heard learned counsel appearing on behalf of the
petitioner and learned A.P.P. for the State.

2. The present petition has been filed for quashing of
the order dated 08.04.2021 passed by learned Sessions
Judge, Patna in connection with Criminal Revision No. 28 of
2021, whereby and whereunder learned Sessions Judge has
been pleased to reject the petitioner's revision application for
release of arms and also to quash the order dated
07.11.2020 passed by learned Chief Judicial Magistrate,
Patna in Kotwali (Patna) P.S. Case No. 148 of 2018, G.R. No.
1623/2018, whereby learned Magistrate has been pleased to
reject the petitioner's application for release of fire-arm and



ammunition.

3. Learned counsel for the petitioner 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 a rifle bearing number 374AB1403848 with 10 live cartridges was recovered, It is further alleged that on query regarding the seized weapon and cartridges, co-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 petitioner, 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 petitioner submitted 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 petitioner produced the license at the time when it was asked, perhaps the weapon would not have been seized. It is next submitted that petitioner is person 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 petitioner 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 petitioner is having valid license and is person with clean antecedent i.e., against him no criminal case is 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 petitioner next submitted that in trial the petitioner either may get convicted or get acquitted and in the event, if the petitioner get acquitted then the entire allegation as alleged in the F.I.R. would stand falsified and if he is convicted, he 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 petitioner, at this stage the learned counsel submits that till date the license of the petitioner has not been cancelled, it is further submitted that the issue which arises for consideration, in the present case, is that if the petitioner is person with clean antecedent and he had a valid license for carrying arms, then whether merely because he was 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 petitioner from getting his arms released.

6. The learned counsel for the petitioner next submitted 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 petitioner do not have a valid license nor the fact that he is the person 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 petitioner is valid license holder and was carrying the arms in accordance with the terms of the license.

7. The learned counsel for the petitioner next submitted that till date the arms have not been confiscated and the petitioner undertakes 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 petitioner 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 property 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 petitioner, thus, summarizes his submission and submits that what is not in dispute rather stands admitted is that the weapons which the petitioner was alleged to have been carrying is licensed weapon and even the cartridges which was seized, was 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 petitioner 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 petitioner under Section 451 Cr.P.C. for release of his licensed weapon was rejected, is hereby quashed.

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

(i) the petitioner shall furnish personal bond of Rs. 2,00,000/- (Rupees Two Lakhs) 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 petitioner 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 petitioner was 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 petitioner's expense at the place directed; or

(iii) any further condition imposed by the learned trial court.

14. Accordingly, the present quashing application stands allowed.

(Chandra Shekhar Jha, J)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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