

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.700 of 2024**

Arising Out of PS. Case No.-85 Year-2023 Thana- PALI District- Jehanabad

Upendra Yadav @ Barhu Yadav Son of Late Bhana Yadav R/V- Village- Saidabad Golakhpur, P.S.- Pali, Distt.- Jehanabad

... ... Petitioner/s

Versus

The State of Bihar

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Umesh Kumar, Advocate
Mr. Abhishek Anand, Advocate
Mr. Roy Birendra, Advocate
Mr. Prashant Kumar, Advocate

For the Respondent/s : Mr. Umeshanand Pandit, APP

**CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT**

Date : 22-07-2025

The instant revision is directed against the judgment and order of conviction and sentence dated 09.07.2024 passed in Criminal Appeal No.11 of 2024 by the learned District & Sessions Judge, Jehanabad whereby and whereunder the First Appellate Court dismissed the appeal and affirmed the judgment dated 21.03.2024 passed by the learned Judicial Magistrate, 1st Class, Jehanabad in G.R. No.774/2023, Trial No.1266/2024, arising out of Pali P.S. Case No.85/2023 convicting the appellant of the offence under Section 25(1-B)a and 26 of the Arms Act and sentencing him to suffer rigorous imprisonment of three years for the offence punishable under Section 25(1-B)a and imprisonment of two years with payment



of fine of Rs.10,000/- for the offence punishable under Section 26 of the Arms Act. It was directed that the substantive sentence of imprisonment shall run concurrent.

2. Prosecution case, in brief, is that one Balvir Kumar Singh, SHO, Pali Police Station was conducting evening patrolling duty on 06.07.2013 at about 05:15 p.m. with the members of the force attached to the police station. At about 5:40 p.m., when they reached near Serthu village, the SHO received a secret information that one Upendra Yadav @ Barhu Yadav was carrying illegal fire arms to commit some offence in or around the government cabin constructed for irrigation on his land in village-Golakhpur. The SHO passed on the said information to his senior officers and at about 6:30 p.m. reached near the said cabin situated on the eastern side of village-Golakhpur. Seeing the police party, a man started to flee away. The police party alongwith the Chowkidar of the locality conducted search inside the cabin and recovered one black colour loaded country made pistol and a live cartridge of .315 bore from the waist of the person, who was eventually apprehended. On being asked he disclosed his name as Upendra Yadav @ Barhu Yadav, police seized the country made pistol and live cartridges at the spot in presence of Chowkidars and arrested the accused.



3. The S.H.O. Pali Police Station lodged a suo-moto complaint against the petitioner, on the basis of which Pali Police Station Case No.85 of 2023 under Section 25(1-B)a/26 of the Arms Act was registered. Police took-up the case for investigation and on completion of investigation, charge-sheet was submitted against the petitioner under the above-mentioned penal provisions of the Arms Act.

4. The accused/petitioner duly appeared to face trial, charge was framed against the accused and when it was read over and explained to him he pleaded not guilty. During trial, prosecution examined seven witnesses. They are PW-1 Balvir Kumar Singh (informant), PW-2 Suresh Prasad, PW-3 Chandan Kumar Shah, PW-4 Bikash Kumar Biswas, PW-5 Manoj Kumar Prasad, PW-6 Rakesh Kumar and PW-7 Manoj Kumar Ram. All the witnesses are police personnel, PW-7 is the expert, who submitted his report regarding the work ability of the fire arm and live cartridges.

5. On the basis of the evidence on record, both the Trial Court as well as the Court of Appeal held the accused guilty for committing offence under Section 25(1-B)a/26 of the Arms Act and convicted and sentence him accordingly.

6. The learned Advocate on behalf of the petitioner at the outset submits that the petitioner is in jail custody for about



two years.

7. Secondly, the Trial Court did not consider material contradictions involved in the case and the petitioner was convicted and sentenced on the basis of contradictory and inadmissible evidence. In support of his contention, he first refers to Exhibit-P2, which is the seizure list.

8. It is submitted by the learned Advocate for the petitioner taking me to paragraph No.3 of the seizure list that the fire arm and live cartridges were recovered from the land of the petitioner beside a cabin (ग्राम—गोलखपुर, थाना—पाली, जिला—जहानाबाद स्थित अभियुक्त के खेत के केबिन के पास से). Thus, it is submitted by the learned Advocate for the petitioner that according to the seizure list, fire arm was not seized from the waist of the petitioner. Therefore, the prosecution story of illegal possession of fire arm is false and false to the knowledge of the SHO Pali (informant) as well as the Investigating Officer.

9. Another important contradiction appearing from the seizure list police recovered one contry made fire arm loaded with two live cartridges, engraved therein 8mm KF. However, during trial the witnesses stated that two live cartridges of .315 bore was recovered. The suo-moto FIR was filed by Balvir Kumar Singh, SHO Pali police station also referred to recovery of .315 bore cartridges.



10. Thus, the prosecution itself was full of contradiction with regard to the nature of the material and bone of the live cartridges, which were recovered in connection with this case.

11. If the seizure list is believed fire arm and ammunitions were not recovered from the waist of the accused/petitioner, those were recovered from a place beside the cabin. There is absolutely no evidence that the place from where the fire arm and cartridges were allegedly recovered, were under exclusive possession of the petitioner.

12. Thirdly, the informant stated in his evidence that seeing the police party, the accused fled away, there is absolutely no evidence, when and where the accused was apprehended. This, casts a doubt as to whether the accused was actually apprehended or not.

13. An offence under Section 25 and 26 of the Arms Act relate to illegal possession of fire arm. Therefore, prosecution is under primary obligation to prove that the fire arm and cartridges were recovered either from actual or constructive possession of the petitioner.

14. This Court has already narrated the circumstances that may lead to the Court to hold that the prosecution case does



not stand on a true foundation.

15. This Court is perfectly aware that examination and appreciation of evidence is generally not permissible while exercising revisional jurisdiction unless the appreciation of evidence is absolutely perverse.

16. In the instant case, perversity of appreciation of evidence is manifest when both the Courts below did not consider the evidence of PW-1 and PW-4 to the effect that they recovered two live cartridges of .315 bore. The arms expert, on the contrary certified that the live cartridges were of 8mm KF. It is not believable or desirable that the police officers did not know the difference between the cartridges, specially when the police administration uses cartridges of .315 bore. Thus, there remains discrepancy as to the nature and neck of cartridges which were allegedly recovered by police.

17. In view of what has been stated above, this Court is not in a position to hold that prosecution was able to bring home the charge against the accused/petitioner under Section 25(1-B)a/26 of the Arms Act. Both the Courts below failed to appreciate the evidence adduced by the witnesses on behalf of the prosecution during Trial and in course of appeal.

18. Therefore, this Court is not in a position to concur with the order of affirmation of conviction and sentence passed



against the petitioner/accused. The instant revision is accordingly allowed on contest. There shall be however no order as to cost.

19. The accused/petitioner be acquitted of the charge, set at liberty and released from his bail bond at once.

20. Let a plain copy of this order be handed over to the learned Advocate for the petitioner free of cost at once.

21. The Trial Court is directed to act on the basis of the plain copy of the order passed in the instant revision.

22. The seized material be destroyed after the expiry of the period of limitation for Special Leave to Appeal.

23. The Lower Court Records be returned.

(Bibek Chaudhuri, J)

mdrashid/-

AFR/NAFR	
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