

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3487 of 2025**

Arising Out of PS. Case No.-98 Year-2014 Thana- NOKHA District- Rohtas

Munna Ram S/o Ram Pravesh Ram R/o village - Karma , P.S.- Baghaila ,
District - Rohtas at Sasaram

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Dharmendra Kumar Singh, Adv.
For the State : Mr. Anand Mohan Prasad Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT**

Date : 13-11-2025

Heard learned counsel for the appellant and
learned Additional Public Prosecutor for the State.

2. The present appeal has been directed against
the judgment of conviction and order of sentence dated
21.07.2025 passed by learned District and Additional Sessions
Judge-IV, Rohtas at Sasaram in Sessions Trial No. 189 of 2015,
arising out of Nokha P.S. Case No. 98 of 2014 whereby and
whereunder the appellant has been convicted for the offences
punishable under Sections 25(1-b)a and 26 of the Arms Act and
has been sentenced to undergo rigorous imprisonment for three
years along with fine of Rs. 250/- under Section 25(1-b)a of the
Arms Act and in case of default of payment of fine, appellant
has to undergo further simple imprisonment of 15 days. The



appellant has further been sentenced to undergo rigorous imprisonment for three years and fine of Rs. 250/- under Section 26 of the Arms Act and in case of default of payment of fine, appellant has to undergo further simple imprisonment of 15 days.

3. According to self statement recorded by S.I. Mohd. Akram Ansari, S.H.O. of Nokha Police Station, on 10.07.2014 at 11:00 PM, he received a secret information that in white coloured Magic vehicle, 6-7 armed miscreants were roaming on Nokha-Rajpur road to commit some cognizable offence. Upon the said information, he rushed there along with other police officials and found one white Tata Magic vehicle parked near Srikhanda Kali Asthan. On seeing the police, the miscreants started fleeing away out of which five persons were apprehended. On search, one country made loaded rifle was recovered from apprehended accused Upendra Paswan and on unloading the same, one cartridge was recovered. One country made pistol and three cartridges were also recovered from the pant of apprehended accused Upendra Paswan. One country made rifle was recovered from apprehended accused Sanoj Ram. One country made rifle and five cartridges were recovered from apprehended accused Kanhaiya Paswan. One country



made pistol was recovered from the possession of appellant/Munna Ram. One country made pistol was also recovered beneath the seat of white Tata Magic vehicle bearing Registration No. BR-2T-3494. Accordingly, seizure list was prepared and a copy thereof was served to each of the accused persons.

4. On the basis of self statement recorded by S.I. Mohd. Akram Ansari, Nokha P.S. Case No. 98 of 2014 dated 11.07.2014 was registered under Sections 399, 402 of the IPC and Sections 25(1-B)a, 26 and 35 of the Arms Act. Routine investigation followed. Statement of witnesses came to be recorded and on the completion of investigation, charge sheet has been submitted against the appellant and others under Sections 399, 402 of the IPC and Sections 25(1-b)a, 26 and 35 of the Arms Act. Thereafter, the learned trial court took cognizance. The case was committed to the court of sessions after following due procedure. The learned trial court framed charges against the appellant and others under Sections 399, 402 of the IPC and Sections 25(1-b)a and 26 of the Arms Act. Charges were read over and explained to the appellant to which he pleaded not guilty and claimed to be tried.

5. In order to bring home guilt of accused



persons, prosecution has examined altogether five witnesses. PW-1 Shashi Kant Kumar, PW-2 Sheo Parsan Singh, PW-3 Raj Deo Singh, PW-4 Mohd. Akram Ansari (informant of the case) and PW-5 Bigan Sahu (I.O. of the case).

6. Prosecution has relied upon following documentary evidence on record:-

*Ext. 1- Signature of witness
Shashi Kant Kumar on seizure list.*

*Ext. 2- Signature of witness
Raj Deo Singh on seizure list.*

Ext. 3- Written report.

*Ext. 3/1- Endorsement on
written report.*

Ext. 4- Seizure list.

Ext. 5- Sanction Order.

7. Defence of the appellant as gathered from the line of cross examination of prosecution witnesses as well as from the statement under Section 313 of the Cr.P.C. is that of total denial. However, they did not enter into defence.

8. After hearing the parties, the learned trial court convicted the appellant and sentenced him as indicated in the opening paragraph of the judgment.

9. Following submissions have been made on behalf of learned counsel for the appellant:-

Learned counsel for the appellant has submitted that judgment of conviction and order of sentence passed by the



concerned court is without discussing the material available on record. Learned counsel further submits that there are two seizure list witnesses i.e. PW-1 and PW-3. PW-1 has stated that the weapon which was seized at the place of occurrence was not sealed at the place of occurrence and all the documentation of seized items were made at Thana where PW-1 put signature and hence, seizure list itself has become doubtful. He further submits that PW-3, who is seizure list witness, has stated that he put signature on plain paper, therefore, the very authenticity of the seized item is doubtful. He further submits that there is no compliance of Section 103 of BNSS while preparation of seizure list. Learned counsel further submits that seized arms and ammunition were not sent to ballistic expert for their examination and, hence, it cannot be said that seized arms and ammunition were effective or not. Learned counsel for the appellant has submitted that sanction has been given by the concerned District Magistrate in a routine manner. Learned counsel further submits that there is vital contradiction in the written report as well as deposition of prosecution witnesses including the informant. In this way, prosecution has not proved its case beyond reasonable doubt. The Trial court has passed the impugned judgment of conviction and order of sentence without



applying judicious mind. In the light of aforesaid facts and circumstances of the case, impugned judgment of conviction and order of sentence is liable to be set aside.

10. Learned Additional Public Prosecutor appearing for the State has submitted that PW-4/ informant, PW-5/Investigating Officer and other prosecution witnesses have supported the case of the prosecution and hence, the judgment of conviction and order of sentence passed by the concerned court is justified and legal and no interference is needed.

11. The question which arises for consideration is:-

"Whether offence under Sections 25(1-b)a, 26 of the Arms Act is made out in the light of given facts and circumstances of the case or not ?"

12. I have perused the impugned judgment, order of trial court and trial court records. I have given my thoughtful consideration to the rival contention made on behalf of the parties as noted above.

13. It is necessary to evaluate, analyze and screen out the evidences of witnesses adduced before the trial court.

14. PW-1/ Shashi Kant Kumar is witness of seizure list as well as member of raiding team. During cross



examination, PW-1 has stated that the weapon, which was seized at the place of occurrence, was not sealed at the place of occurrence and all the documents regarding seized items were made at Thana where PW-1 put signature.

15. PW-2/ Sheo Parsan Singh stated that he was also member of the patrolling party. He has stated that five miscreants were caught. He did not recognize any of the accused persons in dock.

16. PW-3/ Raj Deo Singh is seizure list witness as well as member of raiding team. PW-3 has stated that he does not remember the date of occurrence and he has no knowledge regarding the occurrence. During cross examination, PW-3 has stated that he has no knowledge from where the seized articles were recovered and he put signature on plain paper.

17. PW-4/ Mohd. Akram Ansari is informant of the case. He has stated in para-5 of cross examination that before conducting search, he had got himself searched, and as he was himself conducting the search, he did not deem it necessary to search others and he has not made any paper regarding his search. He has also stated that he does not remember the number of vehicle. PW-4 has further stated that he has given weapon to In-charge Malkhana. He has also stated



that there is no provision to take receipt from the In-charge of Malkhana and same is maintained in the station diary. PW-4 has stated that he has not made any photography of the seized items. PW-4 at para 8 of his cross examination has stated that it took him one and a half hours to prepare the report and seizure list on the place of occurrence.

18. PW-5/ Bigan Sahu is Investigating Officer of the case. He has stated that after getting the charge of investigation, he recorded the re-statement of informant and visited the place of occurrence. PW-5 has further stated that on 22.07.2014 he gave application before the District Magistrate for obtaining sanction. On 06.08.2014 he obtained sanction report from District Magistrate. He has submitted charge sheet under Sections 399, 402 of the IPC and Sections 25(1-b)a, 26, 35 of the Arms Act. During cross-examination, PW-5 has stated that he has not mentioned the date and time of re-statement of the informant. He has also stated that the seized items were put before him and he has not noted the contents thereof in the case diary. He made application for obtaining sanction report on 19.07.2014 but he has not explained in the case diary as to why he did not obtain the sanction between 11.07.2014 to 22.07.2014 and after depositing the seized article in Malkhana, he has not



seen it again. He has also stated that he has recorded the statement of private witness but none of the private witnesses told him as to what cognizable offence the accused were going to commit. PW-5 has stated that he was also member of the raiding team.

19. After going through the evidence of prosecution witnesses adduced during trial, it is clear that PW-1/ Shashi Kant Kumar and PW-3/ Rajdeo Singh are witness of seizure list as well as member of raiding team. During cross examination, PW-1 stated that the weapon, which was seized at the place of occurrence, was not sealed at the place of occurrence and all the documents regarding seized items were made at Thana where PW-1 put signature. The statement of PW-1 puts question mark on the seized items. If the seized items were found on the place of occurrence, as to why they were not sealed at the place of occurrence and why the seizure list was made at thana. During cross examination, PW-3 has stated that he has no knowledge from where the seized articles were recovered and he put signature on plain paper. In this way, whole prosecution story has been shattered in the light of averments made by the two seizure list witnesses. Apart from that, PW-4/ informant at para 8 of his cross examination has



stated that it took him one and a half hours to prepare the report and the seizure list at the place of occurrence whereas PW-1, who is seizure list witness, has stated that the weapon, which was seized at the place of occurrence, was not sealed at the place of occurrence and all the documents regarding seized items were made at Thana where he put signature. A pertinent question is asked by the defence counsel regarding description of vehicle to which informant/PW-4 stated that said reply could be given by the I.O. but neither in examination-in-chief nor in the cross examination the I.O. has disclosed the registration number of the vehicle. On the said point, the evidence of PW-4/informant and PW-5/Investigating Officer is quite shaky. Seizure list does not reflect any specific remark as admitted by the PW-5 and it has also not been stated whether seized materials were put before the court at the time of adducing evidence, same is not reflected in the evidence of PW-5 and 4.

20. From perusal of sanction order/Ext-5, it has not been specified as to from whose possession which weapon was recovered and the weapon was found effective or not. Not only that who was the informant of the case and how the weapons could be falling under the definition of the 'Arms' as contained under the Arms Act were also not stated in the



sanction order. The District Magistrate, Rohtas at Sasaram was simply noting that on the basis of recommendation made by Superintendent of Police as well as application of Investigating Officer, he was agreeing and granting the sanction. The sanction report is typed and printed copy and there was no space left even for putting down the bare facts of the case or even a shamble of it so as to indicating as to how the appellant was found in possession of it so that he could be said to violate conditions are punishable under Sections 25, 26 or 35 of the Arms Act. The sanction order as appears in the form of Ext-5 was in fact not an order which could be said to be passed after due application of mind by the District Magistrate and as such it stood vitiated which could never be utilized by any court of law to justify the proof of charges under the Arms Act under which the appellant was convicted and sentenced. Thus, what I find is that the conviction of the appellant under Sections 25(1-b)a and 26 of the Arms Act was completely vitiated on account of the lack of proper sanction.

21. In the present case, there is no due application of mind by the sanctioning authority. It must appear from the sanction order itself that actually application of mind has been made and the Officer granting the sanction order was



fully aware of the facts of the case. It does not speak any word about the date on which the offence was committed, the manner in which the accused was arrested or the manner of making search and seizure and recovery of the arms. Sanctioning the prosecution of a person could not be an act to issue a licence for sale the arms or either of any commodity as is done by the officers of the Executive. This is an act which forms part of the judicial function of an officer of Executive which is defined by Section 3(4) of the Cr.P.C. It might by an administrative executive action but the function ultimately being of putting a person on trial for a particular offence, it could really be a quasi judicial in nature, which could have an administrative tinge. It was required that the District Magistrate, Rohtas at Sasaram ought to have indicated facts of the case and other details of it sufficiently in his sanction order, so as to indicating that the order has been passed on due application of mind and the sanction order suffers from infirmities and lacuna and it cannot be upheld.

22. A co-ordinate Bench of this Court vide judgment dated 10.12.2014 passed in Cr. Appeal (SJ) No. 664 of 2013 and its analogous case has observed in para-6 which is reproduced herein below:-



"6. However, mere prove or formal report of expert without producing article and without examination of the Sergeant Major, it is difficult to suggest that what articles were seized and whether article seized were sent to or which article were sent for examination, nor expert has come to depose or the accused get opportunity to cross- examine and report is only corroborative part of evidence and in absence of the Sergeant Major or expert from Forensic Science Laboratory, accused persons got prejudice as they could not get opportunity to get examine. Neither article seized has been proved nor marked or sealed nor it has been stated that they were sent to Sergeant Major after due marking or seal nor expert has come to depose that articles seized were examined by him and were found to be effective or part of fire arms nor the expert has been examined and hence it is difficult to hold in the situation articles were seized of fire arms or explosive substance. The trial court misdirected itself in holding that articles seized were explosive substance or fire arms in absence of non-examination of Sergeant Major and article seized having been produced before the court. Without examination of expert and producing the fire arms, order of conviction and sentence can not sustain in absence of clear evidence that articles seized were fire arms or explosive substance. Moreover, sanction has been formally proved."

23. In the present case, prosecution has not examined ballistic expert. The question arises how the seized items were declared to be arms and ammunition, whether they were effective or not, whether they have been put under the



category of prohibited items and whether they can be declared illegal under Section 25(1-b)a and 26 of the Arms Act. No reason has been assigned by the prosecution as to why ballistic expert has not been examined in the case.

24. Keeping in view all the infirmities and discrepancies, I find the judgment of conviction and order of sentence passed by the concerned court is not justified and legal and same is fit to be set aside.

25. In the result, in my view, prosecution case suffers from several infirmities, as noticed above, and it was not a fit case where conviction could have been recorded. The learned trial court fell in error of law as well as appreciation of facts of the case in view of settled criminal jurisprudence. Hence, impugned judgment of conviction and order of sentence are hereby set aside and this appeal stands allowed. The appellant is on bail, he is discharged from the liabilities of his bail bonds.

26. The interlocutory application, if any, also stands disposed of.

27. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for compliance and for record.



28. The records of this case be also returned to
the concerned trial court forthwith.

(Alok Kumar Pandey, J)

shahzad/-

AFR/NAFR	AFR
CAV DATE	N.A.
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