

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.289 of 2002

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Neerain Akhtar @ Narain Akhtar, son of Late Haji Nizamuddin, resident of
G.B. Road, P.S.-Civil Lines, District-Gaya.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Prakash Chaudhary, Adv.

For the State : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 16-01-2015

Heard learned counsel for the petitioner as well
as learned Additional Public Prosecutor.

Learned counsel for the appellant fairly concedes that he intends to confine his argument on the point of sentence only. As per prosecution case, appellant was apprehended on the date of occurrence that means to say on 16.08.1996, itself, on chase while he along with Babloo @ Jalaluddin escaped from judicial custody and has been granted bail by this Court on 27.06.2002 after admission of instant appeal. He remained under custody during the intervening period achieving approximately six years judicial confinement. As such, the sentence inflicted against the appellant should be moulded as already undergone. It has also been submitted that there happens to be justification in raising such plea because of the fact that save and except conviction and sentence recorded under Section 506(ii) of the IPC whereunder appellant has been directed to undergo R.I.



for seven years as well as also fined Rs.2000/- and in default thereof, to undergo additional period of imprisonment of one year, the remaining sentences inflicted for different sections are found already saturated. It has also been submitted that counting of days as per calendar the appellant remained under custody for five years and ten months consecutively justify the prayer considering counting of period as per jail manual. It has also been submitted that appellant is ready to deposit the fine amount so inflicted by the learned lower court within three months.

The learned Additional Public Prosecutor objected that too in the background of own admission of the appellant regarding his criminal antecedent however, fairly concedes over the counting of days so prescribed as per jail manual.

After considering the rival submission, prayer of appellant is found appreciable and on account thereof, maintaining the conviction under the appropriate sections inflicted by the learned lower court and further finding that having the period of custody from 16.08.1996 to 27.06.2002 the majority of sentences that means to say R.I. for two years and fine of Rs.1000/- in default thereof to undergo sentence of three months additionally under Section 353, 334 IPC respectively R.I. for three years, fine of Rs.1000/- in default thereof, to undergo three months imprisonment under Section 25(1-B), R.I. for five years as well as fine of Rs.1000/-

in default thereof, to undergo one year imprisonment under Section 26(1) of the Arms Act which found fully saturated. Now, the only remaining sentence R.I. for seven years as well as fine of Rs.2000/- in default thereof, imprisonment of one year under Section 506 (Part-II) is yet to be saturated. Consequent thereupon, the sentence inflicted for an offence punishable under Section under Section 506 (Part-II) of the IPC is moduled as sentence already undergone. So far fine parts are concerned, as the appellant has undertaken to make payment within three months, the privilege of bail granted to the appellant is extended till then in terms of Section 437(A) IPC. In case of fault at the part of appellant in making payment of fine within the aforesaid stipulated period of three months, the imprisonment, in default thereof will automatically replace and on that very count, the learned lower court will be at liberty to proceed against the appellant in accordance with law.

With the aforesaid modification in sentence, instant appeal is dismissed.

(Aditya Kumar Trivedi, J.)

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