

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.702 of 2016

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Moti Sah, Son of Late Bhaddo Sah, resident of Mohalla - Mirjanhat, P.S.
Mojahidpur, District – Bhagalpur.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. P.K. Sinha, Adv.

For the Opposite Party : Mr. Suresh Pd. Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT & ORDER

Date: 07-02-2017

Heard the parties.

2. This criminal revision application, under Section 397 read with Section 401 of the Code of Criminal Procedure, has been filed against an order, dated 04.04.2016, passed by learned Additional District and Sessions Judge-VI, Bhagalpur, in Cr. Appeal No. 126 of 2013, arising out of Trial No. 8 of 2014. The petitioner was, by the judgment and order, dated 19.09.2013, passed by the learned Judicial Magistrate, Ist Class, Bhagalpur, in G.R. No. 1649 of 2008 (Trial No. 3487 of 2013), arising out of



Kotwali P.S. Case No. 311 of 2008, held guilty of the offence punishable under Sections 25(1-B)(a)/35 of the Arms Act and Sections 26/35 of the Arms Act. He was directed to undergo rigorous imprisonment for proved offence punishable under Sections 25(1-B)(a)/35 of the Arms Act, for a period of three (3) years, whereas, for his conviction of the offence punishable under Sections 26/35 of the Arms Act, he was sentenced to undergo imprisonment for a period of one (1) year.

3. The appellate Court, by the impugned order, has recorded acquittal of the petitioner of the charge under Sections 26/35 of the Arms Act. However, he has affirmed the finding of conviction of the petitioner of the offence punishable under Sections 25(1-B)(a)/35 of the Arms Act, but has reduced the sentence from rigorous imprisonment for a period of one (1) year. In addition, a fine of Rs. 1,000/- has also been directed to be paid and in default, imprisonment for further period of one (1) month has been ordered.

4. Learned counsel, appearing on behalf of the petitioner, in the facts and circumstances of the case, without going into the concurrent finding of the conviction of the petitioner, has submitted that the petitioner had remained in



custody in course of investigation/trial, post-conviction and after the impugned order was passed by the appellate Court. All this period taken into account, according to him, the petitioner has remained in custody for a period of slightly more than eight (8) months. He has, accordingly, submitted that by applying Section 428 of the Code of Criminal Procedure, the period of detention, undergone by the petitioner, be directed to be set of against sentence of imprisonment.

5. Considering the facts and circumstances of the case and materials on record, I am of the view that the period during which the petitioner has remained in custody should be set of in the interest of justice, in accordance with the provisions of Section 428 of the Code of Criminal Procedure.

6. This application is, accordingly, disposed of with an order that the period of detention, already undergone by the petitioner during pendency of investigation, trial and after his conviction, shall be set of from the period of total sentence imposed upon him by the impugned order. Impugned judgment and order, dated 04.04.2016, passed in Cr. Appeal No. 126 of 2013 by the learned Additional District and Sessions Judge-VI, Bhagalpur is, accordingly, hereby modified. Let the petitioner,



above named, be released forthwith, if not required in any other case.

7. This application stands disposed of accordingly.

(Chakradhari Sharan Singh, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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