

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.360 of 2015

Arising Out of PS. Case No. -65 Year- 2007 Thana -KURTHA District- JEHANABAD

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SHALENDRA SINGH @ SHAILENDRA SINGH, SON OF LATE
RAMJATAN SINGH, RESIDENT OF VILLAGE - DARHETA, P.S. -
KURTHA, DISTRICT - ARWAL.

.... **APPELLANT/S**

VERSUS

THE STATE OF BIHAR

.... **RESPONDENT/S**

With

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Criminal Appeal (SJ) No. 397 of 2015

Arising Out of PS. Case No. -65 Year- 2007 Thana -KURTHA District- JEHANABAD

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TEJ NARAIN SINGH, S/O SIYA RAM SINGH, RESIDENT OF
VILLAGE- NASIRANA P.S KURTHA, DISTRICT ARWAL.

.... **APPELLANT/S**

VERSUS

THE STATE OF BIHAR

... **RESPONDENT/S**

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Appearance:

(In CR. APP (SJ) No.360 of 2015)

For the Appellant/s : Mr. Arvind Kumar,
Mr. Rajesh Kumar,
Mr. Arun Kumar Pandey, Advocates

For the State : Mr. Binod Bihari Singh, APP

(In CR. APP (SJ) No.397 of 2015)

For the Appellant/s : Mr. Arvind Kumar,
Mr. Rajesh Kumar,
Mr. Arun Kumar Pandey, Advocates

For the State : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 09-05-2018

Criminal Appeal (SJ) No.360 of 2015 wherein
Shalendra Singh @ Shailendra Singh is the appellant and Criminal
Appeal (SJ) No.397 of 2015 wherein Tej Narain Singh is the
appellant have been heard together and are being decided
conjointly as both arise out from common judgment of conviction
dated 06.06.2015 and order of sentence dated 11.06.2015 passed
by Sessions Judge, Jehanabad in Sessions Trial No.107/2018 as



well as 216/2018. However, from para-3 of the judgment impugned, it is evident that learned lower court had explained the situation relating thereto.

2. Both the appellants, namely, Shalendra Singh @ Shailendra Singh and Tej Narain Singh have been found guilty for an offence punishable under Section 25(1B) a of the Arms Act and sentenced to undergo R.I. for three years, 26(1) 35 of the Arms Act and sentenced to undergo R.I. for five years with a further direction to run the sentences concurrently, with a further direction that the period so undergone during course of trial would be subject to set off in accordance with Section 428 of the Cr.P.C.

3. PW.2, Raj Ballav Yadav, Officer-in-charge of Kurtha Police Station recorded his self-statement on 07.07.2007 at about 05:30 AM at village-Nasirana disclosing therein that in the previous night i.e. 6/7-07-2007 they received confidential information with regard to presence of Shalendra Singh, an accused of jail break incident at the place of Tej Narain Singh, his brother-in-law (*Bahnoi*) along with his associates carrying arms and ammunition whereupon, superior police officials were informed and as per direction, requisition of CRPF has been made. After arrival of the same, a raiding party was constituted consisting of he himself along with ASP, CRPF, P.K. Lal, S.I. Brijesh Pal, Head Constable Jagdish Kumar, Head Constable Mangal Ram, Head Constable Gobardhan Singh, Head Constable Hajari Lal, twenty-five sepoy along with S.I. Shambhu Nath Rai, Officer-in-charge Kinjer Police Station, S.I. Upendra Mishra, Incharge, Manikpur, ASI along with



constable reached at the P.O. village and then, in presence of two independent witnesses Ashok Kumar and Amrendra Singh raid was conducted at the house of Tej Narain Singh. During course of search Shalendra Singh and his associates succeeded in their escape after jumping from roof while Tej Narain Singh was apprehended. During course of search, from a room having at upper floor western side one rifle of .315 bore bearing no.L95518 TONS (2) one mouser of .315 bore bearing no.106218, one countrymade pistol of .315 bore , fifty-nine live cartridges of .315 bore, eighteen live cartridge of .303, one cartridge of AK47, one cartridge of 7mm pistol, four charger, three Vindoliya, one Nokia mobile set, one counterfeit Indian currency note of hundred denomination, cash appertaining to Rs.160/-, some documents, one thousand pamphlet against Surendra Sharma, one receipt of Rs.5000/- indicating realization of money from Nadaura brick-kiln, one receipt of seven thousand, one receipt of 5000/- were seized in presence of aforesaid seizure list witnesses and for that, seizure list was prepared whereupon, aforesaid two seizure list witnesses put their signature and the copy of the same was also handed over to Tej Narain Singh who endorsed the same by putting his signature.

4. After registration of Kurtha P.S. Case No.65/2007 investigation was taken up and after completing the same, charge sheet was submitted facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of



the Cr.P.C. is that of complete denial as well as false implication. However, neither oral nor documentary evidence has been adduced in support thereof.

6. In order to substantiate its case prosecution had examined altogether eight PWs, PW.1-Shambhu Nath Rai, PW.2-Raj Ballav Yadav, PW.3-Kamleshwar Prasad Kushwaha, PW.4-Kamleshwar Kumar Kushwaha, PW.5-Upendra Kumar Mishra, PW.6-Ramakant Prasad, PW.7-Ashok Kumar Singh and PW.8-Amrendra Singh. Side by side had also exhibited, material Ext.I to VIII-seized arms and ammunition, mobile set, counterfeit currency note of Rs.100/- denomination also exhibited documents in the following manner. Ext.1-Signature of appellant/accused Tej Narain Singh over seizure list, Ext.1/1-Signature of seizure list witness Ashok Kumar Singh, Ext.1/2-Signature of another seizure list witness Amrendra Singh, Ext.2-Seizure list, Ext.3-Self statement of informant PW.2, Ext.4-Sanha no.36 dated 02.04.2010, Ext.5-Sanction order, Ext.6-Report of Sergeant Major. On the other hand, nothing has been adduced in defence.

7. It has been submitted on behalf of learned counsel for the appellants that the judgment impugned is non-sustainable in the background of the fact that the learned lower court during course of appreciation of materials committed serious error. In order to pinpoint the same, it has been submitted that the search and seizure of the house of appellant Tej Narain Singh is said to be at 05:00 AM on 07-07-2007, house of Tej Narain Singh was cordoned by the CRPF constables, even then none of the



prosecution witnesses been able to disclose in which direction appellant Shalendra Singh along with his associate escaped. In likewise manner, it is apparent that no recovery has been shown from personal possession of the Tej Narain Singh rather it has allegedly been shown from a room having upper floor of the house but, same is found contradicted by both the seizure list witnesses, PW.7, PW.8 who, admitted their presence over seizure list but disowned to support the case of the prosecution with regard to recovery from the house of appellant Tej Narain Singh rather they deposed the recovery from a lonely place (*Badhar*).

8. It has also been submitted that none of the prosecution witnesses have stated that seized arms and ammunitions were sealed at the spot and so, it happens to be in utter violation of the principle having been laid down by the Hon'ble Apex Court in ***Jasbir Singh vs State of Punjab*** reported in ***AIR 1998 SC 1660*** wherein it has specifically been held that seized arms and ammunitions should be sealed at the place of occurrence itself and further, the non compliance thereof has been seen to be a serious lacuna in the prosecution case leading to acquittal of the accused. Also submitted that there was collusive investigation in order to justify the palpably false allegation as one of the accused of the raiding party have been entrusted with the investigation.

9. It has further been submitted that when the evidence of PW.6, sergeant major is gone through, it is apparent that there happens to be inconsistency with regard to the nature of weapon



having seized and the nature of weapon, ammunition having examined by the PW.6. In the background of incongruous version of the prosecution it looks unsafe to rely upon the prosecution version whereupon the finding having recorded by the learned lower court did not justify its sanctity.

10. On the other hand, the learned Additional Public Prosecutor while repelling the submissions having made on behalf of appellant, has submitted that there was no other occasion to visit the place of the appellant Tej Narain Singh by the concerned police officials unless and until presence of Shalendra Singh, an accused of jail break was there and for that, there was search and during course thereof, unauthorized, unlicensed firearms, ammunition were seized having specific details of number relating thereto and so non-sealing was not at all a material event completely ruled out possibility of manufacturing an evidence of recovery. It has also been submitted that seizure list was prepared at the spot and a copy thereof was handed to Tej Narain Singh appellant who, during course of cross-examination of the witnesses have not challenged its validity and that being so, the evidence of PW.7 and PW.8 that recovery was from a lonely place, happens to be mere a farce having no adverse impact upon the case of the prosecution. It has also been submitted that whatever discrepancy happens to be in between search-cum-seizure list as well as the ballistic examination report, that only relates with nature of the weapon or the ammunition identifying bore or caliber, however also not questioned while cross-examine the sergeant major, as well as from the witness who produced material exhibits. It has also been



submitted that there happens to be no barrier under law derecognizing status of the member of the raiding party as Investigating Officer, so the objection having raised has got no sustainability in the eye of law. So, the judgment of conviction and sentence is fit to be confirmed.

11. Gone through the lower court record. True it is that presence of prosecution witnesses at the place of appellant Tej Narain Singh happens to be on account of getting a confidential information regarding presence of appellant Shalendra Singh @ Shailendra Singh, an accused of jail break who happens to be brother-in-law of Tej Narain Singh and for that a raiding party was constituted, raid was conducted and it happens to be specific plea at the end of the prosecution that Shalendra Singh succeeded in his disappearance. Admittedly raid was conducted on 07-07-2007 at about 05:00 AM that means to say it was the month of July and so, 05:00 AM happens to be the time of sunrise. So, when the house was cordoned by the CRPF constables, then in that circumstance was it possible for appellant Shalendra Singh to ditch them and have a safe passage. Furthermore, when the evidence has been minutely gone through, it is apparent that neither PW.1 nor PW.2 nay PW.3 the material witness have had identified the Shalendra Singh in dock. The worst event is that PW.3 at para-3 had identified Shalendra Singh as Tej Narain Singh in dock. Accordingly, the conviction and sentence recorded against appellant Shalendra Singh @ Shailendra Singh is set aside. He is on bail, hence is discharged from its liability. Consequent



thereupon, Criminal Appeal (SJ) No.360 of 2015 is allowed.

12. Now coming to the plea of Tej Narain Singh, it is apparent from search-cum-seizure list Ext.2 that his presence has been over it. Under column-4 thereof, there happens to be details of the arms and ammunitions having seized from a room lying at upper floor of the house having southern flank. During statement under Section 313 of the Cr.P.C., he had simply denied the recovery. In the aforesaid background now the evidence should be seen whether the prosecution has substantiated its case against the appellant Tej Narain Singh or not.

13. PW.1. had deposed that on 07-07-2007 he was posted at Kinjer Police Station. A raiding party was constituted of which he was also one of the member to apprehend Shalendra Singh an accused of jail break who had stayed at the place of his brother-in-law (*Bahnoi*) and accordingly, they conducted raid and during course thereof, Shalendra Singh managed to escape. During course of search and seizure of the house, the arms and ammunitions (detailed) were seized from a room lying at upper floor and for that search-cum-seizure list was prepared and a copy thereof, was handed over to the apprehend accused Tej Narain Singh. License relating thereto was also asked for from the Tej Narain Singh who declined (exhibited the same), identified the accused in dock. During cross-examination at para-3, there happens to be specific disclosure regarding members of the raiding party and manner whereunder they proceeded towards village of appellant Tej Narain Singh (Nasirana). Then at para-6, he had



stated that during course of search and seizure, he remained at the ground floor while others have gone to upper floor. After staying, 10-15 minutes at the upper floor, they got down. Search and seizure list was prepared at that very moment in presence of witnesses. Accused was interrogated. Then had stated that he was not knowing names of the villagers since before. When the witnesses have signed over the seizure list then thereafter, he came to know regarding their names. In para-7, he had stated that Superintendent of Police was present at Kurtha Police Station. They, after returning disclosed the event to the Superintendent of Police. At para-8, he had stated that he made statement before the Investigating Officer. He also disclosed that Investigating Officer was one of the member of the raiding party and so, seen the arms and ammunitions having seized from the house of the accused.

14. PW.2 is the informant who, on the alleged date and time of occurrence was Officer-in-charge of Kurtha Police Station. He had deposed that on an order of superior officials a raiding party was constituted comprising Officer-in-charge of Kinjer Police Station, Superintendent of Police CRPF, ASI Bajrangi Singh, Upendra Mishra, Sap constables CRPF personnel in order to conduct raid at the house of Tej Narain Singh lying at village-Nasirana on getting confidential information regarding presence of Shalendra Singh, an accused of jail break with his associate having arms and ammunitions. They conducted raid and during course thereof, Shalendra Singh @ Shailendra Singh and his associates managed to escape. Tej Narain Singh was apprehended. During course of search from a room arms (rifle, mouser, pistol, eighty



rounds of cartridge, vindolia, counterfeit currency note, payment receipt, mobile, pant etc.) were recovered and for that seizure list was prepared in presence of two witnesses Ashok Kumar and Amrendra Singh who put their signature. A copy thereof was handed over to the Tej Narain Singh who also put his signature. Then thereafter, he had recorded his self statement (exhibited). After registration of the case, he had handed over investigation to Upendra Mishra, ASI incharge Manikpur O.P. Identified the accused Tej Narain Singh. During cross-examination at para-4, para-5, para-6 there happens to be description regarding manner of assemblage of the members of the raiding party at Kurtha Police Station, subsequent steps having taken at their end conduction of raid escaping of co-accused, Shalendra Singh. Furthermore, whole exercise was conducted at the order of the superior police official. At para-7, he had stated that it was 05:00AM, morning time. Door were opened. At para-8, he had stated that he along with Shambhu Singh, Bajrangi Singh and CRPF commando have gone to upper floor. Then thereafter, other police personnel also arrived. Then all of them taken the seized arms and ammunitions to ground floor. At para-9, he had stated that then thereafter, they returned back to Police Station along with Tej Narain Singh. His family members were sleeping at the ground floor. At para-11, he had stated that seizure list was prepared at the ground floor. His self-statement was recorded at the ground floor. At para-12, he had stated that he had not mentioned specifically in his written report that he was recording the same at the ground floor of Tej Narain Singh. At para-13, he had stated that during course of preparation of search



and seizure list, 15-20 villagers have assembled but he is not remembering names of them. In para-15, he had stated that Tej Narain Singh has got no criminal antecedent. Then at para-16, there happens to be specific suggestion that when they have gone to conduct raid at the house of Tej Narain Singh to apprehend Shalendra Singh who was not at all apprehended, during midst thereof, the other extremist seeing the police officials threw their weapon and fled away which was seized by them and then, showing the same to be recovered from the house of the Tej Narain Singh apprehended him in revengeful manner in the background of the fact that he happens to be brother-in-law of the Shalendra Singh. It has further been suggested that self-statement as well as seizure list have been purposely prepared to implicate him.

15. PW.3 is another member of the raiding party who during course of examination-in-chief had reiterated the version save and except he could not able to identify the accused properly. During cross-examination he had stated that raid was conducted at the order of the Superintendent of Police. In para-5, para-6 there happens to be full details regarding constitution of the raiding party. In para-7, he had stated that when he reached at the village, some persons have awakened. The house of Tej Narain Singh was identified by the Officer-in-charge but he is unable to say the boundary. In para-10, he had stated that he had gone inside the house of the Tej Narain Singh along with Officer-in-charge of Kurtha Police Station, Incharge of Manikpur O.P., Shambhu Nath Rai, Assistant Commandant of CRPF along with CRPF personnel. They met with Tej Narain Singh. At that very place no other family



members were present. They have not inquired whether there were other family members or not when they entered inside the house, they have seen two persons jumping from the roof. Then there happens to be topography of the house of the Tej Narain Singh. At para-11, he had stated that house of Tej Narain Singh was cordoned from three sides. Remaining one side was not assessable. Accused escaped through the aforesaid area. In para-12, he had stated that they have gone to upper floor through stair. Then thereafter, they have gone inside the room which was searched and during course thereof, arms and ammunitions were recovered. In para-16, he had stated that seized articles were not sealed in his presence. Cartridges were wrapped in towel. Firearms were shifted through hand. Those articles were taken to ground floor. Then had denied the suggestion that nothing has been recovered from the possession of the accused nor the accused has got any knowledge with regard thereto.

16. PW.4 is the witness who had produced the seized materials in the court and those have been exhibited as respective material exhibits. It is also evident that signature of ACJM is found upon those materials exhibits. During cross-examination at para-10, he had stated that aforesaid arms and ammunition were procured by him from the Malkhana of Kurtha P.S. but, same have not sealed separately but, there happens to be signature of the ACJM as well as Officer-in-charge thereupon. In para-11, he had stated that signature of ACJM was not at all made in his presence. He had stated that he is unable to say the characteristics of the arms and ammunitions. He had further stated that some



documents were destroyed by white-ant and for that, diary entry was recorded.

17. PW.5 is the Investigating Officer. He had stated that after registration of the case, he was entrusted with the investigation of Kurtha P.S. Case No.65/2007. He was handed over the seized arms and ammunitions along with other items whereupon, he kept the same in Kurtha P.S. Malkhana while rifle, mouser were deposited at district armory. Took further statement of the informant inspected the P.O. which happens to be house of Tej Narain Singh and then had detailed the same. Recorded statement of the seizure list witnesses, took statement of accused Tej Narain Singh, also recorded statement of members of the raiding party, sent the seized articles for examination to ballistic expert after taking permission, obtained criminal antecedent of accused Shalendra Singh @ Shailendra Singh and recorded the same under para-70 of the case diary. Procured sanction order from the District Magistrate (exhibited) and then, submitted charge sheet. He had not claimed identification of the accused who was present in court (Shalendra Singh) but claimed to identify the accused who was apprehended at the spot. He had sent the seized counterfeit currency note for examination and procured report (exhibited). At para-12, he had stated that the seized arms and ammunition were not handed over to him in sealed condition. He had not deposited the same in Kurtha Police Station in sealed condition. One regular .315 rifle and one regular mouser rifle were deposited at district armory but were not sealed. In para-13, he had stated that he had not tried to locate how many persons were



residing in the house of Tej Narain Singh. In para-14, he had stated that two persons succeeded in their escape but he had not tried to locate regarding the other. Then had disclosed that he had mentioned in the case diary that two accused after jumping from the roof managed to flee but, he had not mentioned the details thereof. In para-15, he had stated that he had not recorded statement of the villagers. In para-16, he had stated that he had not mentioned the fact regarding distance of houses of both the seizure list witnesses from the house of Tej Narain Singh. In para-17, he had stated that he had not mentioned in the P.O. how many rooms were in the house more particularly, at the ground. In para-18, he had stated that informant had disclosed that the room wherefrom arms and ammunitions were seized was under custody of Tej Narain Singh. In para-18, he had stated that he had not recorded inculpatory extra judicial confessional statement of the accused. In para-20, he had stated that he had not mentioned in the case diary that he had received the arms and ammunitions from the Malkhana in sealed condition nor has mentioned the fact that in sealed condition it was sent to ballistic expert for examination. In para-21, he had stated that as per para-62 of the case diary seized arms and ammunitions were produced before the Chief Judicial Magistrate on 24.07.2007. In para-22, he had stated that he took the seized arms and ammunitions on 16.08.2007 before the ballistic expert.

18. PW.6 is the sergeant major who had examined the arms and ammunitions having produced before him on 16.08.2007. The first one, .315 bore volt bearing arsenal



no.84AB0683, another rifle bearing 30.06 bore volt axon rifle bearing arsenal no.106218, countrymade pistol having bore .303 found to be effective one. Then had shown 38 numbers of cartridge of .315 bore, 28 numbers cartridge of 30.06 bore, seventeen cartridges of .303 bore, one cartridge of 7.62 bores, one cartridge of 7.62x39 bore, one cartridge of .384 bore and after examination of the same, one cartridge of .384 bore, .303 bore, 7.62 bore, 30.06, .315 bore seven cartridge were found is firearm. Other 68 were effective then had exhibited his report.

19. During cross-examination at para-13, he had stated that no arms in which the cartridges of 7.62 bore and 7.62x39 bore is loaded has been produced before him for examination. Then had denied the suggestion that without testing the arms and ammunitions he had submitted report.

20. PW.7 and PW.8 are the seizure list witnesses who have admitted their presence over the seizure list. During cross-examination they have stated that they have put signature over blank paper at *Badhar* where they have gone after hearing hulla that articles have been thrown in the *Badhar*.

21. From the evidence available on the record, it is evident that recovery of arms and ammunitions have not been denied at the end of the appellants. Rather suggestion having been given at the end of the appellants to the informant under para-16, that recovery of arms and ammunitions were from *Badhar*. In the aforesaid background recovery of arms and ammunitions is not under controversy. Ballistic examination of the recovered arms and



ammunitions has not been questioned. PW.6 was not at all cross-examined on the score that the arms and ammunition which were produced before him for examination were not the same arms and ammunitions for which search-cum-seizure list was prepared. That means to say when no cross-examination was made at the end of the appellants, then in that circumstance there was no occasion for the witness either to the Investigating Officer, PW.5 or for the Sergeant Major, PW.6 to explain. That means to say, raising such ground at the present moment is not at all found sustainable in the eye of law.

22. In **Gian Chand & others v. State of Haryana** reported in **2013(4) PLJR 7 (SC)** it has been held:-

11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in **Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204** observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or



elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.”

(Emphasis supplied)

23. So, from the evidence available on the record, it is crystal clear that recovery is not under controversy and further, nor the P.O. Had there been sincere effort at the end of the appellant, he would have engaged himself in deposing or examining in defence that house was occupied by so many family members, having joint possession. Moreover, nothing has been suggested to the informant PW.2 as well as the Investigating Officer PW.5 on that very score. So the question of joint possession also goes away. With regard to non-sealing of arms and ammunitions, in the facts and circumstances of the case, the same is not at all found prejudicial to the interest of the appellant in the background of the fact that specific number of the seized arms have been detailed under the seizure list, and while cross-examining the PW.6 there happens to be own failure at the end of the appellant in testifying the PW.6 whether he had examined the same arms and ammunitions or not more particularly, when he had detailed in his examination-in-chief regarding arsenal number of the seized arms and for that the appellant would have tested him, at least confining to arsenal number.

24. It has been settled at rest that one of the member of



the raiding party becoming Investigating Officer is not averse to the law, nor there happens to be such kind of barrier prescribed under law, even though, the defence unsuccessfully blend with regard to interestedness of the witness in prosecution.

25. In the facts and circumstances of the case, it is found and held that the prosecution has succeeded in substantiating its case against appellant Tej Narain Singh whereupon Criminal Appeal (SJ) No.397 of 2015 is found deficient one and is accordingly dismissed. Appellant is on bail hence his bail bond is cancelled with a direction to surrender before the learned lower court within fortnight to serve out remaining part of sentence, failing which, the learned lower court will be at liberty to proceed against the appellant in accordance with law.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ NAFR	A.F.R.
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