

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.644 of 2010**

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Azad Mian @ Md.Azad Son of Late Nur, resident of village Tabalpur, P.S.
Lodipur, District Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Uma Kant Prasad, Advocate
For the Respondent/s : Mr. Abhay Kumar, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT**

Date : 09-04-2026

Heard Mr. Uma Kant Prasad, learned counsel for
the appellant and Mr. Abhay Kumar, learned APP for the State.

2. The appellant has preferred the present criminal appeal against the judgment dated 28.05.2010 and order of sentence dated 31.05.2010 passed in Sessions Trial No. 459 of 2009 by Additional District and Sessions Judge-IV, Bhagalpur, whereby, the learned trial court has convicted the appellant under Sections 25(1-B) and 26 of the Arms Act and sentenced him to undergo Rigorous Imprisonment for 3 years along with a fine of Rs.5000/- and in default of deposit of fine to further undergo Rigorous Imprisonment for 3 months. The sentences were directed to run concurrently.

3. The appellant has assailed the impugned judgment primarily on the ground that the learned trial court has failed to appreciate the evidence available on record in its proper



perspective and has erred in recording the conviction of the appellant.

BRIEF FACTS OF THE CASE

4. The case of the prosecution, in brief, is that on March 2, 2009, the informant, S.I. Ajay Kumar Mishra (P.W.1), received confidential intelligence regarding the assembly of armed miscreants near Bhola Nath Pul with the intent to commit an offence. Based on the above information, the police party conducted search and recovered eight improvised bombs from a bag (jhola) carried by the appellant, alongwith a country-made pistol and six live cartridges. A seizure list was prepared on the spot. The police registered Ishakchak P.S. Case No. 11/09 under Sections 25(1-B) and 26 of the Arms Act and Sections 3 and 5 of the Explosive Substance Act. Following the completion of the investigation, the Investigating Officer submitted the charge sheet, and the appellant was put on trial after the case was committed to the Court of Session.

ARGUMENT ON BEHALF OF THE APPELLANT

5. Learned counsel appearing on behalf of the sole appellant submitted that the appellant challenges the impugned judgment of conviction primarily on the ground that it is unsustainable both in law and on facts, as the prosecution's case



rests exclusively on the testimony of official police witnesses without any independent corroboration, despite the alleged apprehension occurring in a populated public vicinity. It is contended that the learned trial court failed to appreciate the material contradictions in the seizure procedure and the procedural lapses during the investigation, including the fact that the recovered items were not sealed at the spot. Furthermore, the appellant argues that the sentence is excessive and severe, failing to account for the substantial custodial period already undergone since March 2, 2009, and that as a first-time offender with no prior criminal antecedents, the appellant was entitled to the statutory benefits of the Probation of Offenders Act under Sections 360 and 361 of the Code of Criminal Procedure.

ARGUMENT ON BEHALF OF THE STATE

6. *Per Contra*, learned APP appearing for the State while opposing the appeal submitted that the learned District court, after considering all the evidences on record and exhibits submitted on behalf of the parties during the course of trial, has rightly convicted the appellants for said offences.

ANALYSIS AND CONCLUSION

7. Heard the parties.



8. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

9. With reference to the aforesaid rival legal contention urged on behalf of the parties, I have carefully examined the case to find out whether the impugned judgment warrants interference by this Court on the charge levelled against the accused/appellant under Sections 25(1-B) and 26 of the Arms Act.

10. During the trial, the prosecution has examined altogether four witnesses, namely:

1. P.W.1 – Ajay Kumar Mishra

2.P.W.2 – Ganesh Jha

3.P.W.3 – Janardhan Singh

4.P.W.4 – Baijnath Sah

5.P.W.5 – Baban Prasad

6.P.W.6 – Manoranjan Bharti

7.P.W.7– Suresh Chandra Mishra

8.P.W.8 – Kamleshwari Pandit

9.P.W.9 – Ram Naresh Singh



11. The prosecution has also relied upon following documents exhibited during the course of trial:

- (i) Seizure List (Exhibit-1)
- (ii) Written Statement (Exhibit-2),
- (iii) Signature on FIR (Exhibit-3),
- (iv) Seized Item Inspection Report (Exhibit-4),
- (v) Forensic Science Lab Report (Exhibit-5),
- (vi) Prosecution Sanction Order (Exhibit-6)
- (vii) Pistol (Exhibit – I & II)
- (viii) Bullets (Exhibit- III to III 7)

12. From the perusal of records, I proceed to analyse the statements of the prosecution witnesses whether they have supported the prosecution case.

(i) P.W.1 This witness has deposed that a police team conducted a raid near the HP Oil Depot in Bhola Nath Pul. During the operation, he observed several individuals fleeing, including one person who discarded a weapon subsequently, the team apprehended Azad Mian, who was found in possession of eight improvised explosive devices (steel container bombs wrapped in red and black tape) inside a bag, a loaded .315 bore country-made pistol in his waistband, and live ammunition in his pocket. Another loaded pistol was recovered from the



immediate vicinity. He supported that upon interrogation, the accused disclosed that he and his associates, including Wasim Lalu and Diamon Khan, were hired by Sunil Singh, Anand Shukla, and Dhananjay Mandal to assassinate Kullo Yadav for a sum of Rs.1,00,000, confirming that an advance of Rs.25,000 had been paid and weapons provided to execute the plot.

(ii) P.W.2 This witness has deposed that upon the apprehension and search of Mohammad Azad, a loaded pistol and six cartridges were recovered from his pocket, alongside eight bombs found in a plastic bag. He corroborated that the accused identified fleeing accomplices Wasim Lalu, Diamon Khan, and Mohammad Raju, revealing a conspiracy to assassinate Kullo Yadav (Kuldeep) orchestrated by Sunil Singh, Dhananjay Mandal, and Anand Shukla for Rs.1,00,000, with an initial payment of Rs 3,000. In cross-examination, he detailed the crime scene's proximity to the HP depot and a shrine, confirming that while the area was crowded, legal search protocols were strictly followed and the recovered pistol was serialized in the presence of the accused, leading to the formal signing of the seizure list.

(iii) P.W.3. - This witness has deposed that during a raid on March 29, 2009, near the Bhola Nath Pul, Petrol depot,



Azad Mian was apprehended with a bag of bombs, a loaded country-made pistol in his waistband, and six cartridges in his pocket. He further noted the recovery of an additional loaded pistol from the ground, discarded by one of the approximately ten fleeing accomplices, and identified the accused in court. During cross-examination, the witness confirmed that his statement was recorded by Station In-charge Manoranjan Bharti and verified his official posting at Tatarpur police station at the time of the incident.

(iv) P.W.4.- This witness has deposed that on March 29, 2009, Mohammad Azad was apprehended with a country-made pistol and six cartridges in his pocket, while another discarded pistol was recovered near the railway line. He identified the accused in court and, during cross-examination, described the scene near the Bharat Petroleum boundary wall, noting that the seized iron pistol was less than a foot long. He further clarified that while the seizure list was prepared at the site, the recovered items were formally sealed at the police station after being presented to senior officials, including the Superintendent of Police.

(v) P.W.5. - This witness has fully supported the prosecution's case in his examination-in-chief, testifying that



Mohammad Azad was apprehended with a bag containing eight bombs, a loaded pistol in his waistband, and six cartridges in his pocket. The witness also noted the recovery of an additional weapon discarded by a fleeing accomplice and identified the accused in court. During cross-examination, he confirmed providing a police statement and described the scene's landmarks, including the Bharat Petroleum premises and a peepal tree to the north, while verifying that the search and identification protocols were followed.

(vi) P.W.6. - This witness has deposed that he Station House Officer of Tatarpur, testified that during a coordinated cordon on March 29, 2009, Mohammad Azad (alias Azad Mian) was apprehended with a bag containing eight live bombs, a loaded .315 bore country-made pistol in his waistband, and six live cartridges in his rear pocket. The witness noted the recovery of a second discarded loaded pistol and recorded the confession of accused naming accomplices Wasim Lalu and Diamom Mian, who were hired by Sunil Singh and Dhananjay Mandal to assassinate Kullo Yadav. During cross-examination, the witness detailed the site's geography near the HP depot and the railway line, confirming that independent witnesses were searched by the SHO and that the seized weapons were formally wrapped in



cloth and sealed at the scene using materials brought in police vehicles.

(vii) P.W.7. - This witness has deposed that the Investigating Officer, testified that during the investigation, he inspected the crime scene located approximately 40 feet north of the Bhola Nath pul and 25 feet east of the paved road leading to the petrol pump. He described the site as being adjacent to the Bharat Petroleum boundary wall, with access roads leading west and south toward the Bhagalpur-Sahibganj railway line, which lies 25 feet to the south. The witness noted a Peepal tree to the north and the residence of Parvati Devi nearby. He confirmed recording the statements of the complainant and the accused, obtaining the forensic examination report for the seized items as documented in the case diary and overseeing the disposal of the recovered bombs.

(viii) P.W.8. - This witness has deposed that Investigating Officer, testified that during the course of the investigation, he obtained the formal prosecution sanction order from the In-charge Deputy Collector of the Bhagalpur Legal Cell and subsequently submitted the charge sheet against the accused. However, during cross-examination, he admitted that he did not record the statement of any witness in this case and



could not identify the specific official in charge of the Legal Cell. He further conceded that the sanctioning order was neither signed nor marked in his presence, highlighting a lack of direct involvement in the administrative execution of the legal documentation.

(ix) P.W. 9. - This witness has deposed that the forensic laboratory report related to Ishakchak P.S. Case No. 119/09 was signed by Senior Scientist S.N. Yadav of the Patna FSL and officially submitted by the department. While identifying the report as an exhibit, he admitted during cross-examination that the document was not authored in his presence, he had never personally worked with S.N. Yadav, and the report was not formally marked or signed before him, confirming his role was limited to producing the record in court.

13. On the basis of materials surfaced during the trial, the appellant/accused was examined under Section 313 of the Cr.PC by putting incriminating circumstances/evidences surfaced against him, which he denied and shows his complete innocence.

14. It would be appropriate to reproduce the provisions of Sections 25(1-B) and 26 of the Arms Act for the sake of convenience and better understanding of the facts, which



are as under:-

“25(1-B). Punishment for certain offences
Whoever—

(a) acquires, has in his possession or carries any firearm or ammunition in contravention of section 3; or

(b) acquires, has in his possession or carries in any place specified by notification under section 4 any arms of such class or description as has been specified in that notification in contravention of that section; or

(c) sells or transfers any firearm which does not bear the name of the maker, manufacturer's number or other identification mark stamped or otherwise shown thereon as required by sub-section (2) of section 8 or does any act in contravention of sub-section (1) of that section; or

(d) being a person to whom sub-clause (ii) or sub-clause (iii) of clause (a) of sub-section (1) of section 9 applies, acquires, has in his possession or carries any firearm or ammunition in contravention of that section; or

(e) sells or transfers, or converts, repairs, tests or proves any firearm or ammunition in contravention of clause (b) of sub-section (1) of section 9; or

(f) brings into, or takes out of, India, any arms or ammunition in contravention of section 10; or

(g) transports any arms or ammunition in contravention of section 12; or

(h) fails to deposit arms or ammunition as required by sub-section (2) of section 3, or sub-section (1) of section 21; or

(i) being a manufacturer of, or dealer in, arms or ammunition, fails, on being required to do so by rules made under section 44, to maintain a record or account or to make therein all such entries as are required by such rules or intentionally makes a false entry therein or prevents or obstructs the inspection of such record or account or the making of copies of entries therefrom or prevents or obstructs the entry into any premises or other place where arms or ammunition are or is manufactured or kept or intentionally fails to exhibit or conceals



such arms or ammunition or refuses to point out where the same are or is manufactured or kept, shall be punishable with imprisonment for a term which shall not be less than 3[one year] but which may extend to three years and shall also be liable to fine:

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than 3[one year].

26. Secret contraventions.—*(1) Whoever does any act in contravention of any of the provisions of section 3, 4, 10 or 12 in such manner as to indicate an intention that such act may not be known to any public servant or to any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to seven years and also with fine.*

(2) Whoever does any act in contravention of any of the provisions of section 5, 6, 7 or 11 in such manner as to indicate an intention that such act may not be known to any public servant or to any person employed or working upon a railway, aircraft, vessel, vehicle or any other means of conveyance, shall be punishable with imprisonment for a term which shall not be less than five years but which may extend to ten years and also with fine.

(3) Whoever on any search being made under section 22 conceals or attempts to conceal any arms or ammunition, shall be punishable with imprisonment for a term which may extend to ten years and also with fine.

15. The record reveals that P.W.1 to P.W.6 have generally supported the prosecution case regarding the raid, apprehension of the accused, and recovery of bombs, pistol, and cartridges however, their testimonies are mainly from police



officials and lack independent public corroboration despite the place of occurrence being crowded. Further, P.W.8 and P.W.9 are formal witnesses who admitted limited knowledge about key aspects such as sanction and forensic reports, as these were not prepared or signed in their presence. Minor inconsistencies also appear regarding recovery and procedural compliance. Therefore, while the prosecution version is broadly supported, the absence of independent witnesses and procedural lapses weaken the evidentiary value of the testimonies in establishing guilt conclusively.

16. Section 100 (6) of the CrPc , mandates that a search must be conducted and seizure list must be supported by such witnesses, underscores the importance of procedural fairness and transparency. In the present case, although the seizure list was prepared by P.W.-1 (Ajay Kumar Mishra) and was stated to have been signed by witnesses, the failure to examine or properly present these witnesses during the course of trial amounts to non-compliance with the mandatory safeguards envisaged under Section 100 (6) of the CrPc. Such omission weakens the prosecution's case, as the evidentiary value of the seizure list remains uncorroborated by independent testimony, thereby casting doubt on the authenticity of the



search and seizure and failing to substantiate the allegations against the appellant in accordance with the requirements of Code of Criminal Procedure, 1973.

17. Upon a careful and comprehensive consideration of the entire evidence on record and the law laid down by the Apex Court, it is evident that the prosecution witnesses have consistently supported the case regarding apprehension of the accused and recovery of arms and explosives from his possession, which establishes his conscious possession in light of the principles settled by the Apex Court. A reference, in this regard, can be taken from the law laid down by the Apex Court in the case of ***Gunwantlal vs. State of Madhya Pradesh*** reported in (1972) 2 SCC 194 in para no. 5 which is reproduced hereinafter :

“5. What is meant by possession in the context of this section? Is it that the person charged should be shown to be in physical possession or is it sufficient for the purposes of that provision that he has constructive possession of any firearm or ammunition in contravention of Section 3 which prohibits him to be in such possession without a licence. It may be mentioned that under Section 19 of the Arms Act, 1878, an offence corresponding to Section 25(1)(a) is committed if a person had in his or under his control any arms or ammunition in contravention of Sections 14 and 15 of that Act. The word “control” under Section 25(1)(a) has been omitted. Does this deletion amount to the Legislature confining the offence only to the case of a person who has physical possession or does it mean that a person will be considered to be in possession of a firearm over which he has



constructive possession or over which he exercises the power to obtain possession thereof when he so intends? If the meaning to be given to the word "possession" is that it should be a physical possession only, then certainly the charge as framed on the facts of the prosecution case will not be sustainable but if the meaning to be given to the word "possession" is wider than that of actual or physical possession then it is possible, if the evidence produced by the prosecution is such as would sustain a finding, that he had constructive possession on September 17, 1966, when he handed it over to Miroo and Miroo handed it over to Chhaganlal because if it was not seized from Chhaganlal, the appellant could have at any time got back the physical possession of the revolver through Miroo. The possession of a firearm under the Arms Act in our view must have, firstly the element of consciousness or knowledge of that possession in the person charged with such offence and secondly where he has not the actual physical possession, he has nonetheless a power or control over that weapon so that his possession thereon continues despite physical possession being in someone else. If this were not so, then an owner of a house who leaves an unlicensed gun in that house but is not present when it was recovered by the police can plead that he was not in possession of it even though he had himself consciously kept it there when he went out. Similarly, if he goes out of the house during the day and in the meantime some one conceals a pistol in his house and during his absence, the police arrives and discovers the pistol, he cannot be charged with the offence unless it can be shown that he had knowledge of the weapon being placed in his house. And yet again if a gun or firearm is given to his servant in the house to clean it, though the physical possession is with him nonetheless possession of it will be that of the owner. The concept of possession is not easy to comprehend as writers of Jurisprudence have had occasions to point out. In some cases under Section 19(1)(f) of the Arms Act, 1878 it has been held that the word "possession" means exclusive possession and the word "control" means effective control but this does not solve the problem. As we said earlier, the first precondition for an offence under Section 25(1)(a) is the element of intention, consciousness or knowledge with which a person possessed the firearm before it can be said to constitute an offence and secondly that possession need not be physical possession but can be constructive, having power



and control over the gun, while the person to whom physical possession is given holds it subject to that power and control. In any disputed question of possession, specific facts admitted or proved will alone establish the existence of the de facto relation of control or the dominion of the person over it necessary to determine whether that person was or was not in possession of the thing in question. In this view it is difficult at this stage to postulate as to what the evidence will be and we do not therefore venture to speculate thereon. In the view we have taken, if the possession of the appellant includes the constructive possession of the firearm in question then even though he had parted with physical possession on the date when it was recovered, he will nonetheless be deemed to be in possession of that firearm. If so, the charge that he was in possession of the revolver on September 17, 1966, does not suffer from any defect particularly when he is definitely informed in that charge that he had control over that revolver. It is also apparent that the words "on or before" were intended to bring home to the accused that he was not only in constructive possession of it on September 17, 1966, but that he was in actual physical possession of it prior to that date when he gave it to Miroo. It is submitted, however, that the word "on or before" might cause embarrassment and prejudice to the defence of the accused because he will not be in a position to know what the prosecution actually intends to allege. From a reference of Form XXVIII of Schedule 5 of the Code of Criminal Procedure, the mode of charging a person is that he "on or about"... did the act complained of. In view of the forms of the charge given in the Schedule to the Code, we think that it would be fair to the appellant if the charge is amended to read 'on or about' instead of 'on or before' which we accordingly order."

18. The Forensic Science Laboratory (FSL) report has been referred to during the course of investigation. As per the opinion of the expert, a prohibited and sensitive explosive mixture of Arsenic Sulphide and Potassium Chlorate was



detected in the contents of the first glass phial. Further, in the second glass phial, a similar prohibited explosive mixture along with Aluminium, Sulphur and Potassium Nitrate was detected. The expert has opined that the samples at Sl. No. 1 and 2 were constituents of country-made bombs.

19. However, certain procedural irregularities like absence of independent public witnesses, and limited evidentiary value of formal witnesses have been noted, though they do not materially dislodge the core prosecution version relating to recovery from the person of the accused-appellant.

20. In view of the law laid down by the Apex Court and the facts and circumstances of the present case, it appears that the appellant was apprehended in conscious possession of incriminating articles, namely eight improvised explosive devices recovered from a bag (*jhola*) carried by him, along with a country-made pistol and six live cartridges recovered from his possession. The said recovery from the possession of the appellant clearly attracts the provisions of Sections 25(1-B) and 26 of the Arms Act, and the learned trial court, upon appreciation of the evidence on record, has rightly convicted the appellant thereunder.

21. Considering the facts and circumstances of the



case, I am not inclined to interfere with the judgment dated 28.05.2010 and order of sentence dated 31.05.2010 passed in Sessions Trial No. 459 of 2009 by Additional District and Sessions Judge-IV, Bhagalpur, however, the sentence to undergo rigorous imprisonment for 3 years is modified to the period already undergone by the appellant in custody *i.e.* two and half years. Since the appellant is on bail, as such, he is discharged from the liability of his bail bonds. The fine deposited by the appellant, if any, shall be refunded to him.

22. The appeal stands partly allowed.

23. Office is directed to send back the lower court records along with a copy of the judgment to the learned District Court forthwith.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	17.04.2026
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