

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.573 of 2014

Arising Out of PS. Case No.-233 Year-2007 Thana- NAUTAN District- West Champaran

Birbal Yadav Son of Ramnath Yadav resident of village- Pashchim Kargahiya,
Police Station- Bettiah Town, District- West Champaran

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Bashishtha Nr. Mishra, Advocate
For the Respondent/s : Mr. Bipin Kumar, App

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 21-04-2026

Heard Mr. Bashishtha Nr. Mishra, learned counsel appearing on behalf of the appellant and Mr. Bipin Kumar, learned APP for the State.

2. The present appeal has been filed under Section 374 (2) of the Code of Criminal Procedure challenging the judgment of conviction and order of sentence dated 21.10.2014 passed by the learned Additional District and Sessions Judge, 6th, Bettiah, District West Champaran in T.R. No.4 of 2008 arising out of Nautan P.S. Case No. 233 of 2007 whereby and whereunder the appellant has been convicted for the offence punishable under Section 20(ii),(B) and 22(A) of the NDPS Act and has been sentenced to undergo Rigorous Imprisonment for seven years along with a fine of Rs.20,000/- under Sections 20(ii),(B) of the



NDPS Act and further sentenced to undergo Rigorous Imprisonment for seven years along with a fine of Rs.20,000/- under Section 22(A) of the NDPS Act and in default of payment of fine to further undergo Imprisonment for four months.

BRIEF FACTS OF THE CASE

3. The prosecution case, in brief, as unfolded in the self-written statement (fardbeyan) of the informant, Sub-Inspector Randhir Kumar Singh, is that on 14.10.2007 at about 8:30 PM he received secret information that two accused persons, namely Birbal Yadav (appellant) and Pradeep Yadav, who were also wanted in Bettiah Town P.S. Case No. 240/2007, were present in the area of Banhaura Bazaar and were attempting to form a criminal gang by contacting their associates and had also indulged in illegal trade of contraband substances such as *ganja*, *charas* and opium for the purpose of procuring arms and ammunition. Acting upon such information, the informant along with other police personnel proceeded towards the place of occurrence, and upon reaching Banhaura Bazaar at about 8:45 PM, on further input that the accused were likely to pass through a particular route, the police party took position at a secluded place and kept surveillance, whereafter a motorcycle coming from the northern direction was noticed and on seeing



the police in the light of the motorcycle, the riders attempted to flee but were apprehended. On interrogation, they disclosed their names as Birbal Yadav and Pradeep Yadav, and in presence of two independent witnesses, a personal search was conducted during which 1.5 kg of suspected contraband substance wrapped in a paper packet was recovered from the possession of Birbal Yadav along with a country-made pistol loaded with one live 3.15 bore cartridge from his person, and further two live 3.15 bore cartridges and one .303 bore cartridge were recovered from his shirt pocket, while co-accused Pradeep Yadav claimed ownership of the motorcycle but failed to produce any registration documents or driving license. Since the accused persons could not produce any valid license or authority for possession of the recovered arms, ammunition and contraband articles, the same were seized under a properly prepared seizure list in presence of independent witnesses and copies thereof were furnished to the accused, and thereafter both the accused persons were arrested for offences relating to unlawful possession of arms, ammunition and contraband substances.

4. On the basis of the statement of the informant, the F.I.R being Nautan P.S. Case No. 233 of 2007 was registered for the offences under sections 414 of the IPC, 25(1-B), 26/35 of



the Arms Act and Sections 20/22 of the N.D.P.S. Act. After institution of the FIR, the police proceeded with the investigation and after completion of investigation, charge-sheet was submitted. Thereafter, the learned trial court took cognizance against the appellant and the case was committed to the Court of Sessions for trial.

ARGUMENT ON BEHALF OF THE APPELLANTS

5. Mr. Bashishtha Nr. Mishra, learned counsel appearing on behalf of the appellant, submits that the appellant has already undergone custody for a period of 7 years and 2 months, which exceeds the substantive sentence imposed upon him. It is further submitted that the appellant has not deposited the total fine of Rs. 40,000/-, comprising Rs. 20,000/- under Section 20(ii)(B) and Rs. 20,000/- under Section 22(A) of the NDPS Act, and in default thereof, the learned trial court directed that the appellant would undergo further imprisonment for four months, with both sentences directed to run concurrently. It is also submitted that the appellant belongs to a marginalized section of society and does not possess sufficient means to pay the total fine amount of Rs. 40,000/-, and for him and his family members, the said amount is substantial, due to which they faced considerable hardship in arranging the same even after the



sentence was passed on 21.10.2014.

6. Learned counsel further contends that in default of making payment of fine, the appellant has already undergone period of about two months in custody more than the sentence awarded, therefore, he prays that the remaining default sentence of four months may be reduced to two months already undergone in the facts and circumstances of the present appeal in light of the judgment passed by the Apex Court in case of *Shanti Lal Vs. State of M.P.* reported in (2007) 11 SCC 243.

ARGUMENT ON BEHALF OF THE STATE

7. 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 has rightly convicted the appellant on the basis of material and evidences produced in course of trial. Trial court has committed no error, either in fact or in law. The impugned judgment requires no interference.

ANALYSIS AND CONCLUSION

8. Heard the parties.

9. The record reveals that the appellant was taken into custody on 14.10.2007 and remanded to judicial custody on 15.10.2007, thereafter, the impugned judgment of sentence was passed on 21.10.2014. In the present appeal, sentence of the



appellant was suspended and he was released on bail *vide* order dated 16.12.2014. It is evident that the appellant has already undergone a period of custody equivalent to the substantive sentence of seven years, along with an additional period of approximately two months in default of payment of fine. In these circumstances, particularly considering that only about two months of the default sentence remains, this Court may consider exercising its discretion in respect of the remaining default sentence.

10. However, the present appeal is confined to the question of sentence. Learned counsel appearing on behalf of the appellant has submitted that the appellant does not assail the finding of conviction but prays for leniency in the matter of sentence, particularly on the ground that he is a person of limited means and is not in a financial position to pay the fine imposed by the learned Trial Court. It has further been submitted that the appellant has already undergone substantial period of incarceration during trial and thereafter no previous criminal antecedent has been brought on record against him.

11. Considering the aforesaid submissions, as also the facts and circumstances of the case, including the quantity of contraband being more than small quantity but less than



commercial quantity, this Court is of the opinion that while the substantive sentence imposed upon the appellant does not call for interference, some indulgence can be shown in respect of the sentence of fine. Accordingly, the fine imposed by the Trial Court is reduced to a reasonable extent, and in default thereof, the period of imprisonment awarded in lieu of fine is also correspondingly reduced in light of the observation made by the Apex Court in case of *Shanti Lal (Supra)*.

12. For the reasons aforesaid, the appeal is partly allowed. The conviction of the appellant is affirmed and the order of payment of fine of Rs. 40,000/- is upheld. However, the order that in default of payment of fine, the appellant shall undergo imprisonment is modified and reduced to imprisonment for two months. To that extent, the appeal is allowed. It is noted that the appellant has already undergone substantive sentence of rigorous imprisonment for 7 years and has further undergone 2 months out of the default sentence of four months. If the appellant has undergone the substantive sentence as aforesaid and completes the remaining period of default sentence as modified herein, he shall be set at liberty forthwith unless required in any other case. If the appellant has not completed the said period, he shall be released after the period indicated



hereinabove is over.

13. The appeal stands disposed of accordingly.

14. 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)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
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