2026:JHHC:12716

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J) No.213 of 2019

[Against the Judgment of conviction and Order of sentence dated 19.02.2019, passed by the learned Additional Sessions Judge-III, Palamau at Daltonganj, in Sessions Trial No.94 of 2017, arising out of Sadar (Town) P.S. Case No.252 of 2016 (G.R. No.1744 of 2016)]

Dablu Kumar Paswan aged about 22 years, S/o Baban Paswan, R/o Village – Bhuduya, P.O & P.S. - Patan, District – Palamau. ..... **Appellant**

Versus

The State of Jharkhand ..... **Respondent**

PRESENT
HON'BLE MR. JUSTICE RAJESH KUMAR

For the Appellant : Mr. Sheo Kr. Singh, Advocate
Mr. Vishwajeet Kr. Tiwari, Advocate
For the State : Mr. Saket Kumar, A.P.P

Order No.06/ Dated: 30th April, 2026

1. Heard Mr. Sheo Kumar Singh, learned counsel for the appellant and Mr. Saket Kumar, learned A.P.P.

2. The present appeal is directed against the Judgment of conviction and order of sentence dated 19.02.2019, passed by the learned Additional Sessions Judge-III, Palamau at Daltonganj, in Sessions Trial No.94 of 2017, arising out of Sadar (Town) P.S. Case No.252 of 2016 (G.R. No.1744 of 2016), whereby the appellant has been convicted for the offence under Sections 25(1B) (a)/ 26/35 of the Arms Act, and has been sentenced to undergo rigorous imprisonment for three years with fine of Rs.5,000/- (Five thousand) for the offence under Section

25(1B) (a) of the Arms Act and for the offence under Section 26 of the Arms Act, he is directed to undergo rigorous imprisonment for three years with fine of Rs.5,000/- with default clause. All the sentences were directed to run concurrently.

3. The criminal law has been put into motion by lodging an F.I.R being Sadar (Town) P.S. Case No.252 of 2016 under Sections 399/ 402 IPC and Sections 25(1-b)a/ 26/35 of the Arms Act against three accused persons including the present appellant.

The prosecution story, in short, is based upon the *fardbeyan* of Sheikh Ishrar Ahmad, Incharge of T.O.P No.1, that on 4.10.16 the informant along with forces of Tiger mobile were on patrolling duty and at about 13.00 hours while they were at Chahmuhan chouk the informant got secret information that three boys armed with weapons are standing in front of Government Bus Stand to commit loot. Pursuant to which the informant made information to the superior officer and thereafter proceeded to the place of occurrence and after seeing the informant and the police force, three boys started fleeing away and the informant with help of police force nabbed all the three boys, who disclosed their names as Deepak Kumar Pandey, Dablu Paswan and Rakesh Kumar Paswan. On search of their persons one 12 bore country made loaded revolver kept in the pocket of Rakesh Kumar Paswan, one live cartridge from the pocket of Deepak Kumar Pandey and one mobile

was recovered from the possession of Dablu Paswan. They could not show any valid papers regarding the seized articles and Rakesh Paswan and Dablu Paswan disclosed that Deepak Panddy had called them for committing loot of bank money which goes to Garhwa from Daltonganj and they also disclosed that Deepak Pandey had given the pistol to Rakesh and they were acting pursuant to direction of Deepak Pandey. Three seizure list were prepared in three separate sheets and the case was lodged.

The police, after completing the investigation, has submitted the charge-sheet for the offence under Sections 399/ 402 IPC and Sections 25(1-b)a/ 26/35 of the Arms Act and the trial court has framed the charge under Sections 25(1-b)A/35 and 26(II)/ 35 of the Arms Act against the present appellant and two other co-accused persons. Thereafter, the case has been committed to the court of Sessions to which the appellant has pleaded innocence and claimed to be tried and accordingly, the trial has commenced.

4. To substantiate the charges, the prosecution has examined altogether 09 witnesses and their depositions, in short, are as follows:-

5. **P.W.-1, Md. Arif Alam**, is Police personnel and member of the raiding party. He has stated that seizure has been made before two independent witnesses. He has stated that from the possession of the present appellant only one mobile phone was recovered and the arms have

been recovered from the co-convicts.

In cross-examination, he has deposed that he has put signature on search paper and not on the seizure list.

6. **P.W.-2, Pandit Koutuk Kumar**, is constable and member of police party. He has supported the prosecution story.

In cross-examination, he was unable to recognize the accused persons.

7. **P.W.-3, Chandrapakash Shukla,** is constable and member of raiding party. He has also supported the prosecution story. He has identified the accused in the court.

8. **P.W.-4, Rakesh Kumar Singh,** is constable and also member of the raiding party. He has also supported the prosecution story.

9. **P.W.-5, Sheikh Ibrar Ahmad,** is the informant of the case and member of the raiding team. He has supported the prosecution story. He has proved Ext.-1, 1/1 & 2 .

In cross-examination, he has admitted that after preparing the seizure list, it was not sealed.

10. **P.W.-6, Sunil Kumar Gupta,** is a formal witness.

11. **P.W.-7, Ram Sundar Mahto,** is the Investigating Officer of the case and supported the prosecution story.

In cross-examination, he has admitted that he has not recorded the statement of the independent witnesses.

12. **P.W.-8, Samir Kumar,** is the Sergeant Major, who has examined the sealed articles. He has proved Ext.-4 i.e.

test report.

13. **P.W.-9, Naresh Paswan,** is the another investigating officer of the case. He has proved Ext.-5 i.e. sanction order of D.C., Palamau.

In cross-examination, he has admitted that he has not recorded the statement of any witnesses.

14. On culmination of trial, the trial Court has found all the three accused persons guilty. The appellant has been found guilty for the offence under Sections 25 (1B)(a) and 26/35 of the Arms Act and sentenced him, as stated above.

15. Being aggrieved by the aforesaid judgment of conviction, the appellant has preferred the present appeal.

16. Learned counsel for the appellant has drawn attention of this Court that the present appellant has been convicted by the trial court by taking benefit of Section 35 of the Arms Act, which is not applicable in the facts and circumstances of the present case, as the recovery of arms and ammunition is from the person of co-convicts namely, Deepak Kumar Pandey and Rakesh Kumar Paswan and from the person of this appellant, only a mobile phone has been recovered, which gets support from the deposition of the witnesses and seizure list, as discussed above.

On the above basis, prayer has been made that the judgment of conviction and order of sentence, be quashed and set aside and the appellant, be acquitted.

17. On the other hand, learned counsel for the State has supported the judgment of conviction and order of

sentence, but could not dispute the factual matrix and the materials brought on record.

18. Having heard learned counsel for the parties and from perusal of the records, it appears that the prosecution evidence is very clear that the recovery of arms is from the person of the co-convicts and from this appellant, only a mobile phone has been recovered.

Section 35 of the Arms Act reads as under :-

> ***"35. Criminal responsibility of persons in occupation of premises in certain cases.***
> *- Where any arms or ammunition in respect of which any offence under this Act has been or is being committed are or is found in any premises, vehicle or other place in the joint occupation or under the joint control of several persons, each of such persons in respect of whom there is reason to believe that he was aware of the existence of the arms or ammunition in the premises, vehicle or other place shall, unless the contrary is proved, be liable for that offence in the same manner as if it has been or is being committed by him alone."*

19. Thus, the necessary ingredients for invoking Section 35 of the Arms Act is joint possession either of the vehicle or premises. If the recovery of arms is from the person of the co-convicts, then the aid of Section 35 cannot be taken to convict the accused/ appellant.

20. In view of above settled legal position and the materials brought on record, this Court finds that the conviction of the present appellant for the offence under Sections 25 (1B)(a) and 26/35 of the Arms Act, taking the aid of Section 35 of the Arms Act, is not sustainable and as such, the Judgment of conviction and order of sentence dated 19.02.2019, passed by the learned Additional Sessions Judge-III, Palamau at Daltonganj, in Sessions Trial

No.94 of 2017, arising out of Sadar (Town) P.S. Case No.252 of 2016 (G.R. No.1744 of 2016), is, hereby, quashed and set aside, so far as the present appellant is concerned.

21. In the result, the appeal stands allowed and accordingly disposed of.

22. The appellant is on the bail, hence, he is discharged from the liability of bail bond.

23. Let the Trial Court Records be sent back to the Court concerned forthwith, along with the copy of this Judgment.

(Rajesh Kumar, J.)

Jharkhand High Court, Ranchi
Dated, the 30th April, 2026
Ravi-Chandan/- **NAFR**
Uploaded on 04.05.2026