2026:JHHC:33554

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J) No.1016 of 2026
(CNR. JHHC010368532026)

[Against the Judgment of conviction and Order of sentence dated 30.09.2026, passed by the learned Sessions Judge, Bokaro in N.D.P.S Case No.05 of 2024, arising out of Gomia P.S. Case No.43 of 2024]

Mahendra Prasad aged about 61 years, S/o Late Gopeshwar Prasad, Resident of Patwa, Tola Hosir, P.O & P.S. - Gomia, District Bokaro, Jharkhand. **..... Appellant**

Versus

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

PRESENT
HON'BLE MR. JUSTICE RAJESH KUMAR

For the Appellant : Mr. Vishal Srivastava, Advocate
For the State : Mr. B. N. Ojha, Spl.P.P

Order No.03/ Dated: 25th November, 2026

1. Heard Mr. Vishal Srivastava, learned counsel for the appellant and Mr. Bhola Nath Ojha, learned Special P.P.

2. The present appeal is directed against the Judgment of conviction and order of sentence dated 30.09.2026, passed by the learned Sessions Judge, Bokaro, in N.D.P.S Case No.05 of 2024, arising out of Gomia P.S. Case No.43 of 2024, whereby the appellant has been convicted for the offence under Section 20(b)(ii)(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (in short N.D.P.S Act) and has been sentenced to undergo simple imprisonment for six months with fine of Rs.10,000/- (Ten thousand) and in default thereof, he has further been directed to undergo simple imprisonment for one month.

3. The prosecution story, in short, is based on the self

written report of informant namely, Nityanand Bhokta, Sub-Inspector of Police, stating therein that on 05.05.2024 at about 6:00 a.m., a secret information was received that a person with *Ganja* will crosse through Hosir, Subhash Chowk. After entering the said information into station diary, he has informed the senior police official and as per their direction, a team was constituted, consisting of S.I cum Officer-in-charge Nityanand Bhokta, S.I Arun Kumar, S.I Birsa Bara, Havaldar Kamesh Prasad Yadav, Constable No.1582 Shamim Ansari, Constable No.1699 Sandeep Hansda, Constable No.1569 Dharmendra Rawani, Driver Constable Jamuna Yadav, Chowkidar Vikash Kumar headed by the Bermo S.D.P.O B.N. Singh. Thereafter, they reached Subhash Chowk, Hosir and started conducting checkpoint at Subhash Chowk. In the meantime, a person was coming having bag in his hand and after seeing the police team, he started fleeing away after leaving the bag, who was apprehended by the police on chase. He disclosed his name as Mahendra Prasad and on inquiry, he did not reply satisfactorily. Thereafter, notice under Section 50 of the N.D.P.S Act was served to him for his search, upon which, the apprehended person was ready for search of his bag. Thereafter, in presence of two witnesses namely S.I Arun Kumar, S.I Birsa Bara and the S.D.P.O, Bermo search was made. During course of the search, total 160 small and big sachets of *Ganja*, one electronic weighing machine and two *chillam* were recovered from his bag. On demand, the

apprehended person failed to produce the relevant documents relating to recovered *Ganja*. The recovered Ganja had been weighed by electronic weighing machine in presence of the S.D.P.O, Bermo and two witnesses. The said *Ganja* had been weighted and found total 870 grams. Thereafter, recovered *Ganja* was seized by the the S.D.P.O, Bermo by preparing seizure list and sealed it. He has also arrested the accused Mahendra Prasad .

On the basis of above written report of the informant, Gomia P.S. Case No.43 of 2024 has been registered against the accused for the offence under Sections 20(b) and 32(B) of the NDPS Act and the police, after completing the investigation, has submitted the charge-sheet. The trial court has framed the charge on 17.03.2025 under Section 20(b)(ii)(A) of the NDPS Act against the present appellant. Thereafter, the case has been committed to the court of Sessions to which the appellant hase pleaded innocence and claimed to be tried and accordingly, the trial has commenced.

4. To substantiate the charges, the prosecution has examined altogether 07 witnesses and their depositions, in short, are as follows:-

5. **P.W.-1, Arun Kumar,** is Sub- Inspector of Police and a member of the raiding team. He has supported the prosecution case. He has apprehended the accused after chasing him. He found narcotics substance from the possession of the accused but the accused has not given

any satisfactory reply with regard to the seized item. He has put his signature on the seizure list marked as Ext. P1/PW-1. During cross examination he has stated that the seizure list was prepared at the place of occurrence and he has not weighed the ganja. In paragraph No. 9 he has deposed that a notice was served upon the accused prior to his search and his receipt, acknowledging the same, was obtained. At paragraph No.11 he has stated that apart from the seizure list, an arrest memo was also prepared at the place of occurrence.

6. **P.W.-2, Shamim Ansari,** is a Constable and a member of the raiding team. He has also supported the prosecution story. He has claimed to identify the accused. In his cross examination, he has deposed that he along with two other police personnel have arrested the accused and when the accused was running away, he threw his bag. Further no any documents relating to the identification of the accused was found from the said bag. In paragraph No.7, he has stated that they saw the accused throwing the bag, but neither video was recorded nor photograph was taken at that time.

7. **P.W.-3, Nityanand Bhokta,** is the Officer in-charge of the Gomia P.S. and informant of this case. He has also proved the prosecution story. He has proved the arrest memo of the accused and prepared self written statement at the place of the occurrence and put his signature thereon. He has identified the endorsement regarding

registration of the FIR and also identified the notice under Section 50 of the NDPS Act which was served upon the accused during the search. During cross examination he has stated that he has himself arrested the accused. At the time of arrest of the accused nothing was recovered from his person but a bag was found. While apprehending, the accused threw the said bag which was searched by him but found no identification documents. He has stated that at the instance of the S.D.P.O., he has prepared the seizure list. He has also admitted that the accused was given an opportunity to take the personal search but he refused to do so. He has not mentioned this fact in his application.

8. **P.W.-4, Kamesh Prasad Yadav,** is Head Constable and a member of the police party. He has also supported the case. In cross examination, he has deposed that at the place of occurrence several persons were moving around the checking point. They had not offered their personal search to any independent witness at the place of occurrence. The alleged bag was in the hand of the accused and the Officer in-charge has seized the said bag. All the documents were prepared at the place of occurrence.

9. **P.W.-5, Sandeep Kumar Hansda,** is a Constable and also member of the raiding team. He has also supported the case. During cross examination he has stated that he did not remember whether he had signed any document at the place of occurrence. He has deposed that the seizure

list was prepared at the place of occurrence. He has stated that he had no knowledge as to whether the accused had fled along with the bag or had left the bag behind.

10. **P.W.-6, Birsa Bara,** is the Investigating Officer of this case and also a member of the raiding team. He has investigated in the matter and identified the formal FIR marked as Ext. P-5/PW-6. He has re-recorded the statement of the accused during investigation. He has also identified and proved the seizure list prepared by him. He has also recorded the statement of witnesses and sent the seized material to the SFSL, Ranchi for examination. After examination of the seized article he received the report from the SFSL. After completion of the investigation he has submitted the charge sheet against the accused. During cross examination, he has stated that the informant has handed over him the seizure list, ganja, weighing machine, etc.. He has stated that in the seizure list it was not mentioned that the seized items were recovered from the accused. In Paragraph -19, he has stated that it not mentioned in the arrest memo from where the accused was arrested, nor is it mentioned what was recovered from him. He has also admitted that at the time of raid, no independent witness was present. He has stated that the accused has threw the bag while apprehending. He has also stated that he neither took photographs nor recorded any video.

11. **P.W.-7, Akhilesh Kumar,** is Assistant Sub-Inspector

of Police and he has stated that he brought the seized articles along with the *challan* before the Court. During Cross examination he has stated that nothing was written on the material exhibits to indicate from whom they had been seized and did not bear the signature of the accused. He has also stated that the signature was not found on the seized sachets and their individual weights were not mentioned, only total weight was recorded

12. On consideration of above materials on record, the trial Court has found the appellant guilty for the offence under Section 20(b)(ii)(A) of the NDPS Act and sentenced him, as stated above.

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

14. Learned counsel for the appellant, considering the materials available on record, has to chosen not to challenge so far as the judgment of conviction is concerned, but on the sentencing part, submission has been advanced which is as follows :-

(a) reference has been to Section 32-B of the NDPS Act, 1985, which reads as under :-

> *"**32-B. Factors to be taken into account for imposing higher than the minimum punishment.** — Where a minimum term of imprisonment or amount of fine is prescribed for any offence committed under this Act, the court may, in addition to such factors as it may deem fit, take into account the following factors for imposing a punishment higher than the minimum term of imprisonment or amount of fine, namely:--*
>
> *(a) the use or threat of use of violence or arms by the offender;*
>
> *(b) the fact that the offender holds a public office*

and that he has taken advantage of that office in committing the offence;

(c) the fact that the minors are affected by the offence or the minors are used for the commission of an offence;

(d) the fact that the offence is committed in an educational institution or social service facility or in the immediate vicinity of such institution or faculty or in other place to which school children and students resort for educational, sports and social activities.;

(e) the fact that the offender belongs to organised international or any other criminal group which is involved in the commission of the offences; and

(f) the fact that the offender is involved in other illegal activities facilitated by commission of the offence."

On the strength of above section, it has been submitted that the maximum sentence is prescribed for one year imprisonment or fine of Rs.10,000/- or both and in the present case no aggravating circumstances has been brought on record, rather the mitigating circumstances is available which are :-

(i) the appellant is aged about more than 60 years,

(ii) he is the only bread earner in his family, and

(iii) he has no criminal history.

(b) in the absence of aggravating circumstances and presence of the mitigating circumstances, sentencing part has not been properly done by the learned trial court.

In that view of the matter, prayer has been made for

reduction of the sentencing part to the period already undergone by the appellant.

15. On the other hand, learned counsel for the State has supported the judgment of conviction and order of sentence, but could not point out any aggravating circumstances. Learned counsel for the State has brought on record the custody report of the appellant and as per the custody report, the appellant has remained in custody for about three months.

16. Considering the above facts, especially the mitigating circumstances, the sentencing part is hereby, reduced to the period already undergone by the appellant and the fine amount and default punishment is maintained.

17. With above reduction in the sentencing part, the present appeal is, hereby, disposed of.

18. In view of disposal of the present criminal appeal, the pending interlocutory application being I.A. No.14484 of 2026, also stands disposed of.

19. The appellant is in custody and as such, he is directed to be released from the jail custody, subject to deposition of the fine amount, as imposed by the trial court and if not wanted in any other case.

20. 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 25th November, 2026
Chandan/- **NAFR**
Uploaded on 26.11.2026