

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (SJ) No. 208 of 2025

....
Abhishek Tiwari @ Monu Tiwari Appellant
Versus
The State of Jharkhand Respondent
With
Cr. Appeal (SJ) No. 206 of 2025

....
Satya Prakash Chaubey @ Pintu Chaubey Appellant
Versus
The State of Jharkhand Respondent

PRESENT
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. Pankaj Srivastava, Advocate
[Cr. Appeal (SJ) No. 208 of 2025]
Mr. Sabyasanchi, Advocate
[Cr. Appeal (SJ) No. 206 of 2025]
For the State : Mr. Abhay Kr. Tiwari, A. P. P.
[in all cases]

.....
I.A. No. 4425 of 2025 in Cr. Appeal (SJ) No. 208 of 2025

I. A. No. 5837 of 2025 in Cr. Appeal (SJ) No. 206 of 2025

C.A.V. on 13.08.2025

Pronounced on 27/08/2025

These Criminal Appeals i.e. Cr. Appeal (SJ) No. 208 of 2025 (filed on behalf of the appellant – Abhishek Tiwari @ Monu Tiwari) and Cr. Appeal (SJ) No. 206 of 2025 (filed on behalf of the appellant – Satya Prakash Chaubey @ Pintu Chaubey) are arising out of the common judgment of conviction and sentence dated 29.01.2025 passed by Sri Nalin Kumar, then learned Sessions Judge, Garhwa arising out of Kandi P. S. Case No. 20 of

2017 corresponding to G. R. Case No. 409 of 2017 [Sessions Trial Case No. 40 of 2018] and as such, these Interlocutory Applications are being heard and disposed of together.

2. These Criminal Appeals i.e. Cr. Appeal (SJ) No. 208 of 2025 and Cr. Appeal (SJ) No. 206 of 2025 have been filed on behalf of the appellants challenging the impugned judgment of conviction and sentence dated 29.01.2025 passed by Sri Nalin Kumar, then learned Sessions Judge, Garhwa arising out of Kandi P. S. Case No. 20 of 2017 corresponding to G. R. Case No. 409 of 2017 [Sessions Trial Case No. 40 of 2018] by which the appellants have been convicted for the offences under Sections 25 (1-B)(a) and Section 26 (1) of the Arms Act and sentenced to undergo R. I. for a period of five (5) years each and to pay the fine of Rs. 5,000/- each for the offence under Section 25 (1-B)(a) of the Arms Act and sentenced to undergo R. I. for a period of three (3) years each and to pay the fine of Rs. 5,000/- each for the offences under Sections 26 (1) of the Arms Act.

However, all the sentences have been directed to run concurrently.

3. The case of prosecution, in brief, as per the self-statement of S.I Ashit Kumar Singh, Officer-in-charge, Kandi P.S was recorded on 05.03.2017 at six hours at village Chauka in front of house of Vikash Dubey is that for the last few days, he was receiving information that the notorious criminals of Chauka village Vikash Dubey and Arun Dubey of village-Belhara both of whom are presently lodged in the Hazaribag jail had been in continuous contact with their colleague instructing them to collect Rangdari from the contractors working on different projects under Kandi Police Station and for assuring that the

contractors comply to their dictate, were involved in conspiring to materialize some big criminal event. A sanha in this respect was already recorded in police station. He also received information that some of the members of Vikash Dubey and Arun Dubey gang are likely to come and stay at the house of Vikash Dubey in the night and from there they have to extort money. He then informed this matter to S.P., Garhwa on 04.03.2017 at about 08:00 A.M. At about 09:45 P.M, Superintendent of Police, Garhwa directed him to come along with armed forces of Kandi P.S to his secret office at 11:30 P.M. As per the direction he along with Officer-in-charge Vijay Kumar of Chiniya P.S proceeded from Chiniya P.S while directed A.S.I Sudama Pandey of Kandi P.S to immediately move along with reserve guards to the secret office of Superintendent of Police, Garhwa. In the night about 11:15 he along with S.I Binay Kumar, Officer in-charge Chiniya, A.S.I Sudama Pandey Kandi P.S, Reserved Guard Hawaldar Munnib Rai Kandi P.S., Constable 1094 Ram Kumar Tiwari, Constable 985 Hare Krishna Prasad, Chaukidar 901 Sanjay Paswan, Chaukidar Constable 949 Nitesh Kumar Shukla were present at the secret office of Superintendent of Police. After consultation with S.P under the leadership of S.D.P.O., Garhwa Sameer Kumar, inspector Anil Singh, Officer-in-charge, Garhwa P.S, Inspector Niranjana Kumar Officer-in-charge Nagar Untari, Inspector Binay Kumar Officer-in-charge, Chiniya, he himself Officer-in-charge Kandi, A.S.I Sudama Pandey along with the forces proceeded to commit raid at village Chauka. Then on 05.03.2017 at about 01:00 A.M he along with the raiding team under the leadership of S.D.P.O., Garhwa Sameer Kumar Tirkey along with QRT Garhwa District force proceeded from secret

office of S.P., Garhwa to Kandi on official vehicles at about 02:15 A.M. All of them arrived at village Chauka and in presence of two independent witnesses Bigan Vishwakarma and Suresh Ram Chandravanshi both of village Chauka, started raiding house of criminal Vikash Dubey. In course of raid three persons tried to escape from the door behind the house, who were apprehended with the help of members of the raiding party. Upon asking they disclosed their names as (1) Pintu Chaubey @ Satya Prakash son Surendra Chaubey from whom upon search 9 MM loaded pistol with 9MM live cartridge and two mobile phones; (2) Pintu Kumar Dubey @ Sumit Kumar Dubey son of Kunj Bihari Dubey having country made loaded katta with one 315 bore cartridge; and (3) Abhishek Kumar Tiwari @ Monu Tiwari son of Ash Kumar Tiwari having a six round country made loaded revolver having 7.65 bore five live cartridge and one mobile phones, recovered from them. None of the three apprehended accused persons could produce any license documents to justify the possession of the firearms. In presence of independent witnesses the firearms recovered from three accused persons were formally sealed and seizure list prepared. Upon searching the house of Vikash Dubey, in presence of his relative Vijay Kumar Dubey as well as independent witnesses Suresh Ram Chandravanshi and Bigan Vishwakarma, from the room located in east south direction from inside the Steel Trunk one 7.65 MM country made pistol loaded with 7.65 live cartridges were recovered and for which no document was produced and a Motor-Cycle TVS Apache having registration no. JH-14E-5702 was seized. No document with regard to the motor-cycle was produced. Seizure list was prepared with regard to both the firearms and the motor-

cycle and the copy of it was handed over to the relatives of the criminal Vikash Dubey.

The accused-Pintu Chaubey @ Satya Prakash Chaubey informed that the said firearm was given to him by Arun Dubey before going to jail, whereas Abhishek Tiwari and Pintu Dubey @Sumit Kumar Dubey also told that the firearms was made available to them by Vikash Dubey. All three of them disclosed that the seized firearm from trunk belongs to Vikash Dubey as disclosed by him to them on mobile phone. The three apprehended accused persons also informed that they are involved in seeking extortion from the Contractors under the instruction received from Vikash Dubey and Arun Dubey on mobile phone.

4. I.A. No. 4425 of 2025 in Cr. Appeal (SJ) No. 208 of 2025 and I. A. No. 5837 of 2025 in Cr. Appeal (SJ) No. 206 of 2025 have been filed on behalf of the appellants namely Abhishek Tiwari @ Monu Tiwari and Satya Prakash Chaubey @ Pintu Chaubey respectively under Section 430 (1) and (2) of BNSS for the suspension of their sentences and for grant of bail, during the pendency of the Criminal Appeals.

5. Heard learned counsel for the appellants and learned A.P.P. for the State.

6. It is submitted by the learned counsel for the appellants that the impugned judgment of conviction and sentence passed by the learned Court below is illegal and not sustainable in law. It is submitted that the allegations against both the appellants are false and concocted and no firearms have been recovered from their possession and they have been falsely implicated in this case. It is submitted that seizure list witnesses

of the seized firearms have not been examined. It is submitted that there is no independent seizure list witnesses. It is submitted that there is no CDR detail of the mobile allegedly recovered from the possession of the appellants. It is submitted that Ext.- 2 is the Seizure List, which shows the recovery of the firearm at 3.30 A.M. whereas the FIR marked as Ext.5 shows that FIR was lodged at 06.00 A.M. Thus, there is contradiction in the seizure list, charges and FIR regarding the recovery of the weapons. It is submitted that maximum punishment of five (5) years has been imposed upon the appellants under Section 25 (1-B) a of the Arms Act. It is further submitted that the accused Vikash Dubey has been acquitted by the learned Trial Court, however, the learned Trial Court has wrongly convicted the appellants.

It is submitted that three persons namely Pintu Chaubey @ Satya Prakash Chaubey, Pintu Kumar Dubey @ Sumit Kumar Dubey and Abhishek Kumar Tiwari @ Monu Tiwari were apprehended and from the possession of the appellant namely Pintu Chaubey @ Satya Prakash Chaubey [Cr. Appeal (SJ) No. 206 of 2025], 9 MM loaded pistol with 9MM live cartridge and two mobile phones have been recovered and from the possession of co-convict namely Pintu Kumar Dubey @ Sumit Kumar Dubey [Cr. Appeal (SJ) No. 193 of 2025], country made loaded katta with one .315 bore cartridge had been recovered and from the possession of the appellant namely Abhishek Kumar Tiwari @ Monu Tiwari [Cr. Appeal (SJ) No. 208 of 2025], a six round country made loaded revolver having 7.65 bore five live cartridge and one mobile phones had been recovered. However, they could not produce any license documents to justify the possession of the firearms. It is also submitted that upon searching the house of

Vikash Dubey one 7.65 MM country made pistol loaded with 7.65 live cartridges were recovered and for which no document was produced.

It is submitted that so far as the appellant Abhishek Kumar Tiwari @ Monu Tiwari [Cr. Appeal (SJ) No. 208 of 2025] is concerned, the police has recovered a one country made loaded pistol having six bullets and after unloading the said country made pistol, five live cartridge of 7.65 bore and one mobile phones have been recovered from him.

It is submitted that in absence of non-examination of independent witnesses, who had proved the seizure list, the learned Trial Court has committed grave illegality in convicting the appellants. It is submitted that during trial the appellants were in custody for around two (2) months and after conviction, they are in custody for around seven (7) months i.e. total around nine (9) months and hence, the appellants may be enlarged on bail.

7. On the other hand, learned counsel for the State has opposed the prayer for bail and has submitted there is recovery of fire-arms i.e. pistols, bullets, mobile phone from the possession of the appellants. It is submitted that the Informant had been examined as P.W.-1 in this case. It is submitted that seizure list witnesses P.W.-1, P.W.-2 and P.W.-3 have also supported the prosecution case regarding seizure of fire-arms and thus, there is no illegality in the judgment of conviction and sentence passed by the learned Court below. It is submitted that both the accused including the appellants are named in the FIR. It is submitted that P.W.-1, Asit Kumar Singh is the Informant of this case and who has fully supported the recovery of firearms from the possession of the appellants. It is submitted that P.W.-2, Niranjana Kumar and

P.W.-3, Binay Kumar have also supported the prosecution case and who were members of the raiding party and also regarding recovery of fire-arms. P.W-4, Anil Kumar Singh is the IO of this case and who has submitted the charge sheet against the appellants and also corroborated the prosecution case. It is submitted that P.W-5, Sudama Pandey is the part IO of this case, who had initially investigated the prosecution case and hence the prayer for bail of the appellants may be rejected.

8. Perused the Lower Court Records and has considered the submissions of both the sides.

9. It transpires that S.I Ashit Kumar Singh i.e. P.W-1, Officer-in-charge, Kandi P.S had lodged the FIR against five persons namely Pintu Chaubey @ Satya Prakash [Cr. Appeal (SJ) No. 206 of 2025], Pintu Kumar Dubey @ Sumit Kumar Dubey[Cr. Appeal (SJ) No. 193 of 2025], Abhishek Kumar Tiwari @ Monu Tiwari [Cr. Appeal (SJ) No. 208 of 2025], one Arun Kumar Dubey and one Vikash Dubey.

10. It also transpires that the prosecution has got proved the documents as follows:-

- (i) Ext.-1 is the seizure list prepared by the Informant i.e. P.W.-1, Ashit Kumar Singh,
- (ii) Ext.- 2 is the signature of the accused Pintu Dubey @ Sumit Dubey on the seizure list,
- (iii) Ext. -3 is the signature on the seizure list,
- (iv) Ext.-4 is the writing and signature of the informant on the seizure list,
- (v) Ext.-5 is the self statement of the Informant,
- (vi) Ext. -6 is the confessional statement of the accused Abhishek Tiwari,

(vii) Ext.-6/1 is the confessional statement of the accused Pintu Kumar Dubey @ Sumit Kumar Dubey,

(viii) Ext.-6/2 is the confessional statement of the accused Pintu Chaubey @ Satya Prakash and

(ix) Ext. -7 is the Arms Test report of the Sergeant Major.

11. Apart from this the prosecution has further proved the following Material Exhibits as follows:-

(i) Material Ext.-P/1 is the country made pistol and 0.315 bore cartridge,

(ii) Material Ext.-P/II is Semi automatic pistol and one live cartridge of 9MM and Samsung and Vivo Mobile Phone,

(iii) Material Ext.- P/III is the six round revolver and one Samsung Mobile,

(iv) Material Ext.-P/IV is the one semi automatic pistol with one magazine,

(v) Material Ext. –P/V is the Four live cartridge of 7.65 bore and Khokha and

(vi) Material Ext.—P/VI is the Four live cartridge of 7.65 bore and one Khokha.

12. So far as the prosecution witnesses is concerned, P.W.-1, Ashit Kumar Singh is the Informant of this case, who had lodged the FIR and arrested the appellants and during search, one 9 MM Desi Pistol and one 9 MM live Cartridge were recovered from the possession of one Pintu Chaubey @ Satya Prakash Chaubey [Cr. Appeal (SJ) No. 206 of 2025] alongwith one Vivo Mobile and one Samsung mobile phone. He has proved the seizure list

Marked as Ext.-1.

Thereafter he also recovered one Desi Katta and after unloading the same, one .315 bore live cartridge and one Samsung Mobile were recovered from the possession of another appellant Pintu Dubey @ Sunit Kumar Dubey [Cr. Appeal (SJ) No. 193 of 2025]. He has proved the seizure list Marked as Ext.-2.

Thereafter he has also recovered one six round revolver and 5 live cartridges of 7.65 bore from the possession of another appellant Abhishek Tiwari @ Monu Tiwari [Cr. Appeal (SJ) No. 208 of 2025]. He has proved the seizure list Marked as Ext.-3.

Thereafter he searched the house of one Vikash Dubey and has recovered one big box having Semiautomatic Pistol of 9 MM and five live cartridges of 7.65 MM and one Magazine, which has been marked as Ext.-4.

He further proved the confessional statement of above accused persons namely Abhishek Tiwari @ Monu Tiwari [Cr. Appeal (SJ) No. 208 of 2025], Pintu Dubey @ Sunit Kumar Dubey [Cr. Appeal (SJ) No. 193 of 2025] and Pintu Chaubey @ Satya Prakash Chaubey [Cr. Appeal (SJ) No. 206 of 2025].

He has further proved one Desi Katta and one .315 bore live cartridge and one Samsung Mobile, which were recovered from the possession of another appellant Pintu Dubey @ Sunit Kumar Dubey [Cr. Appeal (SJ) No. 193 of 2025] and which has been marked as Material Ext.-I.

He has further proved one Semiautomatic Pistol and one Samsung and one Vivo Mobile and one envelop having one 9 MM live cartridges, which were recovered from the possession of one Pintu Chaubey @ Satya Prakash Chaubey [Cr. Appeal (SJ)

No. 206 of 2025] and which has been marked as Material Ext.-II.

He has also proved one six round revolver and one Samsung Mobile, which were from the possession of another appellant Abhishek Tiwari @ Monu Tiwari [Cr. Appeal (SJ) No. 208 of 2025] and which has been marked as Material Ext.-III.

He has also proved one Semi Automatic Pistol along with a magazine, which has been marked as Material Ext.-IV.

He has also proved four live cartridges of 7.65 and one blank cartridge in an envelop, bearing signature of accused Abhishek Tiwari and two independent witnesses, which has been marked as Material Ext.-V.

He has also proved four live cartridges of 7.65 and one 7.65 cartridge in an envelop, bearing signature of accused Abhishek Tiwari and two independent witnesses, which has been marked as Material Ext.-VI

Thus, P.W.-1- Ashit Kumar Singh has proved the recovery of pistol and firearms from the possession of the appellants and also proved the recovery of restricted fire arms and ammunitions on the basis of this confessional statement.

13. During cross-examination, he clarified that the accused-Vikash Dubey had got half constructed house. He denied for not having obtained the signature on the seizure list at para-37. Therefore, P.W.-1- Ashit Kumar Singh has proved the recovery of firearms from the possession of the appellants.

14. P.W.-2 is Niranjana Kumar, Officer In-charge of Nagar Untari P.S. and P.W.-3 is Vinay Kumar, Officer In-charge of Chinia P.S. They have stated that one 9 MM Pistol and one live cartridge were recovered from the possession of the appellant Pintu Chaubey @ Satya Prakash Chaubey [Cr. Appeal (SJ) No.

206 of 2025] and one Desi Katta and one live cartridge of .315 bore were recovered from the possession of the appellant Pintu Dubey @ Sunit Kumar Dubey [Cr. Appeal (SJ) No. 193 of 2025] and one six (6) round revolver and live cartridges of 7.65 MM were recovered from the possession of the appellant Abhishek Tiwari @ Monu Tiwari [Cr. Appeal (SJ) No. 208 of 2025].

15. P.W.-3, Vijay Kumar, has also stated that seizure firearms were sealed at the place of the occurrence. P.W.-3, Vijay Kumar is also the part I.O. of the case.

Thus, P.W.-2, Niranjana Kumar and P.W.-3, Vinay Kumar have supported the evidence of P.W.-1, Ashit Kumar Singh.

16. P.W.-4 is Anil Kumar Singh and who stated that the appellant Pintu Chaubey @ Satya Prakash Chaubey [Cr. Appeal (SJ) No. 206 of 2025] had informed him that seized fire-arms and bullets were given to him by one Arun Dubey.

17. P.W.-5 is Sudama Pandey is the first IO of this case and has stated that there was recovery of fire-arms from the possession of the appellants, which had been described earlier. He also proved the confessional statements of the appellants, which have been marked as Ext.-6, Ext.-6/1 and Ext.-6/2 respectively.

18. From perusal of the seizure list marked as Ext.-I with regard to accused Pintu Chaubey @ Satya Prakash Chaubey [Cr. Appeal (SJ) No. 206 of 2025], it reveals that there is recovery of one 9 MM Pistol and one live cartridge. Apart from this mobile phone was also recovered and the seizure list bears the signature of Pintu Chaubey @ Satya Prakash Chaubey on 05.03.2017 and the said seizure list was not disputed during the trial.

19. Similarly Ext.-2 is the seizure list with regard to recovery

of one Desi Katta with one .315 bore live cartridge and one its back it is written 8 MM KF. Apart from seizure of the same, one mobile phone was also recovered.

Ext.-2 also contains Thumb Impression and signature of the independent witnesses, Suresh Ram Chandravansi and Bigan Vishawakarma.

20. Ext.-3 is the another seizure list dated 05.03.2017 with regard to recovery of one six (6) round loaded pistol and five cartridges of 7.65 bore from the possession of the appellant Abhishek Tiwari @ Monu Tiwari [Cr. Appeal (SJ) No. 208 of 2025], which bears the signature of the appellant.

The appellants appear to be associate of the gangster Vikash Dubey and appears to be involved in extortion and giving threat to the contractors through mobile phones.

21. From perusal of provisions of Rule 3 read with Schedule 1 of the Arms Rules, 2016, the pistol of 9 MM and cartridge of 9 MM are restricted arms i.e. fire-arms whereas the Semi-automatic pistol is also restricted fire-arms.

22. It further transpires that on the basis of confessional statement of the appellants namely Abhishek Tiwari @ Monu Tiwari, Pintu Kumar Dubey @ Sumit Kumar Dubey and Satya Prakash Chaubey @ Pintu Chaubey marked as Exhibit-6, 6/1 and 6/2 respectively, two semi-automatic pistols, which have been marked as Exhibit-P/II and Exhibit-P/IV and one live cartridge of 9 MM and in total nine (09) live cartridges of 7.65 bore and some khokha had also been recovered.

23. So far as the appellant Satya Prakash Chaubey @ Pintu Chaubey in Cr. Appeal (SJ) No. 206 of 2025 is concerned, it reveals that one 9 MM loaded pistol with 9 MM live cartridge

and two mobile phones were recovered from his possession. Even Seizure List marked as Ext.- I also reveals that one 9 MM Semi-Automatic Pistol and 9 MM live cartridges and two mobile phones have been recovered from the possession of the appellant Satya Prakash Chaubey @ Pintu Chaubey in Cr. Appeal (SJ) No. 206 of 2025 and which has been supported and corroborated from the evidence of P. W. -1, Ashit Kumar Singh, P.W.-2, Niranjan Kumar and P.W.-3, Binay Kumar and the same has also corroborated from the evidence of P.W.-4, Anil Kumar Singh i.e. IO of this case.

24. As there is direct recovery of firearms from the appellants, which are the restricted fire-arms and ammunities, the prayer for bail of the appellants is hereby rejected.

25. Thus, I.A. No. 4425 of 2025 in Cr. Appeal (SJ) No. 208 of 2025 and I. A. No. 5837 of 2025 in Cr. Appeal (SJ) No. 206 of 2025 are also rejected and stand disposed of.

(Sanjay Prasad, J.)

Kamlesh/