HIGH COURT OF JUDICATURE AT ALLAHABAD

LUCKNOW

CRIMINAL APPEAL No. - 3356 of 2025

Nirbhay Singh @ Pintu .....Appellant

Versus

State of U.P. through Principal Secretary, Home, Lucknow. ....Respondent

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Counsel for Appellant	:	Sri Anil Kumar Sharma
Counsel for Respondent	:	G.A.

Reserved on : 14.11.2025
Delivered on : 12.12.2025

Court No. - 31

HON'BLE ZAFEER AHMAD, J.

1. The instant criminal appeal arises out of an order dated 18.11.2023 passed by Additional District and Session Judge (NDPS), Court No. 10, Barabanki, Police Station Jahangirabad, District Barabanki, whereby the appellant has been convicted under Section 8/21(c) of NDPS Act and sentenced to undergo rigorous imprisonment for ten years with a fine of Rs. 1,00,000/- and to undergo further one year imprisonment in case of default in payment of fine.

2. Before delving into the issue in question, I find it appropriate to discuss the prosecution story, barring irrelevant facts.

3. On 8.7.2015, SHO Jai Prakash Chaubey alongwith Sub Inspector Krishna Kant, Constable Shailesh Chaudhary, Constable Akhilesh Maurya left Police Station Haja for patrolling and vehicles-checking on government vehicle (Geep). While they were checking vehicles at Banwa Mod tiraha (T-Point) before the Faizullaganj Railway Crossing, Incharge Surveillance SI Santosh Kumar Singh alongwith Constable Dilbahar Yadav and SI Ashwini Misra of P.S. Kotwali Nagar and Constable Inamul, Constable Ram Narayan Singh on a government Geep met them and while they were discussing on the crimes and criminals during vehicle-checking they saw someone on motorcycle coming from the side of Banwa in a high speed. When the bike reached close to them they signalled to stop in the light of torch whereupon the rider started turning the bike and slipped. Finding them suspicious, the police personnel caught three persons who were on the bike. The person who was riding the bike told that his name was Nirbhay Singh @ Pintu permanent resident of district Mau and temporarily residing at U.P. State Spinning Mill Co. Ltd. Colony, Jahangirabad, Barabanki and he was possessed with illegal morphine which he used to consume and sell.

4. On physical search, a .32 bore country made pistol in the barrel of which there was one live cartridge, was recovered. From the left pocket of the accused-appellant, a narcotic powder, brown in colour kept in a white plastic pouch, was recovered, which on weighing was found to be 300 gm. From right pocket, one yellow metal Gold chain and one Lava mobile, black in colour, was also recovered.

5. The second person informed that he is Deepak Verma and the third was Ankur Verma @ Amit. On their search pistol cartridge, yellow metal, mobile etc. were recovered. None of the nabbed persons could show the arm licence and the permission to keep morphine. Finding no way out, they started begging for pardon.

6. After necessary formalities and on the basis of recovery, an FIR was registered at Case Crime No. 115/2015 under Section 3/25 Arms Act and Section 8/21 NDPS Act against Nirbhay Singh @ Pintu, the appellant, Deepak Kumar Verma and Ankur Verma @ Amit. The case was assigned to SI Praveen Kumar Dubey for conducting the investigation, who, on the basis of evidence collected and statements of the witnesses, submitted charge sheet under Section 8/21 NDPS Act, against the appellant, Nirbhay Singh @ Pintu and the case was committed to the court of Additional District and Sessions Judge, Court No. 2, Barabanki.

7. The trial court framed charge against the appellant under Section 8/21 NDPS Act and the appellant pleading ‘not guilty’, claimed trial.

8. The prosecution produced four witnesses to prove the guilt, namely, PW-1 complainant SHO Jai Prakash Chaubey, PW-2 Inspector / IO Praveen Kumar Dubey, PW-3 HC / witness of recovery Inamul Haq and PW-4 retired HC / docket witness Bhanu Pratap Gupta.

9. The witnesses supported the version of the prosecution and there was consistency in their statements which was corroborated by the recovery made from the accused-

appellant. For the sake of brevity and the judgement and order having not been challenged on merits, by learned counsel for the appellant, I refrain from reproducing the entire evidence.

10. Learned counsel for the appellant questioned the validity of the impugned judgement and order mainly on the ground that while recording the finding of conviction the trial court lost sight of the fact that the alleged incident occurred in a densely populated area with a number of shops and passers-by but no independent witness or any witness from the vicinity has been examined. It is further submitted that there is non compliance of Section 52-A and Section 57 of the NDPS Act which is mandatory for proceeding under the NDPS Act, as the copy of alleged search and seizure was not supplied to the higher officers.

11. The trial court after appreciation of the evidence on record viz-a-viz the statements of the witnesses and the relevant law, held the appellant guilty of committing offence under Section 8/21(c) NDPS Act and sentenced him to undergo rigorous imprisonment of ten years with a fine of Rs. 1,00,000/-. In the case of default in payment of fine, the appellant was to undergo an additional imprisonment for a period of one year.

12. Learned counsel for the appellant has submitted that appellant has served out 10 years, 4 months, 5 days of rigorous imprisonment as on 14.11.2025, thus, he has served out the entire period of sentence awarded for the offence under Section 8/21(c) N.D.P.S. Act i.e. ten years and now he is undergoing the one year additional

sentence for not being able to pay the fine as provided in the impugned judgement and order and has already served out more than five months imprisonment in lieu thereof.

13. Learned counsel for the appellant has submitted that he does not challenge the conviction as the appellant has already completed ten years of incarceration but he is unable to pay fine of Rs. 1.00.000/- being a very poor person. His father has expired and mother is ailing old woman and he being the only son, there is no one to look after her. It is, therefore, prayed that the sentence for the default in payment of fine be reduced. In support of his submission, learned counsel has also relied on the decision of Hon'ble Supreme Court in the case of ***Shantilal vs. State of M.P. reported in (2007) 11 SCC 243.***

14. In the case of ***Shanti Lal*** (supra), the apex court, considering the relevant provisions of law and with the aid of the various judgements touching the issue in question, reduced the sentence of the appellant in that case, who was also convicted under the provisions of NDPS Act, namely, Section 8 read with Section 18, from three years rigorous imprisonment to six months rigorous imprisonment in default of payment of fine. Relevant paragraph 36 of the judgement reads as under:

> *"36. We are mindful and conscious that the present case is under the NDPS Act. Section 18 quoted above provides penalty for certain offences in relation to opium poppy and opium. Minimum fine contemplated by the said provision is rupees one lakh [fine which shall not be less than one lakh rupees]. It is also true that the appellant has been ordered to undergo substantive sentence of rigorous imprisonment for ten years which is minimum. It is equally true that maximum sentence imposable on the appellant is*

> *twenty years. The learned counsel for the State again is right in submitting that clause (b) of sub-section (1) of Section 30, CrPC authorizes the Court to award imprisonment in default of payment of fine up to one-fourth term of imprisonment which the Court is competent to inflict as punishment for the offence. But considering the circumstances placed before us on behalf of the appellant-accused that he is very poor; he is merely a carrier; he has to maintain his family; it was his first offence; because of his poverty, he could not pay the heavy amount of fine (rupees one lakh) and if he is ordered to remain in jail even after the period of substantive sentence is over only because of his inability to pay fine, serious prejudice will be caused not only to him, but also to his family members who are innocent. We are, therefore, of the view that though an amount of payment of fine of rupees one lakh which is minimum as specified in Section 18 of the Act cannot be reduced in view of the legislative mandate, ends of justice would be met if we retain that part of the direction, but order that in default of payment of fine of rupees one lakh, the appellant shall undergo rigorous imprisonment for six months instead of three years as ordered by the trial court and confirmed by the High Court."*

15. Learned Additional Government Advocate opposing the prayer made by learned counsel for the appellant has submitted that appellant is a habitual offender, but he does not dispute the fact that the appellant has served out the substantial period of sentence and only a short period of couple of months remains to be served. He also does not dispute on the legal verdict in the case of ***Shantilal Vs. State of M.P.*** (supra).

16. Considering the arguments of learned counsel for the appellant as well as learned A.G.A. and going through the impugned judgment as well as trial court record, it is evident that appellant has been convicted for the offence under Section 8/21 N.D.P.S. Act with the sentence of ten years rigorous imprisonment and fine of Rs. One lakh and in default of payment of fine, he had to serve out one year rigorous imprisonment. It is also evident from the record that the appellant is not having support of his near and dear to do pairvi

of case, and he has already served out the substantive sentence, but he is unable to deposit the fine amount.

17. In the light of law laid down by the Hon'ble Supreme Court in case of ***Shantilal vs. State of M.P.*** (supra), the sentence is hereby modified to the extent that in case of default of payment of fine Rs. One Lakh, the appellant shall undergo rigorous imprisonment for six months instead of one year, if the appellant has undergone the substantive sentence of rigorous imprisonment for 10 years. The appellant shall be set at liberty forthwith on expiry of six months imprisonment, as aforesaid, unless he is required for any other offence.

18. Accordingly, the appeal is partly allowed.

19. Copy of this judgment be sent to the court concerned who shall ensure the communication of this judgment to appellant and the Jail Authority, forthwith.

Dated : December 12, 2025 **(Zafeer Ahmad, J.)**
Fahim/-

Digitally signed by :-
MOHD FAHIM AKHTAR
High Court of Judicature at Allahabad,
Lucknow Bench