

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 801 of 2015

[Against the judgment of conviction dated 29.08.2015 and sentence dated 02.09.2015 passed by the learned Sessions Judge, Lohardaga in S.T. No. 168 of 2006 arising out of Lohardaga P.S. Case No. 98 of 2006 corresponding to G.R. No. 242 of 2006.]

Bidya Bhushan Sharma, Son of Late Shiv Kumar Sharma, Resident of Village- Khanpura, P.O. & P.S.- Bhagwanganj, District- Patna, Bihar.

.....Appellant

Versus

The State of Jharkhand

.... Respondent

PRESENT

CORAM: HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

For the Appellant	: Mr. A. K. Kashyap, Sr. Advocate
	: Mr. Manish Kumar, Advocate
For the Resp.-State	: Mrs. Ruby Pandey, A.P.P.

JUDGMENT

C.A.V. On: 07th July, 2026

Pronounced On: 14/08/2026

1. Heard learned senior counsel for the appellant as well as learned A.P.P.
2. Instant criminal appeal is directed against the judgment of conviction and sentence dated 29.08.2015 & 02.09.2019 respectively passed by the learned Sessions Judge, Lohardaga in S.T. Case No. 168 of 2006 arising out of Lohardaga P.S. Case No. 98 of 2006 corresponding to G.R. No. 242 of 2006, whereby and whereunder, the appellant has been convicted for the offence under Sections 222 read with Section 120B of the I.P.C. and sentenced to undergo R.I. for 5 years alongwith the fine of Rs. 10,000/- for the offence under Section 222 of the I.P.C. No separate sentence has been passed for the offence under Section 120B of the I.P.C. Co-accused Ganesh Mishra has been acquitted from all the charges levelled against him.

Factual Matrix:-

3. Factual matrix giving rise to this appeal is that on 13.11.2005, an under trial prisoner Uday Nath Oraon @ Uday Jee was brought to Divisional Prison, Lohardaga from Birsa Munda Central Jail, Hotwar, Ranchi. It is alleged that on 20.05.2006 at about 6:00 P.M. at the time of counting of prisoners in ward no. 5, the number of prisoner was found deficient and on search in the prison at all possible places, it was found that in the second shift duty from 12:00 P.M., Nagendra Kumar was on duty at the gate and warden was Bidya Bhushan Sharma alongwith Narvadeshwar Mishra and home guard Raj Kumar Oraon. At the main gate, home guard Bihari Yadav was deputed. It is alleged that at the time of counting in the second shift at 12:00 P.M. by the in-charge warden Biyda Bhushan Sharma (present appellant), prisoner Uday Nath Oraon @ Uday Jee was present in the ward no. 5 but in the evening counting, when warden Bidya Bhushan Sharma started counting all the prisoners, then prisoner Uday Nath Oraon @ Uday Jee was not found and escaped from the custody.

4. On the basis of typed written report submitted through Letter No. 373 dated 20.05.2006 by Assistant Jailor Swarnlata Bara addressed to Officer-In-charge, Lohardaga, an F.I.R. being Lohardaga P.S. Case No. 98 of 2006 was registered on 20.05.2006 for the offence under Sections 224 of the I.P.C. against prisoner Uday Nath Oraon @ Uday Jee.

In the course of investigation, offence under Sections 120B I.P.C. and Section 17(ii) of the C.L.A. Act was also added vide the order dated 23.05.2006.

During course of investigation, under trial prisoner Uday Nath Oraon @ Uday Jee was apprehended alongwith cash of Rs. 6.00 lakh, huge fire arms and made confessional statement before the police that he managed his escape from the female ward jail custody on his own without assistance of any of the jail officials.

5. After investigation, the charge-sheet was submitted under Section 224 & 120B of the I.P.C. and Section 17(ii) of the C.L.A. Act against the present appellant and after taking cognizance, the case was committed to the court of Sessions, where S.T No. 168 of 2006 was registered. Charges were framed under Section 221, 222 & 120(B) of the I.P.C. against the present appellant and Section 222 & 120(B) of the I.P.C. against co-accused Ganesh Mishra.
6. In the course of trial, altogether 9 witnesses were examined by the prosecution apart from following documentary and material evidence:-
 - I.Exhibit-1: Written report of Swanlata Bara
 - II.Exhibit-1/1: Endorsement by the then O/c Lohardaga (Ram Kumar Verma)
 - III.Exhibit-2: Signature on seizure list of witness
 - IV.Exhibit-3: signature of witness namely Umesh Kumar Thakur on seizure list
 - V.Exhibit-4: Signature of the then O/c namely R. K. Verma on Formal F.I.R.
7. On the other hand, the case of the defence is denial from the occurrence and false implication only on the basis of suspicion.

However, following documentary evidence has been adduced on behalf of defence:-

a) Ext.-A : C/c of F.I.R. of Sisai P.S. Case No. 165 of 2008

8. The learned Trial Court after scrutinizing the evidence oral as well as documentary led by the respective parties, arrived at definite conclusion about the guilt of the sole appellant for the offence under Sections 222/120B of the I.P.C. However, no separate sentence has been awarded for the offence under Section 120B of the I.P.C. Co-accused Ganesh Mishra, who was jointly tried alongwith the present appellant, and co-accused Ganesh Mishra was acquitted from the charges under Sections 222 & 120(B) of the I.P.C. The present appellant has been convicted and sentenced as stated above, which has been assailed in this appeal.

Submission on behalf of appellant:-

9. Assailing the impugned judgment, the learned senior counsel for the petitioner has strenuously argued that there is no eyewitness of the occurrence as to when and how the under trial prisoner, Uday Nath Oraon @ Uday Jee managed to escape from judicial custody from the Divisional Jail, Lohardaga. Although the appellant was In-charge Warden of the jail at the relevant date and time, but nothing has been brought on record showing his conspiracy with the escaped prisoner or any other prisoners in facilitating the escape of Uday Nath Oraon @ Uday Jee. It is further submitted that the appellant has been convicted by the learned Trial Court only on the basis of suspicion on the material collected by sniffer dog showing the final place of escape of the

prisoner Uday Jee. The co-accused, Ganesh Mishra, was acquitted and escaped prisoner Uday Nath Oraon @ Uday Jee, himself, has confessed under (Exhibit-A) that there was no conspiracy with the present appellant in managing his escape. The learned Trial Court has wrongly relied upon the provision of Jail Manual Rule 171 which primarily ensures liability of warden in-charge for escape of any prisoner for the purpose of disciplinary inquiry and not for the purpose of prosecution for a criminal case. Criminal case has its own ingredients to be proved for establishing the guilt of the accused. It is further submitted that the learned Trial Court has also wrongly relied upon the testimony of the PW-4 (Nagendra Kumar), who has shifted his liability upon the present appellant saying that he was directed by the present appellant to go and pluck mangoes from the jail premises and key of the gate was handed over to him for 20 to 25 minutes. In this period, appellant has managed the escape of the prisoner Uday Nath Oraon @ Uday Jee. The learned Trial Court has also overlooked the fact elicited in the cross-examination of the witnesses. It is further submitted that only two accused persons were jointly tried and one of them has been acquitted from the charge under Section 222 and 120B of the I.P.C. Hence, appellant alone cannot conspire himself to attract the offence under Section 120B IPC. Therefore, the entire findings of guilt of the appellant recorded by the learned Trial Court is based beyond the evidence available on record and improper and erroneous consideration of evidence of witnesses as well as non-consideration of the defence evidence (Exhibit-A) and improper and overlooking of rules of Jail

Manual for imposing of criminal liability of the appellant. Accordingly, the impugned judgment order of conviction and sentence of the appellant is liable to be set aside and appellant may be acquitted from the charges levelled against him allowing this revision.

Submission on behalf of State:-

10. On the other hand, learned A.P.P. has opposed the aforesaid contentions raised by learned counsel for the appellant and defending the impugned judgment of conviction and sentence of the appellant has submitted that witnesses examined in this case, particularly, PW-4, who was on the gate duty at the relevant time of escape of the prisoner Uday Nath Oraon @ Uday Jee and other circumstantial evidences collected during investigation and proved by the prosecution, clearly establishes the guilt of the appellant about the charge levelled against him. Although the circumstances unimpeachable points, conspiracy between the present appellant and the escaped prisoner are of shaky nature. Hence, learned Trial Court has rightly not awarded any sentence to the appellant under Section 120B of the I.P.C., but so far his conviction and sentence for the offence under Section 222 of the I.P.C. is concerned, which has been proved beyond doubt by the prosecution. The learned Trial Court has committed no illegality or infirmity in evaluating the evidence available on record by arriving at definite conclusion of guilt of appellant. There is no merits in this appeal and no legal substance in points of arguments raised on behalf of the appellant. Therefore, this appeal is fit to be dismissed.

Analysis, Reasons and Decision:-

11. I have gone through the record of the case along with the impugned judgment and order in the light of the contentions raised on behalf of both side.
12. The only point for consideration of this appeal is, as to whether the impugned judgment of conviction and sentence suffers from any serious error or law calling for any interference or not?
13. Before adjudicating the above point, it is pertinent to apprise with the testimony of the witnesses examined during trial.
14. **PW-1 James Soren**, is a clerk in prison. According to his evidence, he was on duty in the jail at Lohardaga from 8:00 a.m. to 12:00 p.m. Thereafter, he returned to his home and again he was on duty from 3:00 p.m. to 6:00 p.m. In the evening counting, one of the prisoners was found absent. He has not given key to Bidya Bhushan Sharma, the jail warden, and he was also not present at the gate. This witness has been declared hostile by the prosecution.

PW-2 Swarnlata Bara is the informant of this case. According to her evidence, on 20.05.2006 at about 6:00 p.m., at the time of evening counting of the prisoners, she was informed by In-charge Warden Bidya Bhushan Sharma (the present appellant) that one of the prisoners from Ward No. 5 is missing. On recounting, it was found that that Uday Nath Oraon @ Uday Jee has escaped from the jail premises. This witness has simply stated that on that day, In-charge Warden was Bidya Bhushan Sharma. He was also on duty inside the jail premises. Nagendra Kumar was deputed on gate duty from 12:00 p.m. to 6:00 p.m. She also states

that at the time of prisoners counting at 12:00 p.m., Uday Nath Oraon @ Uday Jee was present in the jail premises. She further states that at the outer side of jail gate, Home Guard Bihari Yadav was deputed from 12:00 p.m. to 6:00 p.m. The evening counting was conducted by Jail Warden Bidya Bhushan Sharma. She has proved her written report sent to the Officer In-charge, Lohardaga and also report submitted to S.P., Lohardaga, which is marked Exhibit- 1.

In her cross-examination, she admits that there are two gates in the jail, one inner side and one outer side. In the inner side gate, Nagendra Kumar was on duty and at outer gate, Bihari Yadav was on gate duty. Both gates were locked. She has also admitted that in her working period at Lohardaga Jail, she never received any complaint against Bidya Bhushan Sharma.

PW-3 Lakhan Lal Ravidas is a constable. According to his evidence, on 21.05.2006, he came to Lohardaga Jail premises alongwith sniffer dog squad headed by Constable 148 Amrendra Kumar Singh. According to him, the dog squad first ran towards Female Ward, and thereafter, came towards main gate of jail and subsequently towards east side where mark of wheels of vehicle was found and the dog stopped there.

In his cross-examination, he admits that he went inside of jail after crossing three gates and all the gates were locked with heavy locks. On each gate, there was duty of watchman. He has stated nothing else worth mentioning.

15. **PW-4 Nagendra Kumar** has deposed that on 20.05.2006, he was posted at main gate duty at Divisional Jail, Lohardaga and was also

posted as Head Warden. The In-charge of Jail Ward was Bidya Bhushan Sharma, who met this witness at gate at about 1:00 p.m. and asked the key of the gate saying that he has to go on leave and hence directed this witness to pluck some mangoes from the inside of jail premises. Then, this witness alongwith Shibu Sai, who was a writer in the jail, went to pluck mangoes and handed over the key of the gate to Bidya Bhushan Sharma. This witness returned after 20 to 25 minutes after plucking mangoes and met Bidya Bhushan Sharma at the gate, and key of the gate was handed over to him. At that time, no other person was present there, except the Home Guard on duty at the outer gate of the jail whose name he failed to recollect. He has further deposed that in the jail premises, prisoners are counted three times in a day, in the morning, in noon and in evening. On the date of occurrence, till the counting of 12:00 p.m., all the prisoners were present, but at the time of evening counting at about 6:00 p.m., one prisoner was found escaped, who was in ward number 5, namely, Uday Nath Oraon @ Uday Jee. The information about escape of prisoner was given to police by Assistant Jailor. Police also arrived at the jail premises and interrogated with him, but he has disclosed nothing to the police. The dog squad also inspected the jail premises, which at first went towards female ward and thereafter returned towards gate. He has proved his signature on the seizure list, marked Exhibit-2. This witness has further stated that at the time of investigation, he also disclosed before the Dy.S.P. that there is no possibility of any prisoner to escape from the jail gate under strict security but no heed was paid to his statement.

In his cross-examination, he also admits that on the date of occurrence, his duty was from 12:00 p.m. to 6:00 p.m. He also admits that there are two gates for entry and exit of the prisons and on both gates, there is duty of guards, both gates are duly locked and guard by separate home guards.

PW-5 Shiv Nandan Sai @ Shibu Mandal was a co-prisoner in the Divisional Jail, Lohardaga at the relevant time of occurrence. According to his evidence, on 20.05.2006, he saw the prisoner, Uday Nath Oraon, was talking with his wife when he was being brought back after production in the court. He has stated nothing as to how the prisoner, Uday Nath Oraon, fled away or any role of present appellant in escape of prisoner Uday Nath Oraon.

16. **PW-6 Umesh Kumar Thakur** is the Investigating Officer of this case. This witness has proved the written report of the informant as Exhibit-1, Endorsement on written report Exhibit- 1/1, seizure list, Exhibit-3 and formal F.I.R. Exhibit- 4. The charge of investigation of this case was handed over to him. After assuming the charge of investigation, he recorded re-statement of informant Svarnlata Bara. He inspected the place of occurrence, which is Divisional Jail premises, Lohardaga, having main gate towards north. The main gate is made of iron grill about 12 ft. high. Thereafter, there is some space for stay of prisoners and wardens alongwith a big room. Thereafter, another iron gate is at northern in the jail compound, which is at a distance of 150 yards from the main gate. Thereafter, there is ward of prisoners and from ward number 5, prisoner Uday Nath Oraon was found escaped. He

has further stated that just after entrance from the first gate towards east-west corner, there is a cell constituting of five rooms, which was not being used by the jail officials but during inspection, one bag belonging to Uday Nath Oraon was found and seized in presence of witnesses. He also noticed that inside the jail premises, there were several trees of mangoes and other fruits bearing trees. Towards southwest corner, there is female ward, which is situated at a distance of 80 yards from the ward no. 5, where prisoner Uday Nath Oraon was locked. He prepared sketch map of the place of occurrence and recorded statement of witness Nagendra Kumar, who has stated before him that he was on duty inside gate, where two locks were put on gate and both keys belonging to him. He has also stated that in between 12:00 p.m. to 2:00 p.m., outer gate rooms are opened and no one is deputed on duty in that period for the outer gate. In between 12:00 to 2:00 p.m., only Bidya Bhushan Sharma was present at the place of duty of this witness, who has managed the prisoner Uday Nath Oraon in escaping from jail custody in between 12:00 to 2:00 p.m. and sent him to pluck the mangoes from inside the jail premises on pretext that he will leave the jail premises very soon and go on leave. He has also recorded statement of other witnesses, namely Nandeshwar Mishra, James Soren, Rajkumar Oraon, who all have also supported the version of Nagendra Kumar. He also recorded the statement of constable of dog squad, namely Lakhan Lal, and Amrendra Kumar Singh, who have deposed that the dog went towards mark of tyre of vehicle outside the jail gate. He arrested the accused Bidya Bhushan Sharma on 23.05.2006 and remanded in this case.

Accused Ganesh Mishra was found involved in this case, who was also arrested on 22.09.2006 and remanded in this case. He has submitted chargesheet against above accused persons on different dates.

In his cross-examination, he admits that at the time of submission of first chargesheet against accused Bidya Bhushan Sharma, there was no evidence against co-accused Ganesh Mishra. He admits that not a single witness has stated before him about involvement of co-accused Ganesh Mishra in facilitating the escape of prisoner Uday Nath Oraon, but he further states that during investigation, this witness received confidential information through spy that co-accused Ganesh Mishra has managed to escape the prisoner Uday Nath Oraon by motorcycle towards Toto village. He also admits that none of the witnesses interrogated by him during investigation, have stated about any conspiracy in between prisoner and Bidya Bhushan Sharma in managing the escape of prisoner Uday Nath Oraon. He further admits that from the bag of the prisoner Uday Nath Oraon, seized in this case, nothing objectionable things were recovered. In the F.I.R. also, no suspicion was raised against Jail Warden Bidya Bhushan Sharma. In the course of investigation, sufficient evidence was found against him showing his involvement in this case. This witness further admits that in the F.I.R., it is stated that in the outer main gate of the jail Home Guard Bihari Yadav was on duty from 12:00 p.m., but in course of investigation, it was revealed that in the outer gate, the Home Guards are deputed from 8:00 a.m. to 12:00 p.m. and 2:00 p.m. to 4:00 p.m. This fact was disclosed by witness Nagendra Kumar, James Soren and

Rajkumar Oraon. He further admits that during investigation, he has not seized any duty register of the jail or attendance register of the jail officials. He also admits that on the date of occurrence, prisoner Uday Nath Oraon was produced before the Court and all the prisoners had passed through the main gate at the time of exit and entry. He further admits that he visited the jail premises and inspected the cell on 20.05.2006, but the seizure list was prepared on 22.05.2006. The seizure list material has also not been produced before him at the time of recording his evidence. He has also not investigated plucking of mangoes from the jail premises on the date of occurrence by PW-4 or any other witnesses at prison.

PW-7 Fulmani Sanga has stated that she was posted at female ward. Both male and female wards are separate from wall. She has expressed no knowledge about the occurrence.

PW-8 Deepak Kumar was the In-charge, Jail Superintendent of Divisional Jail, Lohardaga on 20.05.2006. According to his evidence, on that day, he was on casual leave. He was informed about the escape of one under trial prisoner Uday Nath Oraon. Then, he returned to Lohardaga on 22.05.2006 and interrogated with jailer and other officials and warden about the occurrence and came to know that on 20.05.2006 in the counting at 12:00 p.m., all the prisoners were present, but in the evening counting at 6:00 p.m., one prisoner Uday Nath Oraon was not present and he managed to escape from the jail custody. He also came to know that Head Warden Bidya Bhushan Sharma received the key of main gate from Kachhpal Nagendra Kumar, who was posted at gate

duty and was sent to pluck mangoes inside the jail premises. After plucking the mangoes, Nagendra Kumar returned and received the key from the Bidya Bhushan Sharma and joined his duty. This witness has also not stated any specific terms about any conspiracy or any kind of escape or any assistant provided by present appellant in managing the escape of prisoner Uday Nath Oraon.

In his cross-examination, this witness admits that he was working as In-charge Superintendent of Jail since 13.07.2005 to June 2007. Since then, he is acquainted with Bidya Bhushan Sharma, but never received any complaint against him, even by warden (Kacchpal) Nagendra Kumar. This witness categorically admits that for entry or exit from the jail, one has to pass through two gates, both gates are locked. Locks are put and guards are posted. He also admits that all the office bearers inside the jail are duty bound to maintain their time of attending the duty and exit time also in the register with signature. ***He has failed to state although he has checked the register of the relevant date, but failed to state the name of the guards, who were deputed on first gate on the relevant date of occurrence.*** He has denied the suggestion of defence that Uday Nath Oraon @ Uday Jee has escaped from the jail premises himself and he has given wrong evidence against the accused Bidya Bhushan Sharma on the suspicion only.

PW-9 Raj Kumar Oraon is a constable and was posted inside the jail premises. He has simply proved his duty from 12:00 to 6:00 p.m., and in the evening counting of prisoners, one under trial prisoner Uday

Nath Oraon was missing. He has also expressed no knowledge about the occurrence as to how the same has happened.

17. On the other hand, Exhibit-A has been relied upon by the defence, which is self-statement of S.I. Manas Kr. Gupta, Officer-in-charge, Sisai police station in Sisai P.S. Case No. 165 of 2008 dated 20.11.2008, registered under Section 386, 414/34 I.P.C. and Section 25(1-B)(a), 26 & 35 of the Arms Act, Section 13 of the UAPA and Section 17 of the C.L.A. Act accompanied with confessional statement dated 20.11.2008 at about 4:10 a.m. of Uday Nath Oraon, wherein he has admitted his escape from the Divisional Jail, Lohardaga.

18. In the statement under Section 313 Cr.P.C., the main question which is basis of conviction of the present appellant is extracted as under:-

प्रश्न - यह कहा गया है कि उस समय आपकी ड्यूटी जेल के अंदर थी, क्या कहना है ?

उत्तर- जी हाँ।

प्रश्न- यह कहा गया कि आप नागेन्द्र कुमार के पास आए और उससे गेट की चाभी की मांग की और कहे कि उन्हें छुट्टी में जाना, आप अंदर से आम तोड़कर ला दीजिए, तदनुसार नागेन्द्र कुमार को आपने गेट की चाभी सौंपी, क्या कहना है ?

उत्तर- यह गलत बात है मेरे द्वारा नागेन्द्र कुमार से कोई चाभी नहीं ली गई थी।

प्रश्न- यह कहा गया है कि आप अन्य अभियुक्तों के सहयोग में अभियुक्त उदय उरांव को जेल से भगाने में सहयोग किए जो भा० द० वि० की धरा 302 एवं अन्य गंभीर अपराधों का अपराधी है, क्या कहना है ?

उत्तर- मैंने कोई सहयोग नहीं किया था।

19. It appears that the learned Trial Court before imparting judgment on the charges levelled against the present appellant has quoted the relevant rule of Jail Manual, which is also extracted hereunder for better appreciation of the case.

*Jail Manual Rule 171 read as **All Jail Officers are bound-***

- 1) *To exert the utmost vigilance in the prevention of escapes; to this end the Jailor and his subordinates shall see that all ladders, ropes, bamboos, privy vesseces and other articles which may facilitate escape, are not left in any place from which they may be taken by prisoner.*
- 2) *To prevent to the best of their power the introduction into the jail and the giving to any prisoner of any opium, ganja or other prohibited articles enumerated in rules 615 or any article not permitted by rule.*
- 3) *To prevent and report any attempt at communication between prisoners and outsider except as permitted by rule and shall report the fact when any suspicious person are observed loitering about the jail.*

Rule 301 read as-

- 1) *The keys of the jail shall when not in use or in the personal custody of any officer of the jail be kept in the key box at the main gate and the key of such receptacle shall by day be retained by the head warder and by night by the patrolling officer on the duty.*
- 2) *Any keys which any officer may have to carry about his person while on duty shall be attached to any person by means of a stout chain.*

Rule 302 provides- *In the event of an escape taking place, the head warders shall be held primarily responsible unless they can satisfactorily prove that the escape was due to no laxity of duty on their part.*

20. The learned Trial Court further analyzing the ingredients of the offences under Section 221 and 120B of the I.P.C. in the light of testimony of prosecution witnesses examined during trial, propounded the following circumstances as a basis of conviction of the appellant:-

- a) Prisoner Uday Oraon was in judicial custody as a prisoner with regard to several cases including a case u/s 302 I.P.C.

- b) Accused Bidya Bhushan Sharma was head warder at the time of escape and he was responsible for any escape of the prisoner within the jail manual,
- c) the accused Bidya Bhushan Sharma was on duty inside jail at the time of escape,
- d) prisoner Uday Oraon was found present in the jail at about 12:00 P.M. and he was found escaped at 6:00 P.M., meaning, thereby the prisoner escaped between this period.
- e) PW-4 was working as junior to accused Bidya Bhushan Sharma and he handed over the keys of both the gates to a point of time for 20 minutes.
- f) the sniffer dog found the escape of the prisoner either through the main or through the female ward,
- g) I am of opinion that even if the evidence of handing over the keys by the PW-4 to the accused is not taken as true the prosecution has proved its case otherwise.
- i. I have no reason to believe the version of Uday Oraon, if any stated before the police regarding escape as it own, as the accused is saddled with charge u/s 120(B) I.P.C. also and the ingredient of Sec. 120B Cr.P.C.
- ii. the prosecution has not brought any material for the offence u/s 17(ii) of the C.L.A. Act.
- iii. There is no material against the accused Ganesh Mishra

21. On the above formulation of substances without recording any sound reasons, the learned Trial Court has passed the impugned judgment of conviction and sentence of the appellant.
22. Upon careful scrutiny of the oral testimony of the prosecution witnesses, it transpires that except PW-4 Nagendra Kumar, who was in-charge of keys of the main inside gate and also on duty at the relevant time from 12:00 P.M. to 6:00 P.M., no other witnesses have corroborated the testimony of PW-4 that in between 12:00 P.M. to 2:00 P.M., the key was handed over to the appellant on his direction to PW-4 to pluck the mangos from the jail premises because he has to go on leave. Surprisingly, this fact was disclosed by PW-4 for the first time while interrogation was made by the investigating officer. He has whispered nothing to the jailor, who lodge the F.I.R. disclosing the above material point.
23. It appears that the learned Trial Court has led much emphasis on Rule 301 & 302 of the Jail Manual. It is also opined by the learned Trial Court that even if the evidence of handing over the keys by PW-4 to the accused is not taken to be true, the prosecution has proved its case otherwise.

At this juncture, this fact is relevant to observed that if PW-4 had not disclosed the handing over of the key at the particular time for 20 minutes to the present appellant, the result would have been otherwise. Since, PW-4 was put under duty as guard inside gate having its key with him and any escape from that gate at that relevant time would necessarily fix the liability of PW-4 for facilitating the escape of any

prisoner. In this regard, the provision of Rule 302 of the Jail Manual also does not appear to be absolute in fixing the primary responsibility of the head warden in case of escape of any prisoner unless the laxity of duty on their part is also proved.

24. So far charge under Section 222 of the I.P.C. is concerned, the provision is extracted hereunder:-

Indian Penal Code 222- *Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed*- whoever being a public servant legally bound as such public servant to apprehend or to keep in confinement any person under sentence of the court of justice for any offence or lawfully committed to custody intentionally omit to apprehend such person or intentionally suffers such person to escape or intentionally aids such person in escaping or attempting to escape from such confinement shall be punished as follows that is to say- with [imprisonment for life] or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement, or who ought to have been apprehended, is under sentence of death; or with imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement, or who ought to have been apprehended, is subject, by a sentence of a Court of Justice, or by virtue of a commutation of such sentence, to [imprisonment for life] or imprisonment for a term of ten years or upwards; or with imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement, or who ought to have been apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years [or if the person was lawfully committed to custody].

Ingredient of offence i). accused was a public servant ii), a person was legally committed to custody or was under sentence of a court, iii). sentence was passed for committing certain offence, iv). accused was legally bound to apprehend or keep such person in confinement, v). accused omitted to apprehend or suffered such person to escape or attempt to escape, vi). accused did so intentionally.

25. In the instant case, the learned Trial Court has recorded finding that the appellant has intentionally suffered the escape of under trial prisoner from custody under conspiracy with main accused.

In this regard, the simple incriminating circumstance put to the accused under Section 313 of the Cr.P.C. is the handing over of key by PW-4 to him for 20-25 minutes in pretext of plucking mangos, but no other circumstances have been put to the accused for basing his conviction for the offence under Section 222 of the I.P.C. Moreover, he has simply asked as to he has facilitated the escape of prisoner Uday Nath Oraon from custody under conspiracy, but on the both counts, no reason has been recorded for arriving at the conclusion about guilt of the present appellant.

26. The charge of conspiracy has also been failed due to acquittal of another co-accused Ganesh Mishra, who was jointly tried with the present appellant and also in absence of any evidence on record showing the conspiracy in between the present appellant and the escaped prisoner in facilitating his escape from the prison.

27. The manner and circumstances under which the prisoner escaped is also doubtful in view of the fact that the dog squad firstly moved towards the female ward, thereafter, came to the main gate and it is also admitted by the investigating officer that either the prisoner fled away from the female ward or from the main gate. The another hole mark in the prosecution case is revealed from the fact that on the first gate, Bihari Yadav was posted and having the keys of the main gate. This fact has been proved by PW-2 (informant). Surprisingly, the investigating

officer has not inspected the relevant registers of entry and exit of the jail officials on duty on the particular date and time to ascertain as to whether Bihari Yadav was posted on the date of occurrence or not. He has simply relied upon the statement of PW-4 in this connection. The role of PW-4 appears in this case extremely doubtful in order to save his own skin shifting his liability upon others. Even if the testimony of PW-4 regarding handing over the key to the present appellant for same time is taken to be true, even then it cannot be connected with mere giving of key and at the same time facilitating escape of the prisoner at his instance because the key of another gate was belonging to another guard. It is to be further observed that the responsibilities fixed under Jail Manual are relevant for the purpose of disciplinary action against the erring officials or against the dereliction of duty, it cannot be used to prove criminal charge against the accused for any particular offence, which has to be decided only on the basis of ingredients of the offence as defined under penal statute.

28. In view of the above discussion and reasons, I find that the learned Trial Court has miserably failed to consider the overall aspects of the case in proper perspective of the evidence available on record in the light of charges levelled against the present appellant rather concentrated towards provisions of Jail Manual and based the conviction of the appellant on extraneous facts, which appear to be perverse, illegal, beyond weight of evidence and non-consideration of material available on record.

29. Accordingly, I am of the constraint view to set aside the impugned judgment of conviction and sentence of the appellant passed by the learned Trial Court.
30. This appeal is **allowed**.
31. Pending I.A.(s), if any, stands disposed of.
32. The appellant is on bail. He is discharged from the liability of bail bond and sureties are also discharged.
33. Let a copy of this judgment alongwith the trial Court records be sent back immediately to the concerned Trial Court for information and needful.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand at Ranchi

Dated: 14/08/2026

Rahul- NAFR

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