

**IN THE HIGH COURT**

**AT LABASA**

**APPELLATE JURISDICTION**

**Criminal Appeal No. HAA 17 of 2023**

**BETWEEN:** NIMISH DEO SINGH

**APPELLANT**

**AND:** STATE

**RESPONDENT**

**Counsel:** Ms. S. Devi for the Appellant

Ms. M. Lomaloma for the Respondent

**Date of Ruling:** 6<sup>th</sup> June 2024

**Date of Ruling:** 2<sup>nd</sup> August 2024

**SENTENCE**

1. Nimish Deo Singh was convicted in absentia on the 11th of November 2022 for the offence of Unlawful Possession of Illicit Drugs, contrary to section 5 (a) of the Illicit Drugs Control Act.
2. The particulars of the offence are that on the 27th of May 2020, at Labasa, Nimish Deo Singh, without lawful possession, was in possession of 35.48 grams of methamphetamine, an illicit drug.
3. On the 23rd of November 2022 he was sentenced to imprisonment for 2 years and 6 months, with a non-parole period of 24 months.

4. The appeal period ended on the 21st of December 2022, however the appeal was filed on the 28th of March 2023, therefore he was directed to file his appeal out of time.
5. On the 27th September 2023, the Court granted him leave to appeal out of time and time to file his Grounds of Appeal and thereafter the matter then took its course. He appealed against conviction and sentence.
6. On the 6th of June 2024, the appeal against conviction was dismissed however the appeal against sentence was allowed and his sentence was quashed. He is now before the Court for re-sentencing.
7. The Court gave directives for mitigation submission by the Accused and for the State to also file sentencing submissions.

1. Mitigation

- (a) The Accused is 38 years old and a divorcee. He has one child aged 9 years old
- (b) He was a Radio announcer and the sole breadwinner in his family.
- (c) He resided with his parents and his child. His child is attending school and he was financially supporting his child.
- (d) He was a patient at the Stress Management Ward in Labasa and was prescribed anti-depressant tablets.
- (e) He is remorseful and he seeks forgiveness from the Court.
- (f) Prior to the conviction in this case, he was a first offender.
- (g) He was previously remanded for 45 days prior to his initial sentence.
- (h) He has served 1 year 6 months of the sentence handed down by the Court below.

- (i) The tariff was set in the case of Abourizk vs State [1991] FJCA 98 (7th June 2019) and for the quantity of drugs in this case, the offending falls into Category 2 and the tariff is from 3 ½ years to 10 years imprisonment.
- (j) Counsel submits that the quantity of methamphetamine found is not significantly higher therefore the Court ought to consider the lower part of the tariff.
- (k) Counsel submits that the drugs analysis report does not indicate the purity of the drugs, therefore the Court must consider this in sentencing him.
- (l) He has spent 1 year 8 months in custody serving his initial sentence therefore this period should be taken into account and deducted from any new sentence.

## 2. Sentencing Recommendations

- (a) The Accused Nimish Deo Singh was found in possession of 35.48 grams of Methamphetamine.
- (b) The maximum penalty for the offence of Unlawful Possession of Illicit Drugs attracts a maximum sentence of life imprisonment or a fine of \$1, 000, 000 (one million dollars.)
- (c) The tariff for synthetic illiict drugs such as Methamphetamine was set in the case of Abourzik vs State (supra)
- (d) He falls into Category 2 of drug offenders and the tariff ranges between 3 ½ years to 10 years imprisonment.
- (e) The State submits that the aims of sentencing in this case is to punish the Accused in a manner that is just in all of the circumstances of the case; and to achieve a fair sentence which would address public denunciation and also to prevent the public from engaging in the committal of such offences.
- (f) He is a first offender and a person of previous good conduct.
- (g) The following facts aggravate the offending – there is an increase in the number of similar offences in the country; there is public outcry, these drugs are now on our streets and the accesibility to this drugs are easier for young people to engage themsleves in.
- (h) He has spent a total period of 16 days in remand prior to sentence.

- (i) The State submits that this case merits a deterrent custodial sentence in order to protect the community and as a deterrent, both specific and general.

### **Analysis**

8. The Accused has been convicted of Unlawful Possession of Illicit Drugs, more particularly of Methamphetamine. The tariff for such hard drugs was set in the case of Abourzik vs State (supra).
9. The offending in this case falls into Category 2 of drug offenders with a tariff of 3 1/2 years to 10 years imprisonment.
10. The aggravating factors in this case are as follows: -
  - (a) These type of drugs are prevalent in our communities now
  - (b) Synthetic drugs such as Methamphetamine are more harmful in their effects on families and individuals in the community
11. The major mitigating factor is that Nimish Deo Singh is a first offender and a person of previous good conduct. The rest of the factors set out are his personal circumstances and do not mitigate the offending.
12. He spent a total of 11 days in remand and he has served 1 year 8 months already so this will be deducted as time already served.

### **Sentencing Remarks**

13. Nimish Deo Singh you have been convicted of the offence of Unlawful Possession of Illicit Drugs, more particularly of Methamphetamine, considered a hard drug.

14. The maximum sanction is life imprisonment and/or a maximum fine of \$1, 000, 000 (one million dollars) and the tariff as set by Abourzik vs State , where the offending here falls into Category 2 of drug offences, with a tariff of between 3 ½ years to 10 years imprisonment.
15. In sentencing you I find that your personal culpability is high, the drugs were found on you and you made active attempts to conceal the same.
16. The level of offending in this case lies at the lower end for such offences. With respect to submissions by counsel on the purity or otherwise of the drugs, the relevant section, 5 (a) of the Illicit Drugs Control Act makes it an offence to possess illicit drugs, including Methamphetamine. It does not stipulate the purity or otherwise of the drugs therefore that is not a relevant consideration for sentencing.
17. I adopt a starting point of 3 1/2 years imprisonment and I add 2 years for the aggravating factors identified above. For your previous good conduct as a first offender I deduct your sentence by 2 years, leaving you with an interim sentence of 3 1/2 years imprisonment.
18. You were remanded for 11 days prior to the initial conviction and you have served 1 year and 8 months therefore this period of 1 year 8 months and 11 days is deducted as time already served.
19. Nimish Deo Singh for the offence of Unlawful Possession of Illicit Drugs, you are sentenced to 2 years 2 months and 20 days imprisonment.
20. Pursuant to section 18 of the Sentencing and Penalties Act, I impose a non-parole period of 18 months 20 days to be served by you. The Corrections Authorities are to make the necessary adjustments to your records and revise your possible date of release.

**Nimish Deo Singh this is your sentence: -**

- 1. For the offence of Unlawful Possession of Illicit Drugs you are sentenced to 2 years 2 months and 20 days imprisonment – you will serve a non-parole period of 18 months 20 days.**

**30 days to appeal**



  
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**Mr. Justice Usaia Ratuveli**  
**Puisne Judge**

**Solicitors:**

Legal Aid Commission for the Appellant

Office of the Director of Public Prosecutions for the Respondent