

**HIGH COURT OF TRIPURA
AGARTALA**

Crl. Rev. P. No.18 of 2025

Smt. Mampy Nama, W/o Shri Apu Saha, resident of Bishalgarh, Murabari, P.S. Bishalgarh, District – Sepahijala, Tripura on behalf of Sri Apu Saha, S/o Late Tapan Saha, resident of Bishalgarh, Murabari, P.S. Bishalgarh, District- Sepahijala, Tripura.

..... Petitioner(s).

V E R S U S

The State of Tripura, represented by the Secretary, Home Department, Government of Tripura, Agartala.

..... Respondent(s).

For Petitioner(s) : Mr. Janardhan Bhattacharjee, Advocate,
Mr. Sajib Ghosh, Advocate.

For Respondent(s) : Mr. Raju Datta, Public Prosecutor,
Mr. Rajib Saha, Addl. Public Prosecutor.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

14/05/2025

Heard Mr. Janardhan Bhattacharjee, learned counsel appearing for the petitioner and Mr. Raju Datta, learned Public Prosecutor appearing for the respondent-State.

2. The prayer for discharge under Section 227 of the Cr.P.C. made by the petitioner accused on 15.02.2025 in Special (NDPS) No.14/2025 has been rejected by the Special Judge (NDPS), West Tripura, Agartala vide impugned order dated 13.03.2025. Being aggrieved, the petitioner has preferred this instant revision petition under Section 397 read with Section 401 of the Cr.P.C.

3. The Airport P.S. Case No.2024/ARP/035 was instituted on 23.04.2024 under Section 21(C)/25/29 of N.D.P.S. Act, 1985 against one Sri

Anjan Shil, son of Late Gopal Shil. It alleged that in the courtyard of Sri Anjan Shil, the alleged contraband articles, two numbers of documents in the name of Shri Anjan Shil and one Maruti Van bearing No.TR-01-E-0605 (blue colour) were seized from the house of the said Shri Anjan Shil in presence of available witnesses. The FIR is at Annexure – 1 and the seizure list is at Annexure – 2. The police after investigation submitted charge sheet bearing Airport PS C/S No.62 of 2024 on 30.10.2024, under Section 21(C) of the NDPS Act, 1985 against the present accused petitioner Sri Apu Saha. The investigating agency later submitted a prayer for custodial trial of the accused. By the impugned order dated 13.03.2025, charges were framed against the petitioner under Section 21(C) of the NDPS Act, 1985 after going through the materials collected by the investigation. Petitioner has alleged that except one omnibus statement of witness namely Ratanlal Ghosh son of Late Dharendra Chandra Ghosh under Section 161 of the Cr.P.C. no other evidence has been found against the petitioner. Moreover, no such person resides in the locality at the address mentioned in the statement of Ratanlal Ghosh. It has been revealed that Ratanlal Ghosh is a man of Bishalgarh, Sepahijala District who does not know the actual facts of the case. He cannot identify the accused petitioner also. This has been made the basis for framing of the charge.

4. Mr. Janardhan Bhattacharjee, learned counsel for the petitioner, has placed reliance on the decision of the Apex Court in the case of **Sajjan Kumar Versus Central Bureau of Investigation** reported in (2010) 9 SCC 368. He has referred to the propositions laid down by the Apex Court on the scope of exercise of jurisdiction under Section 227 and 228 of the Cr.P.C. at

paragraph-17 of the judgment. He submits that if the materials collected by the investigation do not make out a prima facie case against the accused and if two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the learned trial Court is empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal. The materials produced by the investigation in the present case do not constitute prima facie case against the petitioner for framing a serious charge under Section 21(C) of the NDPS Act, 1985. Moreover, till date the investigation has not been able to trace the true owner of the Maruti Van. The petitioner, unnecessarily may have to face the rigors of a criminal trial which ultimately in all possibility would not lead to this conviction. Therefore, the impugned order may be set aside and the petitioner may be discharged.

5. Mr. Raju Datta, learned Public Prosecutor, for the respondent-State has filed a counter-affidavit. He submits that the contention of the petitioner at paragraph-4 of the petition that there was only one witness namely Ratanlala Ghosh who made statement against the petitioner is not correct. There are eight witnesses namely, Pradip Deb, Bijoy Baidya, Sujit Sen, Chandan Bhowmik, Badal Sharma, Abhijit Chakraborty and Kaim Uddin who have been examined under Section 161 of the Cr.P.C and have implicated the petitioner. Those statements are annexed to the counter-affidavit from page No.52 onwards. It is submitted that there is other circumstantial evidence also. During investigation, it has been established that on the day of offence the alleged vehicle was driven by the petitioner who parked the vehicle in the house of Anjan Shil in his absence. He also

submits that therefore a prima facie case was made out for framing of charge under Section 21(C) of the NDPS Act, 1985. He relies upon a decision of the Apex Court in the case of ***State of Gujarat Versus Dilipsinh Kishorsinh Rao*** reported in ***(2023) 17 SCC 688*** paragraph Nos.12, 13 and 14. He submits that at the stage of framing of charge, the test is of existence of a prima-facie case, and the probative value of materials on record need not be gone into. The court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial. The power and jurisdiction of the Higher Court under Section 397 of the Cr.P.C. which vests the Court with the power to call for and examine records of an inferior court is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings. Learned Public Prosecutor, therefore, submits that there are enough materials collected against the petitioner for making out a prima facie case against him for proceeding with the trial under Section 21(C) of the NDPS Act, 1985. Therefore, the learned trial Court has rightly refused to discharge him.

6. Mr. Janardhan Bhattacharjee, learned counsel for the petitioner in reply submits that the statements of the other witnesses have been collected after much delay. Even if they are taken into account, they would

not in all probability lead to his conviction. As such, the petitioner may be necessarily subjected to face rigors of trial.

7. I have considered the rival submissions of the learned counsel for the parties and the gamut of facts placed from record. Proposition of law as regards the scope of exercise of jurisdiction under Section 227 and 228 of the Cr.P.C, has been laid down by the Apex Court in the case of **Sajjan Kumar** (Supra) relied upon by the petitioner and also in the case of **State of Gujarat** (Supra) relied upon by the learned Public Prosecutor.

Paragraph-17 of the report of case of **Sajjan Kumar** (Supra) is extracted hereunder:

“17) Exercise of jurisdiction under Sections 227 & 228 of Cr.P.C.

On consideration of the authorities about the scope of Section 227 and 228 of the Code, the following principles emerge:-

(i) The Judge while considering the question of framing the charges u/s 227 of the Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

iii) The Court cannot act merely as a Post Office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.”

8. Paragraph-13 & 14 of the report of case of ***State of Gujarat***

(Supra) are extracted hereunder:

“13. The primary consideration at the stage of framing of charge is the test of existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in *State of Maharashtra v. Som Nath Thapa* and the *State of MP v. Mohan Lal Soni* has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

14. The power and jurisdiction of Higher Court under Section 397 CrPC. which vests the court with the power to call for and examine records of an inferior court is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings.”

9. The principle enshrined under Section 227 and 228 of the Code

do not permit the learned trial Court to examine the probative value of the

materials collected by the investigating agency at the stage of framing of a charge. Though undoubtedly the learned trial Court has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the learned Court will be fully justified in framing a charge and proceeding with the trial. At the stage of framing of the charge, it should not be the outlook of the trial Court to see whether the trial would end up in conviction or acquittal. The satisfaction therefore which is to be derived at the stage of framing of charge is only to the extent of forming an opinion based on the materials on record whether the accused might have committed an offence alleged against him. In the light of the above principles, this Court upon consideration of the materials on record finds that the contention of the petitioner that there was only one witness namely Shri Ratanlal Ghosh who implicated petitioner of the offence alleged is not correct since eight witnesses who have been examined under Section 161 of the Cr.P.C. have made statement regarding the implication of the petitioner as the driver of the offending vehicle which was seized in a parking state containing contraband items in the premises of one Sri Anjan Shil. The investigating authority has, even after inquiries made from the District Transport office, Tripura, been informed that no information could be found in Vahan 4.0 database in respect of Maruti Van bearing No.TR-01-E-0605, Chasis No. ST91-IN422813 (Annexure-R/6). In the wake of such materials placed before the learned trial Court, the learned trial Court was rightly found that sufficient materials are found to make out a prima facie

case against the petitioner. Whether these materials could ultimately lead to this conviction or acquittal is neither to be examined nor to be expressed at the stage of framing of charge lest the case of the defence could be prejudiced before trial. Therefore, this Court does not find any error in the impugned order.

10. Accordingly, the instant petition is dismissed. Pending application(s), if any, shall stand disposed of.

(APARESH KUMAR SINGH), CJ

