

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case:- CRM(M) No. 219/2025
CrIM No. 437/2025

Raj Kumar Gupta, age 70 years S/o Sardari Lal Petitioner(s)
R/o H.No. 37-F B/C, Gandhi Nagar, Jammu.

Through: Mr. Ashfaq Ahmed Khan, Advocate

Vs

1. UT of J&K through Crime Branch, Jammu.
2. Mohd Akhter S/o Abdul Rashid R/o Batote Tehsil Batote, District Ramban.
3. Irfan Hamid Zarger S/o Abdul Hamid R/o Drundi Bala, A/p Near Dak Banglow Doda City.
4. Mohd Iqbal S/o Haji Suba R/o Mansar Distt. Udhampur.
5. Muddasir S/o Mohd Iqbal Bakerwal R/o Mansar District Udhampur.
6. Abdul Jaleel S/o Haji Suba R/o Mansar Distt Udhampur.
7. Mohd Tahir Bakerwal S/o Haji Suba R/o Mansar District Udhampur.
8. Vintakata Kriahana Madgula S/o Shiv Ram Babu R/o Podena Rao Nagar, Telengana Hyderabad (testator of trath gold)
9. Parvez Ahmed Mir S/o Abdul Rashid Mir R/o W. No.1, Batote District Ramban.
10. Imran Khan S/o Abdul Jaleel Bakerwal R/o Mansar District Udhampur.
11. Gundeep Singh S/o Balwant Singh R/o 281/R Sainik Colony, Jammu.
12. Angad Manhas S/o Hakam Singh R/o Kandhote Tehsil Thatri District Doda.
13. Sandeep Singh Rana S/o Naib Singh Rana R/o Parnot Tehsil Doda.

..... Respondent(s)

Through:

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT(ORAL)
(18.03.2025)

- 01.** Petitioner through the medium of present petition filed under Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) seeking quashment of impugned order dated 30.10.2024 passed by the learned Principal Sessions

Judge, Udhampur in File No.3/Cr.Revision titled Mohd Akhter Mir & Ors vs State through Police Station Crime Branch Jammu, whereby the accused have been discharged after framing of charge.

- 02.** The specific case of the petitioner is that on 16.09.2013, police of Police Station Kud came to know through reliable source that about 15/16 days back some person of an unknown organization were carrying on illegal activities of banned militant outfit Hizbul Mujahideen to recruit new boys in the said outfit and have distributed Hawala Money amongst residents of Patnitop, namely, Iqbal, Tahir, Mudasir, Jalil, Imram who are underground workers of the outfit. The hawala money was also distributed among some other persons namely Akhtar Mir, Angad Manhas and Sandeep Singh Rana who are residents of different areas of Batote, Doda and Kishtwar and are providing logistic support to above mentioned persons. From the distributed Hawala Money said persons have purchased new vehicles (Scorpio), truck chasis etc to carry on illegal activities of the outfit. On receipt of this information, FIR No. 110/2013 came to be lodged at Police Station Kud against the accused under Sections 13, 17, 21, 38 & 40 of J&K Unlawful Activities (Prevention) Act, 1967 (as amended by Act 35 of 2008 dated 31.12.2008).
- 03.** During the course of investigation, one Mohd Iqbal S/o Haji Suba R/o Mansar came to be arrested on 19.09.2013 under Sections 13, 17, 21, 38 & 40 of J&K Unlawful Activities (Prevention) Act, 1967 who was put to sustained interrogation and disclosed that some unknown organization had provided huge money to his brothers namely Tahir and Jalil and his son

Mudassir to carry on illegal activities for the outfit. His son and brothers allegedly further distributed 80 lakh to one Parvaiz Mir, 45 lakh to Angad Manhas and 45 lakh to Sandeep Rana. He allegedly took share from said Halawa Money out of which he deposited 20 lakh in the name of his son Jaffere Hussain at J&K Bank, Mansar and purchased Scorpio in the name of his nephew Imtiaz Ali. Another accused Akhtar Mir was arrested and was also put to sustained interrogation who disclosed that in the month of August 2013, he came to know that Mohd Iqbal Bakarwal and his brother Jalil were going to sell a precious article "Trath Gold" to one Gupta Firm of Jammu, for which they required help in finalizing the deal. He allegedly helped them in finalizing the deal and went to Mansar at the house of Jalil Bakarwal and took 80 lakh as his share out of said deal.

- 04.** It was further alleged that on 10.10.2013, a written complaint was lodged by one Raj Kumar Gupta R/o 97/06 Channi Himat, Mohd Iqbal Mir and Parvez Mir son of Abdul Rashid resident of Batote, who were also partners of Jhelum Infra Project, and the said complaint was received by the I.O from District Police Office, Udhampur, wherein it was alleged that one of their employees namely Narayan Raina, who is Engineer has informed them that Mohd Iqbal, Abdul Jalil and Imran are in possession of precious article, which are magical and useful for their business. The said Engineer is alleged to have connived with the accused and made the complainant believe that it is precious item and if kept at the business site, in that event, one will become a business tycoon. For the purpose of purchasing the said precious article an amount of Rs.25 lacs was paid in cash at Patnitop as

advance on 03.08.2013 and they promised to handover the item on payment of Rs.2.00 crores to them. The complainant is alleged to have paid balance amount to the accused on 30.08.2013. The complainant kept on requesting them time and again to deliver that precious article but same was not given to him. In the complaint, the complainants stated that they could not file complaints against the accused since they were under fear as accused are very high handed and could harm their life and property.

05. Feeling aggrieved of the impugned order, the petitioner has challenged the same on the following grounds:

- a) *That the learned Court below has passed the impugned order in mechanical manner without going into the facts and circumstances of the case.*
- b) *That the Court below has exceeded jurisdiction vested in it by relying on the material which could had been relied upon only after trial got concluded.*
- c) *That in reference drawn by learned Revisional Court is perverse and had turned nelsons eye, towards the material placed on record by the prosecution agency, which can be substantiated from the bare perusal of challan.*
- d) *That the learned Revisional Court lost sight of that an innocent person has been duped of several crores of his hard earned money on the allurements of accused persons, who have deceived the petitioner by luring him into their dragnet.*
- e) *That the principal laid down for framing of charges clearly stipulates that the learned Court below, while framing the charge has to see material placed before the same and it was because of the said fact that charge was framed by learned CJM, Udhampur.*
- f) *That the learned Revisional Court while discharging the accused persons has not returned the finding that what were the legal irregularities of trial Court while framing the charge and as such have committed grave irregularities in discharging the accused persons.*
- g) *That the learned Court below has not taken cognizance of fact that while luring the petitioner, an obtaining an amount of Rs.5.60 Crore to Iqbal Mir and Parvaiz Mir for purchasing of precious article i.e “Traith Gola” and as a measure of security*

the same gave him a cheque amounting to Rs.5.60 Crore as a token guarantee.

- h) That the various Hon'ble High Courts and Hon'ble Apex Court have laid down guidelines for trial Courts for framing of charges.*
- i) That it is settled proposition of law that where the material placed before the Court discloses grave suspicions which has not been properly explained the learned trial Court will be fully justified in framing charge.*
- j) That the learned Court below while adjudicating upon the facts of the case lost site of the fact that though there was allegation of purchased of vehicle by Imtiaz Ali on behalf of Mohd Iqbal and deposit of Rs.20 lacs of his Jaffer Hussain yet were not impleaded as party in the arena of accused but the laws on behalf of prosecution could not be appreciated at this stage.*
- k) That the learned Court below failed to appreciate that clear cut case of duping of money in furtherance of criminal conspiracy has been clearly established given in record placed before learned trial Court which candidly framed the charges which were upset by the Revisional Court giving its own explanation and transgressing the judicial not vested in it.*
- l) That in case impugned order passed in revision bearing 3/Cr.Revision dated 30.10.2024 in revision titled Mohd Akhter Amir & Ors vs State through Police Station Crime Branch Jammu is not quashed, the petitioner shall suffer an irreparable loss and injury which cannot be compensated any means later on.*

06. A bare perusal of the order passed by the trial Court (CJM, Udhampur) reveals that the I.O after taking all necessary steps during investigation came to the conclusion that offences under Unlawful Activities (Prevention) Act were not disclosed against the accused person because their complicity in involvement of any militancy related incident was not established so he dropped the offences under the said Act against the accused person and the investigation was transferred to Crime Branch, Jammu on 11.01.2014. The I.O of the Crime Branch after completion of investigation proved offences u/s 420/120-B RPC against the accused persons and presented challan before the learned CJM Udhampur on

26.12.2018 and learned CJM, Udhampur vide order dated 20.08.2020 framed charges against all the accused persons for the commission of offences u/s 420/120-B RPC.

- 07.** Feeling aggrieved with the aforesaid order, the petitioners/accused therein preferred the revision petition before the Revisional Court (learned Principal Sessions Judge, Udhampur) on the facts and grounds agitated therein. The learned Revisional Court after going through the record and the facts of the case, allowed all the revision petitions and set aside the order dated 20.08.2020 passed by the Court of learned CJM, Udhampur and consequently, the charge sheet against the accused/petitioners stood dismissed and the petitioners stood discharged, accordingly.
- 08.** The instant petition has been filed under Section 528 BNSS by the petitioner, who was a complainant in the aforesaid case, seeking quashment of impugned order dated 30.10.2024 on the ground that the learned Revisional Court has passed the impugned order in mechanical manner without going into the facts and circumstances of the case.
- 09.** While addressing the case at hand, it is essential to carefully consider whether the learned Revisional Court was justified in setting aside the trial Court's order dated 20.08.2020 whereby the charge sheet against the accused/persons stood quashed and accordingly, accused/petitioners therein were discharged vide impugned order.
- 10.** Before proceeding further in the matter, it would be apt to reproduce the scope of Section 528 of BNSS, which has been invoked in the instant petition. For facility of reference, the same is reproduced as under:

“528. Saving of inherent powers of High Court.

Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice”.

11. With a view to consider whether a *prima facie* case has been made out against the petitioner, the Supreme Court has clarified the standard of review under Section 227 of the Code of Criminal Procedure. The Judge, while exercising powers under this provision, has the duty to determine whether there exists sufficient material to proceed with the trial by framing charges against the accused. It is a settled position of law that while the Judge, at the stage of framing charges, is not expected to conduct a detailed or exhaustive inquiry akin to the trial. Rather, what is required, is to evaluate whether, on the basis of the material presented by the prosecution, there exists a "*prima facie*" case that justifies putting the accused on trial. In this context, a *prima facie* case refers to a situation where the evidence, when viewed in the light most favorable to the prosecution, is sufficient to lead a reasonable person to believe that the accused has committed the alleged offense.

12. The aforesaid view has been reiterated by the Apex Court in case titled **“Ajay Singh & Anr vs State of Chhattisgarh & Anr, reported in 2017 SCC (3)330**, wherein Hon’ble the Supreme Court has held in Para-9 as under:

“9. Chapter XVIII CrPC provides for trial before a Court of Session. Section 227 empowers the trial Judge to discharge the accused after hearing the submissions of the accused and the prosecution and on being satisfied that there is no sufficient ground for proceeding against the accused. The key words of the section are “not sufficient ground for proceeding against the accused”. Interpreting the said provision, the

Court in “P. Vijayan v. State of Kerala, (2010) 2 SCC 398” has held that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

13. Reliance is also placed in another case titled “**Dilawar Balo Kurane vs State of Maharastra**”, wherein the Hon’ble Supreme Court has been pleased to observe that the Court has the limited power to sift and weigh the evidence. The operative part is reproduced as under:-

“In exercising powers under [Section 227](#) of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section 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; 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; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under [Section 227](#) of the Code of Criminal Procedure, the Judge 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 but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

14. Thus, after meticulously perusing the averments pleaded in the writ petition and also the record produced with particular reference to the order dated 30.10.2024 passed by the Revisional Court in File No.3/Cr. Revision, which is subject matter of the present case, this Court is of the view that the said order is perfectly legal, justified and is not perverse, as the Court

below has exercised the revisional jurisdiction well within its right and this Court concurs with the finding recorded by the learned Revisional Court while discharging the accused. Accordingly, the order dated 30.10.2024 passed by the Revisional Court in File No.3/Cr. Revision is **upheld**.

- 15.** For the foregoing reasons, the petition preferred under Section 528 of the BNSS is not maintainable being devoid of any merit and accordingly the same is **dismissed along with all connected applications** in *limine*.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
18.03.2025
Vijay

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No

