

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM(M) No. 431/2022
CrlM No. 885/2022

Jahingeer Ahmad Yatoo

.... Petitioner/Appellant(s)

Through:- None.

V/s

UT of J&K

.....Respondent(s)

Through:- Mr. P D Singh, Dy. AG

CORAM: HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL, JUDGE

ORDER

18.08.2025

1. There was no representation on behalf of the petitioner for the last two consecutive dates, i.e., 31.05.2024 and 19.05.2025. Today also, no one has put in appearance on his behalf. It appears that the petitioner has lost interest in pursuing the present writ petition.

2. Mr. P.D. Singh, learned Deputy Advocate General, appearing on behalf of the respondent, submits that the charge framed against the petitioner vide order dated 25.09.2021 by the learned 2nd Additional Sessions Judge, Jammu (hereinafter referred to as the "Trial Court") has been challenged in the present petition.

3. The impugned charge sheet (Challan) has been challenged on the following grounds:

- (i) that even if the entire contents of the challan are taken at its face value, the same would not result in conviction;

- (ii) that the only allegation against the petitioner is with respect to a statement allegedly made under Section 25 of the Evidence Act, which would not be legally admissible;
- (iii) that any statement under Section 164 of the C.r.P.C. must be recorded before a Magistrate strictly in accordance with the procedure prescribed under that provision and in compliance to the legal formalities laid down in Section 164 Cr.P.C, any statement which is not in accordance with Section 164 Cr.P.C cannot be proved as a confessional statement by the accused;
- (iv) that there is no direct or indirect evidence against the petitioner which could ever connect him with the commission of alleged offence and from the bare perusal of the Challan it is crystal clear that the petitioner has not committed any offence as alleged by the respondent;

4. Learned counsel for the respondent has taken the Court through the impugned order passed by the Trial Court, which is under challenge in the present petition. After hearing the counsel for the parties, the Trial Court found sufficient grounds to frame charges against the accused persons. Specifically, it was observed that there were grounds to believe that accused Nos. 1 and 2 had committed offences punishable under Sections 8,15,25,29 of the NDPS Act, and that accused No. 3 had committed offences under Sections 8,15, 25, and 29 of the NDPS Act read with Section 201 of the IPC.

5. As per the prosecution case, on 02.07.2020, the Anti-Narcotic Task Force received credible information regarding a truck bearing registration No. JK 18-4311, which was allegedly transporting a large quantity of poppy straw-like substance being smuggled from Kashmir to Punjab by unknown persons. On this information Case FIR No. 19/2020 under Section 8/15/29 NDPS Act was registered at PS Crime Branch Jammu and investigation entrusted to the I/O Inspector Sanjeet Sharma. During the Course of Investigation I/O proceeded towards NHW 44 Sidhra Nagrota bye pass road Jammu along with staff of ANTF Jammu and senior Officers of Jammu also informed telephonically to reach on NHW 44 Sidhra Nagrota bye pass road JK Forest Department bamboosetum park. I/O along with other officers/officials laid naka near JK. Forest Department Bamboosetum Park NH 44 Sidhra Narwal Road Jammu and started checking of trucks coming from Nagrota side. During checking truck bearing registration No. JK18-4311 was stopped for checking. EMIC concerned and photographer/videographer of crime branch Jammu were informed telephonically through PCR Jammu to reach on the spot. In presence of EMIC Sidhra Bajalta checking of the truck bearing registration No. JK 18-4311 was conducted. During checking some plastic bags were found concealed under empty fruit crates loaded in the above mentioned truck. All the concealed plastic bags were unloaded and found to be 44 in number. On opening of 44 plastic bags, poppy straw like substance was found. On questioning driver disclosed his name as Mohd Afzal Khan S/o Ab. Ghani Kham R/o Hundoora Tral Pulwama and co-driver as Momin Hasan Chopan S/o Gh. Hasan Chopra R/o Midoora Awantipora. Notice U/s 50 of NDPS Act has been served to both of them and briefed by I.O in their known language in the presence of EMIC Sidhra Bajalta. Personnel search

memo of both the accused was prepared on spot in presence of EMIC Sidhra Bajalta and witnesses. Legal Metrological Department Officer was also informed telephonically through PCR Jammu to reach on the spot with calibrated weighing machine. On reaching, legal metrological officer weighed 44 plastic bags packed with Poppy Straw like substance. Total weight of 44 plastic bags was found to be 1200 Kgs. Out of 44 plastic bags 44 samples of 200 gms each were extracted and marked as 1A-44A for Chemical Analysis by FSL Jammu and 44 samples of 200 gms each were also extracted and marked as 1B-44B as reserve samples and remaining main 44 plastic bags were marked as 1-44. All the 88 samples and remaining 44 main bags were sealed by EMIC Sidhar Bajalta and signed on the spot by EMIC I/O, witness and accused persons. Video graphy and photography was conducted by Videographer and photographer of Crime Branch Jammu. I/O prepared site plan, seizure memo of Poppy Straw like substance, truck, empty fruit crates, recorded statement of witness u/s161 Cr.P.C on spot, seizure memo Poppy straw like substance was attested by EMIC Sidhra Bajalta 44 samples marked as 1A-44A to be deposited with FSL Jammu for Chemical Analysis, 44 reserve samples marked as 1B-44B and remaining

Main plastic bags marked as 1-44 were deposited in the Maalkhana of PS Crime Branch Jammu under project receipt, during questioning both of the accused stated that they received the consignment of Poppy straw from owner of truck namely Jahingeer Ahmed Yatoo S/o Gh. Rasool Yatoo R/o Midoora Awantipora. The statement of Javed Ahmed Dar S/o Rasool Dar recorded u/s 161 CrPC (registered owner of truck Jk 18-4311) who stated that he has sold his truck in 2012 and at present the above mentioned truck is in the proccession of Jahingeer Ahmed Yatoo who purchased it from one person namely Khursheed Ahmed Shah S/o Gh.

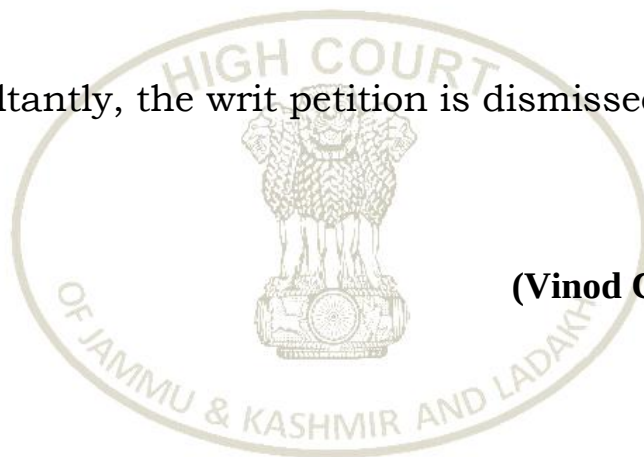
Ahmed Shah R/o Androosa Tehsil Pampore Pulwama against affidavit duly attested by Notary. In this regard I/o recorded the statement of Khurshid Ahmed Shah s/o Gh. Ahmed Shah u/s 161 CrPC who produced an affidavit in this regard. Jahingeer Ahmed Yatoo was arrested on 06.12.2020. During questioning accused Jahingeer Ahmed Yatoo stated that the Mobile No. 9541488486 was purchased by him in the name of Momin Hasan Chopan and was using it for illicit smuggling of Narcotics. During questioning Jahingeer Ahmed Yatoo disclosed that Masood Ahmed Dar S/O Ab. Rahman Dar R/O Tulkhan Bibehara provided the above consignment for further delivery at Jalandhar Punjab further Jahingeer Ahmed Yatoo stated that he handed it over to accused person Mohd Afzal Khan and Momin Hasan Chopan for further delivery at Jalandhar, Punjab. On reaching Jalandhar they have to inform Masood Dar through Jahingeer about their present location, so Masood Dar can send his contacts at Jalandhar to collect the same from them. Accused persons (driver Mohd Afzal Khan and co-driver namely Momin Hasan Chopan) will receive Rs, 10000/- each from Jahingeer Ahmed Yatoo after delivering the consignment at Jalandhar, Punjab and Jahingeer Ahmed Yatoo will receive Rs 50000/- from Masood Ahmed Dars/o Ab. Rahman Dar r/o Tulkhan Bijbehara. On 30.06.2020 with common criminal intention of driver namely Mohd Afzal Khan s/o Ab. Ghani Khan R/O Hundoora Tral Pulwama, co-driver namely Momin Hasan Chopan s/o Sh. Hasan Choptan R/o Midoora Awantipora with the connivance knowingly permits by the owner of truck namely Jahingeer Ahmed S/o Gh. Rasool Yatoo R/o Midoora Awantipora and main supplier namely Masood Ahmed Dar S/o Ab. Rahman Dar R/o Tulkhan Bijbehara loaded 1200 kgs of Poppy Straw from Sangam Kashmir in truck bearing registration No. JK 18-4311 and concealed it

under empty fruit crates and both driver and co-driver left for Jalandhar, Punjab from Kashmir. On 02.07.2020 at 1930 hrs the above mentioned truck was stopped at naka point laid near JK Forest Bamboosetum Park, Sidhra, Narwal Bye Pass 44 Jammu by Anti Narcotics Task Force Jammu and recovered 1200 kgs of Poppy straw concealed under empty fruit crates. It is pertinent to mention here that Masood Ahmed Dar S/o Abdul Rahim Dar R/o Tulkhan Bijbehara is also wanted in Case FIR 21/2020 u/s 8/20/29 NDPS Act PS CBI and Case FIR No. 67/2020 u/s 8/21/22/27-A/29 NDPS Act of PS Lakhanpur (presently under investigation with ANTF CBI) in case FIR 67/2020 accounts of Masood Ahmed Dar are freeze by Anti Narcotics Task Force Jammu. Thus in view of the above offences u/s 8/15/25/29 NDPS Act stands proved against the accused persons namely 1. Mohd Afzal Khan S/o Ab. Ghani Khan R/o Hundoora Tral Pulwama 2. Momin Hasan Chopan S/o Gh. Hasan Chopan R/o Midoora Awantipora. 3. Jahingeer Ahmed Yatoo S/o Gh. Rasool Yatoo R/o Midoora Awantipora. 4. Masood Ahmed Dar S/o Ab. Rahim Dar R/o Tulhan Bijbehara Kashmir and read with 201 IPC against Jahingeer Ahmed Yatoo. In the above cited case search of the main supplier Masood Dar S/o Ab. Rahim Dar R/o Tulkhan Bijbehara has been going on and as and when Masood Ahmed Dar traced/arrested supplementary charge sheet against him will produced separately before the Hon'ble Court of law. However accused persons namely Mohd Afzal Khan, Momin Hasan Chopan and Jahingeer Ahmed Yatoo are under judicial custody. On the basis of charge framed by the Trial Court vide order dated 25.09.2021 the only allegation against the petitioner is that the confession made by the two accused persons namely. 1. Mohd Afzal Khan S/o Ab. Ghani khan R/o Hundoora Tral Pulwama. 2. Momin Hasan Chopan S/o Gh. Hasan Choptan

R/o Midoora Awantipora and the confession against the petitioner himself but on charge sheet there is no record of any confessional statement against the petitioner.

6. Having carefully perused the record, including the impugned order, this Court is of the view that prima facie the offences for which accused have been charged under NDPS Act and IPC appear to have been committed. The order passed by the Trial Court, therefore, cannot be interfered with at this stage. No jurisdictional error, illegality, or perversity is discernible in the framing of charges.

7. Resultantly, the writ petition is dismissed.



(Vinod Chatterji Koul)
Judge

Jammu:

18.08.2025
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