

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

**Reserved on: 05.08.2025
Pronounced on: 12.08.2025**

Case No. Crl A(AD) No.06/2025

Crl LP No.22/2020

CrlM No.1676/2023

UT of Jammu & Kashmir through SHO Police
Station, Udhampur

.....Appellant(s)

Through :- Ms. Saleeqa Sheikh, Advocate vice
Mr. Raman Sharma, AAG.

v/s

1. Parkash Krishan Watkar S/O Krishan
Watkar R/O Marathwada Chal
Committee Hill No.2, Narayan Nagar
Room No.598 P/S Ghat Koper Mumbai-
86.

.....Respondent(s)

2. Maqsood Sardar Hussain S/O Sardar
Hussain R/O Kurla Kamani Sunder Bagh
Indra Nagar Jai Ambika P/S Chirag
Nagar Mumbai-70.

Through :- Ms. Kumand Kiran, Advocate for
respondent No.1.

**CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE**

JUDGMENT

Per; Sanjay Parihar-J

CrlM No.1676/2023

1. For the reasons stated in the application coupled with the submissions advanced by learned counsel for the applicant/appellant at the Bar and there being no serious objections raised by the opposite counsel, the same is allowed. Delay in filing the accompanying Acquittal Appeal is condoned. CrlM No.1676/2023 is **disposed of**.

Crl LP No.22/2020

2. At the time of hearing, we were informed that Crl LP No.22/2020 is still pending, by the medium of which the appellant had sought leave to file acquittal appeal. Learned counsel for the respondents fairly conceded that she has no objection in case the finding returned by the trial Court is decided on merits. Given the submissions made, leave is granted. Registry to diarize the appeal and the same is **admitted** to hearing and taken on board for final disposal. Crl LP No.22/2020 is **disposed of**.

Crl A(AD) No.06/2025

3. By this Acquittal Appeal, judgment dated 27.07.2019 drawn by Court of Additional Sessions Judge, Udhampur is called in question, as in terms thereof, trial Court has proceeded to acquit the respondents herein of charge under Sections 8/20 NDPS Act in case FIR No.286/2011 of Police Station, Udhampur.
4. Briefly stated the admitted facts obtaining in the case are that on 03.11.2011, a police party comprising prosecution witnesses Saif Ali Shah, Rattan Lal, Noor Ahmed, Sanjay Kumar and Vikas Bali left the police Station for checking and frisking at Jakhani and accordingly at 11.30 AM a Qualis vehicle bearing registration No.MH03Z-0852 proceeding from Srinagar, suddenly slowed down at the distance of 100 yards from Naka point and two persons de-boarded from moving vehicle. It raised suspicion and the vehicle was taken into custody. In the said vehicle including driver, there were four persons who on asking disclosed their names as Parkash Krishan Watkar (A-1), Abdul

Rehim Sheikh (A-2), Maqsood Sardar Hussain (A-3), Qayoom Gafoor Sheikh (A-4). On further questioning, they disclosed the names of Tariq and Rehan Gafoor Sheikh, as the one who on seeing the police party had de-boarded from the vehicle. Upon the search of the vehicle from the rear dickey and under the seat of the vehicle Charas was recovered. After registration of the FIR, the packets of Charas were weighed. All the packets were containing 270 no. of small balls of different size. The actual weight of the Charas was found at 28.6 kgs. Thereafter, specimen samples of the Charas were drawn from each charas ball and marked as Mark-A and Mark-A/1 whereas rest of the Charas was marked as Mark-B & Mark-C.

5. After conclusion of the investigation, it was found that on asking of accused Rehan Gafoor Sheikh, A-1 hired the aforesaid vehicle from its owner for journey to Srinagar. The hiring was for a round trip and the hire was settled at Rs 40,000/-. Rehan Gafoor Sheikh asked A-1 to drive the vehicle as it would not cost any expense for him. When A-1 went to Rehan Gafoor Sheikh with the vehicle, three other persons were also with him. He disclosed their names as Abdul Rahim Sheikh, Maqsood Sardar Hussain and Qayoom Gafoor Sheikh. He stated to A-1 that all these persons have to go to Srinagar for a tour. Accordingly five accused persons commenced journey in the said vehicle towards Srinagar. The vehicle was driven by A-1. On the way they stopped at Ajmer. On 01.11.2011 five accused persons reached at Khanabal where a person was waiting whose name was disclosed as Tariq by Rehan Gafoor Sheikh. All of them went to the house of Tariq at Khanabal. At that place A-5 took the keys of the vehicle from A-1 and

asked him to take rest as he had to drive vehicle in the morning. Then rest of the accused persons on the asking of A-5 concealed the Charas in the vehicle. On the next day on 02.11.2011 all the five accused persons boarded the vehicle and proceeded toward Mumbai. Tariq boarded the vehicle for the journey to Mumbai. When the vehicle reached near Jakhani Naka, Udampur, A-5 asked A-1 to slow down the vehicle and thereafter, Tariq and A-5 de-boarded from moving vehicle. Police apprehended rest of the four accused persons. It is alleged that the accused persons were taking Charas to Mumbai for smuggling. It was found that A-1 had come for the first time and he had no knowledge about the working of the other accused but upon reaching at Khanabal, A-1 had got knowledge that accused persons are smuggling Charas to Mumbai. At that time when accused persons were concealing the Charas in the vehicle, A-5 told A-1 that they are concealing some material which is taxable. Accused persons alleged to have committed offence under Section 8/20 NDPS Act. A challan was presented against all the accused persons. A-5 and A-6 absconded and accordingly, they were proceeded under Section 512 Cr.P.C. Accused persons were charged for the offences under Sections 8/20 NDPS Act. The charges were read over and explained to the accused persons who pleaded not guilty and claimed trial. In support of the charges prosecution has examined PW-1 Saif Ali Shah, PW-2 Noor Ahmed, PW-3 Rattan Lal, PW-4 Balbir Singh, PW-5 Vikas Bali, PW-6 Kuldeep Singh , PW-7 Qassim Din, PW-8 Kalpakh Dan Lal Teli, PW-9 Suresh Ram Dass Teli, PW-10 Shabir Ahmed Yeswi Scientific officer FSL Srinagar, PW-11 Anil Kumar, PW-12 Ved Parkash Naib

Tehsildar, PW-13 SI. Padam Dev Singh and PW-14 Gian Chand Sharma Inspector.

6. After closure of evidence, in order to seek explanation from the accused as regards incriminating evidence lead against them in trial, they were examined under Section 342 Cr.P.C., wherein they denied the prosecution case in totality and claimed it to be a case of false implication. In defence, they examined four witnesses viz. DW Zahira, DW Sahiba, DW Vinod Subash Wadkar and DW Rashma Parkash Wadkar.
7. Ms. Saleeqa Sheikh, Advocate appearing vice Raman Sharma, AAG for the appellant, reiterating the grounds taken in the memo of appeal, has argued that the trial court has not properly appreciated the evidence on record in its right perspective. The court below has mis-appreciated the law on the point. There was enough evidence on record which was sufficient for convicting the accused/respondents. With these submissions, learned counsel prayed that the appeal on hand be allowed and the judgment impugned be set aside.
8. Per contra, learned counsel appearing on behalf of respondent No.1 has vehemently argued that the judgment passed by the trial Court is well reasoned one based on appreciation of evidence on record. Learned counsel further submits that the acquittal earned by the respondent be upheld by this Court and the appeal filed by appellant deserves dismissal out-rightly.
9. We have gone through the record of the case and have also heard both the counsels.

10. It is relevant to state here that at the time of interception of vehicle No.MH03Z-0852 (Qualis), it allegedly was having six occupants, out of them two namely Rehan Gafoor Sheikh and Tariq were alleged to have given slip to the police and escaped, and that lead them being declared as absconder subsequent to the filing of the charge-sheet. Whereas co-accused Abdul Rahim, though put to trial, expired during the currency thereof, thus, proceedings to that extent stood abated. Whereas the other three accused i.e. the respondents herein came to be acquitted. In addition thereto, respondent No.3- Qayoom Yaqoob Sheikh too expired during the currency of this appeal, so proceedings to that extent also got abated. So the acquittal in question relates to respondent Nos.1 & 2 only. Respondent No.1 is stated to be the driver of the vehicle, whereas the other happened to be its occupant.
11. Briefly the evidence of the prosecution is stated in the manner;
PW Saif Ali Shah, who was posted at Police Station Udhampur, stated that he alongwith other police personnel were on duty for checking at Jakhani Naka. They intercepted the vehicle at Jakhani Naka point. Four persons found travelling in the vehicle, who were apprehended, other two persons had during the process of being intercepted, fled away. On checking of the vehicle and on opening seats of the dickey were found containing certain packets. When opened were in the shape of balls, which smelt like 'charas'. Respondent No.1 claimed to be driving the vehicle, others were its occupant. When the packets were opened, it yielded recovery of charas weighing 28.6 kilograms, which was seized. He further claims that seizure was prepared and samples were also drawn from each of

the balls so recovered. He claims that no efforts were made to trace the absconders. He claims that respondents did not state anything on spot about the seizure of the material and claimed they were travelling as passengers.

PW Noor Ahmed, who was also posted in Police Station Udhampur, claims that under the supervision of ASI and others, they were at Jakhani Naka, when they intercepted the vehicle. The occupants were arrested. He too stated that two of the occupants fled away and four were taken in custody. The ASI checked the vehicle and from its Dickey found one secret cabin on either side of the vehicle and in that cabin polythene bags were containing, apparently a material smelling like charas. On this ASI prepared a docket. After some time, SI Padam Dev Singh along with Photographer Dalbir Singh came on spot and seizure was prepared. The balls were weighed about 100 gms, out of which 50/50 gm two packets were separately packed. He further went on to narrate that it was ASI, who stopped the vehicle and recovered the contraband.

PW Rattan Lal too had stated on the same line. **PW Balbir Singh**, who was a photographer from the Crime Branch, too was examined and claims that he took the photographs of the seized material. **PW Vikas Bali** claims to know the accused, who were intercepted in Jakhani Naka at 11.30 a.m. when they were travelling in vehicle No.MH03Z-0852 which was coming from Srinagar and slowed down on seeing the police party and two persons fled away. Four were taken into custody and he too states that when asked, none of the

respondents claimed responsibility of the material so seized and they pleaded ignorance.

PW Qassim Din says that he was Malkhana Incharge of the Police Station Udhampur when IO Padam Dev Singh produced sealed packets which were marked as A, A-1, B, C in FIR No.286/11 under section 8/20 NDPS Act and on 16.11.2011 those packets were taken by him and sent to FSL Jammu. He had recorded entry in the Malkhana register at serial No.138. **PW Kalpakh Dan Lal Teli** claims to be registered owner of the vehicle and says that on 28.10.2011, A1 Parkash Krishan Watkar (respondent No.1) took his vehicle for ferrying as he wanted to travel to Srinagar. Later he came to know that the vehicle was seized. He claims that he only knows respondent No.1 and has no connection with the other accused persons. He denied the suggestion that on 20.10.2011 he had gone to Ajmer Sharief and stayed in a hotel. **PW Suresh Ram Dass Teli** says that the vehicle was got released on the superdnama of registered owner and he is signatory to it. **PW Ved Parkash- Naib Tehsildar** is witness to the re-sealing of the contraband.

PW SI Padam Dev Singh, though has supported the prosecution case, has admitted during cross examination that two accused fled away. He denied the suggestion that Kalpakh Dhan Lal (owner of vehicle) was taken in custody by P/S Udhampur. This witness also denied that Kalpakh was present on spot. He further went on to admit that respondent no.1 was not a regular driver of the vehicle and had come to Srinagar for the first time with the vehicle. He also admits that the vehicle in question was engaged by Rehan Gafoor and it is he who

told respondent No.1 to go to Srinagar. In the investigation, it has come that at Khannabal, Tariq received other accused and took them to his home. That since respondent No.1 had tired, out of long driving, he slept. The witness further went on to state that at the behest of Rehan Gafoor, other accused concealed the charas in the vehicle. When this charas was concealed, at that time respondent No.1 was not there. As per his investigation, at the time of loading of charas at Khannabal, respondent No.1 had no knowledge about the loading of the charas but during the course of travelling he came to know about the same.

PW Gian Chand Sharma claims to have concluded the part of the investigation.

12. Learned trial Court, after appreciating the evidence on record, was of the view that the prosecution had miserably failed in establishing that accused were in conscious possession of the contraband and that the case suffers from various material lacunae especially relating to the collection and preservation of link evidence, as such, proceeded to record acquittal.
13. We are of the considered view that the finding of acquittal recorded in favour of the respondents was the only conclusion, which the trial Court could have derived, based upon the nature of evidence laid before it. This is because when the vehicle was signaled to stop by PW-1 Saif Ali Shah, before it could reach to the place where the police party was standing, it slowed down, as a result two occupants made their escape. Whereas the other including respondents herein were intercepted. It is not the case of the prosecution that the

consignment loaded in the vehicle under beneath the seat was recovered at the behest of any of the respondents. It is also not proved that respondent No.1 though was the driver of the vehicle, was in know of there being consignment of charas in his vehicle. As per the evidence recorded before the trial Court, PW-13 SI Padam Dev Singh is categorically found admitting that during disclosure by the co-accused, it came to fore that when the consignment was being kept or concealed in the vehicle, the driver (respondent No.1) was not present. Though the witness hastened to add that after the consignment had been loaded and the vehicle was on way towards Jammu, when at some moment of time, respondent No.1 was told by the co-accused that consignment of charas has been loaded. These aspects, according to the said witness, have not been stated by any of the witnesses. During trial, it has been proved from the evidence of the owner of the vehicle (PW Kalpakh Dhan Lal Teli) that he had given the vehicle to respondent No.1 for hire so as to undertake round trip of Mumbai to Srinagar and back. From the statement of the owner, it is not discernable as to from where the consignment of charas was loaded. PW-1 claims to have made search of the vehicle and recovered the contraband. PW-3 Rattan Lal claims that he along with other SPOs went towards chase of other absconders, which means that PW-3 has not witnessed the incident of recovery. On the other hand, PW-5 Vikas Bali also a police official, he alone chased the absconding respondents, which means these witnesses are excluding one and each other's presence at the scene of crime. Believing one would exclude his statement that he witnessed the search of the vehicle inasmuch as

vehicle was slowed down at some considerable distance from the naka point. PW-5 Vikas Bali is found stating that he has witnessed such incident number of times and the trial Court was of the view that he is in the nature of a stock witness, whose testimony is to be examined cautiously.

14. The Executive Magistrate and Investigating Officer said to have been brought at the site of recovery, is a lateral aspect because what PW Saif Ali Shah is stating that he had recovered the consignment at first. The trial Court has noted that the said recovery has not been got witnessed from any independent witness. We agree with it because given the consignment of charas and also that as many as four persons were found travelling in the vehicle when the charas was recovered, the prosecution was required to prove by way of cogent evidence that all the four had clear knowledge of their being existence of charas under beneath the seat of the vehicle. Being a Qualis vehicle is stated to be 5 + capacity vehicle and it is not clear as to from under beneath which seat the consignment was recovered. In that background, once the prosecution has failed to introduce clinching evidence against the respondents showing their involvement in the act of conscious possession of charas, no presumption could be drawn against them that one or all of them were in know of the charas having been loaded and kept concealed in the vehicle. The respondents were not facing charge of criminal conspiracy punishable under Section 29 of the NDPS Act. The investigating officer in his statement has deposed that respondent No.1 was not regular driver of the vehicle, rather had been engaged only for the round trip. Once the investigating officer had

found that respondent No.1 had no prior knowledge of concealment of charas, then a case against him should not have been filed at all and the IO should have proceeded to unearth the sequence of events leading to the concealment of charas in the vehicle.

15. What Section 8 of the NDPS Act speaks of unauthorized possession of contraband, which is punishable as an offence under Section 20, so conscious possession is *sine qua non* for commission of such an offence. Which in the given case, the prosecution had miserably failed. The trial Court has touched with other aspects of the case as well and found that the prosecution case suffered from inherent contradictions and defects, which make it weak to sustain in the court of law.
16. The trial Court has found that it has not come in the evidence of any of the prosecution witnesses that the respondents, who were facing trial, were sitting on the seat beneath which the alleged contraband was recovered. In absence of positive evidence, it cannot be inferred that respondents were sitting on the seat and had any kind of dominion over the site from where the recovery was made. It is admitted case that as the vehicle approached towards the 'naka point' and was to be intercepted by them, that it slowed down leading to two of the occupants fleeing away, which raises the probability that had the present respondents been also in knowledge of the charas is loaded in the vehicle, they too would have made an effort to escape from the clutches of law as is the case with two other accused, who were stated to be absconders.

17. For what has been stated above, we concur with the finding of acquittal recorded by the trial Court and see no merit in the appeal, which is **dismissed**.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
12.08.2025
Narinder

Whether order is speaking? **Yes**
Whether order is speaking? **Yes**

