

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Crl LP(D) No. 64/2023

UT of J&K

.... Petitioner/Appellant(s)

Through:- Mr. Ravinder Gupta, AAG

V/s

Tariq Hussain

.....Respondent(s)

Through:- None

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

ORDER
18.08.2025

Crl LP(D) No. 64/2023

1. This is an application filed by the applicant-Union Territory of J&K seeking leave of this Court to file an appeal against the judgment of acquittal dated 31.05.2023 passed by the Court of learned Additional Sessions Judge (Special Judge Under NDPS Act), Samba [**"Trial Court"**] in case titled ***"State of J&K through SHO P/S Bari Brahmana vs. Tariq Hussain & Another."***
2. Having heard Mr. Ravinder Gupta, learned AAG appearing for the applicant and Mr. Masood Ahmed for the non-applicant and having gone through the judgment of acquittal passed by the trial court, we are of the considered opinion that there is no merit in the appeal proposed to be filed against the judgment of acquittal dated 31.05.2023.

3. The trial Court has evaluated the entire evidence on record in correct perspective and has rightly concluded that neither the recovery of the contraband has been proved to have been made from the possession of the respondent, nor the safe custody of the contraband from the time of seizure till it landed before the FSL for examination has been proved.
4. Apart from other formal witnesses, PW- Dev Raj and PW- Neeraj Kumar were examined by the prosecution as independent witnesses to the recovery of the contraband from the possession of the respondent. Both the witnesses have not supported the prosecution. Interestingly, the prosecution has not sought any permission from the trial Court to declare them hostile and exercise the right of cross-examination. The safe custody of the contraband from the day it was sealed till it was taken to the Executive Magistrate for re-sealing has also not been proved.
5. Admittedly, the contraband was seized by the I.O. on 08.11.2017 and the same was sealed on the spot by using a ring as a seal. The ring with which the seized contraband was sealed, all along remained with the Police and was never handed over to an independent witness on sapurdnama. As per the prosecution case and the statement of Moharir of the Police Station, the contraband was deposited in the Malkhana on 08.11.2017 and was taken out to the Executive Magistrate for re-sealing on 09.11.2017. The Moharir has appeared as a witness for the prosecution but did not support his testimony by proving the entry in the concerned register. As a matter of fact, no such

register was ever produced before the trial Court. It is, thus, evident that the contraband from 08.11.2017 till it was taken out from the Malkhana on 09.11.2017 for re-sealing and for its onward transmission to FSL was under the seal of I.O, who alone had retained the ring used for sealing the seized contraband. In such situation, there is every possibility of the contraband having been tempered from the date of its seizure till it was taken out from Malkhana and produced before the Executive Magistrate for re-sealing. Apart from the above, further evidence on record is highly contradictory and sketchy and, therefore, cannot be relied upon to convict the respondent.

6. For all these reasons, we are of the considered opinion that the applicant has not made out a case for grant of leave to file appeal against the judgment of acquittal. The application for leave is devoid of any merit and the same is accordingly, dismissed.
7. The proposed appeal, which is filed along with the application seeking leave to file appeal, also stands disposed of.

(Sanjay Parihar)
Judge

(Sanjeev Kumar)
Judge

JAMMU
18.08.2025
Rahul