

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

CRM(M) No. 1307/2025

CrIM No. 2431/2025

Jamat Ali and Anr.

.....Appellant(s)

Through: Mr. Irfan Khan, Advocate

Vs

UT of J&K and Ors.

..... Respondent(s)

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

Coram: HON'BLE MR. JUSTICE MOHD. YOUSUF WANI, JUDGE

ORDER
12.12.2025

(ORAL)

01. Heard.

02. The case of the petitioners in nutshell is that they are facing trial in criminal case bearing No. 1070711/2020 titled "*State v/s Dilbag Singh & Ors.*" arising out of case FIR No. 119/2019 of Police Station Janipur, Jammu under Sections 223 and 224 RPC, pending disposal in the Court of learned Judicial Magistrate (2nd Additional Munsiff) Jammu since January, 2020. That they being the Police Personnel and posted as on the date of occurrence in District Udhampur came to be deployed on escort duty in connection with the production of co-accused namely Dilbag Singh before the Court at Jammu from Udhampur in case FIR No. 28/2016 of Police Station Miran Sahib, Jammu. That the co-accused namely Dilbag Singh during the course of his presence in the Court premises Jammu, found an opportunity to attack on the petitioners and

attempted to escape from the escort vehicle, thereby leading to the registration of the case FIR No. 119/2019 with the Police Station Janipur, Jammu in which they are presently facing trial.

That the final report/charge-sheet in the case came to be presented before the Court on 28.01.2020 in the absence of the said accused No.1-Dilbag Singh against whom the learned trial Court proceeded in terms of provisions of Section 512 of the erstwhile J&K Code of Criminal Procedure (now repealed and hereinafter referred to as "Code" for short), upon the request of the Investigating Officer of the case, who submitted before the learned trial Court that the said co-accused-Dilbag Singh has absconded and there is no immediate prospect of his arrest in the ordinary course. That the learned trial Court after proceeding under Section 512 of the Code against the said accused No.1 issued a general warrant of arrest against him regarding his arrest and production before the Court. That the said co-accused-Dilbag Singh came to be arrested in the execution of the general warrant of arrest and produced before the learned trial Court on 12.02.2020 on which date, the learned trial Court without commenting on the proceedings already initiated against him in terms of provisions of Section 512 of the Code directed him to furnish surety and personal bonds to the satisfaction of the Court, who failed to furnish the same, pursuant to which the accused was directed to be lodged in the Kot Balwal Jail, Jammu, however, with the stipulation that in case of his furnishing the requisite surety to the satisfaction of the Court, he can be directed to be released from the Jail concerned upon furnishing the requisite personal bond to the satisfaction of the Superintendent of the Jail concerned.

03. That subsequently, the learned trial Court passed an order dated 15.02.2020 regarding change of the custody of the said accused No.1-Dilbag Singh from the case FIR No.119/2019 of Police Station Janipur, Jammu to his detention under PSA. Subsequently, after release from the PSA detention, the accused No.1 namely Dilbag Singh came to be arrested in connection with some criminal case and lodged in some Jail at Punjab. He, however, was produced in custody on 23.02.2024 before the learned trial Court on which date, the learned trial Court framed charge against all the accused persons. The prosecution was directed by the learned trial Court to produce evidence in support of its case, pursuant to the pleading of not guilty to the charge by all the accused.

04. It is the case of the petitioners that no effective trial is being conducted in the case by the learned Magistrate, which has deprived them of their right to fair and speedy trial guaranteed under the Constitution of India.

05. It is submitted by the learned counsel for the petitioners that learned trial Court is under an obligation to proceed effectively on the trial of the case by adopting the procedure warranted in the situation having regard to the absence of the accused No.1 namely Dilbag Singh at the trial. It is submitted that the petitioners are public servants posted in the Police Department, who have been badly suffering on account of the pendency of the trial case, which deserves to be disposed of on merits in an expeditious manner.

06. In the facts and circumstances of the case and having regard to the relief sought by the petitioners, this Court is of the opinion that matter can be disposed of at this threshold stage by passing of appropriate orders warranted in the situation.

07. It is borne out from the minutes of the proceedings on file of the trial case that the learned trial Court vide order dated 28.01.2020 was rightly convinced to proceed against the co-accused-Dilbag Singh in terms of provisions of Section 512 of the Code on the request of the Investigating Officer.

08. Subsequently, when the said co-accused came to be arrested in the execution of the general warrant of arrest and produced before the trial Court on 12.02.2020, the learned trial Court without recalling the proceedings that had already been initiated against the said co-accused in terms of Section 512 of the Code simply observed that since the offences in the case are bailable, as such, he is directed to furnish surety and personal bonds to the tune of some amount. The learned trial Court on 12.02.2020 was required to set aside the proceedings already initiated by him in terms of Section 512 of the Code, pursuant to the accused's production before the Court in execution of the general warrant of arrest.

09. The said co-accused fails to furnish bail bonds and is directed to be lodged in the Kot Balwal, Jammu.

10. Subsequently, the accused is again produced in custody before the learned trial Court on 23.02.2024 when the charges against all the accused persons are being framed. On that day also, the learned Magistrate did not address the proceedings under Section 512 of the Code which were already in force.

11. Once an accused against whom the Court proceeds in terms of Section 512 of the Code is arrested in execution of the general warrant of arrest and is produced before the trial Court, the said proceedings in terms of Section 512 of the Code are deemed to have been cancelled. The main object of initiation of

proceedings in terms of Section 512 of the Code corresponding to the provisions of Section 335 of the BNSS is to record the prosecution evidence in the absence of the accused under the circumstances when there are no immediate prospects of the arrest of the accused so that the evidence pending his arrest is not lost or rendered incapable of being led at the trial.

12. Now, any way, the learned trial Court is reported be not proceeding effectively on the trial of the case for the simple reason that co-accused-Dilbag Singh is not appearing at the trial.

In view of the production of the said co-accused-Dilbag Singh before the learned trial Court on 12.02.2020 and 23.02.2024, the proceedings already initiated in terms of Section 512 of the Code are deemed to have been cancelled. The learned trial Court is required under law to enquire as to whether the said co-accused-Dilbag Singh is still lodged in some jail in connection with some other case or is at large and avoiding his appearance at the trial of the case. In case, it is found that the said co-accused-Dilbag Singh is presently lodged in any jail in the country in connection with some another case, the learned Magistrate can procure his attendance at the trial of the case through virtual mode by passing of appropriate orders so that the old pending trial of the case is not further delayed. In case of his being still at large, the learned Magistrate can get him arrested by issuance of the warrants of arrest. In case of his still absconding with no immediate prospect of his being arrested in the case, the learned Magistrate is within his powers to proceed again in terms of provisions of Section 512 of the Code against him so that the trial to the extent of the present petitioners is expedited.

13. As per the perusal of the minutes of the recent orders passed by the learned trial Court on the file, the non-bailable warrants of arrest have been repeatedly issued against him. So, under these circumstances, it is appropriate for the learned Magistrate either to get the said co-accused produced at the trial through virtual mode in case of his lodgment anywhere in the country in some other case or to proceed again against him in terms of provisions of Section 512 of the Code corresponding to Section 335 of BNSS, so that the trial as against the present petitioners is effectively conducted.

14. In the backdrop, the instant petition is **disposed of** at this threshold stage with the direction to the learned Magistrate to proceed in the matter in the light of the observations made hereinbefore.

15. The learned Magistrate shall submit fortnightly status report regarding the trial proceedings to the learned Registrar Judicial of this Court. The learned Registrar Judicial shall maintain the status reports to be submitted by the learned trial Court and list a *suo moto* miscellaneous application accompanied with the aforesaid status reports after a period of three months for perusal and satisfaction of this Court.

16. A copy of this order shall be forthwith forwarded to the learned Magistrate for his information and compliance.

17. **Disposed of.**

(Mohd. Yousuf Wani)
Judge

Jammu
12.12.2025
Riya Kochhar

