

Serial No. 09

Regular List

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Cr1A(D) 39/2022

**UNION TERRITORY THROUGH ...Petitioner/Appellant(s)
POLICE STATION
AWANTIPORA**

Through: Mr. Mohsin Qadri, Sr. AAG

Vs.

INAYAT BASHIR BHAT AND ORS. ...Respondent(s)

Through: Mr. Sami Lone, Advocate for R-1 to 3.
Mr. Younis Ahmad, Advocate for R-4

CORAM:

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

ORDER

29.07.2025

1. This appeal under Section 21 of NIA Act filed by Union Territory of Jammu and Kashmir is directed against an order dated 26-05-2022 passed by the Court of Special Judge under TADA/POTA, Srinagar ["the trial Court"] in case FIR No. 76/2019, Police Station Awantipora, in case titled ***"UT of Jammu and Kashmir vs Inayat Bashir Bhat and Ors"***., whereby the trial Court has discharged the respondents from offences under Sections 16, 18, 20, 38 of UAP Act ["the Act"] and has transferred the challan to the Court of Sessions Judge, Pulwama for trial of offences under Section 307 RPC and 07/27 of Arms Act. The

respondents have been discharged by the trial Court primarily on the ground that initially investigation in case FIR No. 76/2019 was conducted by Sub-Inspector and that the evidence collected by the SDPO Awantipora, was not sufficient to sustain the charge of commission of offences under the Act.

2. The impugned order is assailed by the appellant primarily on the ground that the trial Court has failed to appreciate that FIR No. 76/2019 was initially registered for commission of offences punishable under Section 307 RPC and 07/27 of Arms Act and, therefore, the Sub-Inspector of the territorial Police Station was competent to investigate the matter. It was only when during the course of investigation the commission of offences punishable under Sections 16, 18, 20 and 38 of the Act were disclosed, the investigation was entrusted to SDPO Awantipora, who holds the rank of Deputy Superintendent of Police (Dy.SP) and, therefore, meets the requirement of Section 43.

3. *Per contra*, Mr. Sami Lone, learned counsel appearing for the respondents 1 to 3 and Mr. Younis Ahmad, Advocate for respondent 4, would argue that most of the investigation was conducted by the Sub-Inspector and that the evidence collected by the SDPO subsequently was not enough to frame the charges under the Act against the respondents. It is thus argued that the investigation in this case shall be deemed to have been conducted by the Sub-Inspector, who

was not competent in terms of Section 43(C) of the Act to conduct investigation. Learned counsel appearing for the respondents would urge that the order of the trial Court be upheld, being in consonance with provisions of Section 43 of the Act.

4. Having heard learned counsel for the parties and perused the material on record, we deem it appropriate to set out Section 43 of the Act herein below: -

43. Officers competent to investigate offences under Chapters IV and VI. –Notwithstanding anything contained in the Code, no police officer, –

(a) in the case of the Delhi Special Police Establishment, constituted under sub-section (1) of section 2 of the Delhi Special Police Establishment Act, 1946 ([25 of 1946](#)), below the rank of a Deputy Superintendent of Police or a police officer of equivalent rank;

(b) in the metropolitan areas of Mumbai, Kolkata, Chennai and Ahmedabad and any other metropolitan area notified as such under sub-section (1) of section 8 of the Code, below the rank of an Assistant Commissioner of Police;[(ba) in the case of National Investigation Agency, below the rank of Inspector];

(c) in any case not relatable to clause (a)[or clause (ba)], below the rank of a Deputy Superintendent of Police or a police officer of an equivalent rank, Shall investigate any offence punishable under Chapter IV or VI.

5. From reading of Section 43 of the Act, in particular, clause (c) thereof, it is abundantly clear that in the instant case which pertains to the offences under Chapter IV and Chapter VI of the Act, the investigation was required to be conducted by the Dy.SP, or a police officer of an equivalent

rank. Had the FIR been registered initially for the offences falling under Chapter IV and Chapter VI of the Act, we could have sustained the argument of learned counsel for the respondents that the investigation conducted by the Sub-Inspector was nullity in law and deserved to be ignored. However, the facts of the instant case are entirely different. With regard to the incident, that happened on 23-05-2019, an FIR came to be registered under Section 307 RPC and 07/27 of Arms Act. Since, no offence under Chapter IV and Chapter VI was involved, as such, the investigation was taken up by the Sub-Inspector of the concerned Police Station.

- 6.** During the course of investigation, it came to light that besides the offences under Section 307 RPC and 07/27 of Arms Act, the respondents were responsible for commission of offences falling under Chapter IV and Chapter VI of the Act. Without any waste of time, the investigation was entrusted to the SDPO Awantipora, who holds the rank of Dy.SP in the J&K Police. It is the SDPO Awantipora, who took over the investigation, completed the same and presented the challan before the competent court of law. The trial Court has, no doubt, observed that the part of evidence which is collected by SDPO Awantipora, is not sufficient to frame a charge under the Act against the respondents. However, we do not find any discussion of any evidence in the order impugned. We also do not see any

logic in the observation of the learned trial Court that while considering the framing of charge, the evidence collected by the Sub-Inspector, when he was investigating the case registered under Section 307 RPC and 07/27 of Arms Act, is required to be ignored. The investigation in FIR No. 76/2019 which was conducted by the SDPO on disclosure of commission of offences under the Act was in continuation of the investigation conducted by the Sub-Inspector, when the FIR was registered only in respect of Section 307 RPC and 07/27 of Arms Act. It is, thus, unthinkable for the investigating agency to anticipate that the investigation which was taken for offences under Section 307 RPC and 07/27 of Arms Act, would necessarily entail the investigation into offences under the Act. The investigation of the offences under the Act was undertaken only after the investigation conducted by the Sub-Inspector for offences under Section 307 RPC and 07/27 of Arms Act led to the discovery of evidence relating to the commission of offences under the Act. The trial Court has miserably failed to appreciate this aspect of the matter and has landed itself in a serious error of discharging the respondents.

- 7.** For all these reasons, we find merit in this appeal and the same is accordingly allowed. The impugned order dated 26-05-2022 is quashed.
- 8.** The matter is remanded to the Special Judge, NIA Pulwama Cases, for considering the framing of fresh charge after

providing adequate opportunity to both the sides.
Respondent 1 and 2 shall surrender before the trial Court
on the next date.

9. The matter shall be taken up by the trial Court for framing
of charges in accordance with law. The challan which is
now pending trial before the Sessions Judge Pulwama,
shall be transferred to the Special Judge aforesaid.

10. Disposed of.

(SANJAY PARIHAR)
JUDGE

(SANJEEV KUMAR)
JUDGE

SRINAGAR:

29.07.2025

Akhil Dev

Whether the order is speaking/reportable? Yes/No

