

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

Crl R No.28/2024 CrIM No.1145/2024

Manzoor Ahmad Dar and Anr.

...Petitioner/Appellant(s)

Through: M/s. M. S. Reshi, and Wani Javid, Advocates.

Vs.

Union Territory through Ps Kupwara

...Respondent(s)

Through: Mr. Faheem Shah, GA.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

08.10.2025

(ORAL)

1. In the instant criminal revision petition, order dated 29-06-2024 has been thrown challenge to by the petitioner herein passed by the court of Additional Session Judge Kupwara, (for short "the trial court") in case titled as "*UT of J&K through SHO Police Station Kupwara and Ors., vs. Rehmat Shah and others*".

2. Facts emerging from the record would reveal that the petitioners herein came to be arraigned as accused persons in FIR No.176/2023 registered with Police Station Kupwara for offences under Section 8/21 of the Narcotic Drug and Psychotropic Substances Act, 1985, (for short "the Act of 1985"), and after concluding the investigation therein the said FIR, same culminated into a charge sheet filed before the trial court wherein besides, the present petitioners/accused persons namely Rehmat Shah S/o Manzoor Shah, Khalid Hussain Shah S/o Mehboob Hussain Shah and Farooq Ahmed Sheikh S/o Abdul Aziz Sheikh as well came to be arraigned

as accused persons and offences under Section 29 of the Act as well was found to have been committed.

3. The case set up by the prosecution in the charge sheet supra is that a contraband came to be seized during checking at Naka duty at Brahanwari crossing Kupwara, from a Alto Car bearing registration number JK09C-3512 coming from Kralpura to Kupwara and the driver of the said car at that time disclosed his name as Rahmat Shah and that the said contraband after being seized was weighed and found to be 8.6 grams whereafter a sample was lifted and sent for testing and the statements of witnesses was also recorded during the course of investigation and upon initial questioning of the said Rahmat Shah he disclosed that two persons, namely Farooq Ahmad Sheikh and Khalid Hussain Shah, were accompanying with him whereafter upon search of the residential house of the said Farooq Ahmad Shah, a similar kind of contraband substance wrapped in an envelope was recovered in presence of the Executive Magistrate which weighed 454 grams and further, another envelope containing similar substance was also recovered from the residential house of Khalid Hussain Shah in presence of Executive Magistrate, weighed 557 grams and samples from the said envelopes were also sent for analysis to the FSL Srinagar. It is also stated in the charge sheet that Rahmat Shah accused No. 1 also made a statement under Section 67 of the Act of 1985 wherein he stated that he has been doing the sale and purchase of narcotic business with one Manzoor Ahmed Dar S/o Ghulam Mohd Dar, R/o Narkar Budgam, (petitioner 1 herein), who came to be arrested on 03-09-2023, and also too made a statement under Section 67 of the Act of 1985 two more persons, namely Javed Ahmed Bhat, S/o Gulam Qadir Bhat R/o Warsoo Ganderbal (petitioner 2 herein) and one Mohd

Ashraf Yattoo S/o Ghulam Mohd Yattoo R/o Budgam were also actively involved in the business of contraband brown sugar, and had also on number of occasions purchased and sold the brown sugar whereafter said Javed Ahmed Bhat was arrested on 07-12-2023, and also meantime, the FSL report was also received which revealed the seized contraband to be heroin, and that on the basis of investigation conducted inasmuch as CDR record obtained from the ESU wing of DPO Kupwara, it came to fore that accused persons had been in contact with each other on phone, conducting the business of narcotics, while stating further that the Mohd Ashraf Yattoo, named by Manzoor Ahmad Dar, was also found involved in the commission of offences who however, could not be arrested, as he evaded his arrest, and that owing to his non-arrest as also after concluding the investigation consequent Challan/chargesheet came to be presented in the court.

4. The trial court could upon hearing the appearing counsel for the parties, being the prosecution, as also the counsel appearing for the accused persons, in terms of impugned order concluded that there is sufficient material on file whereby it can safely be inferred that there is grave suspicion to charge the accused 1 to 3 qua commission of offence under Section 8/21 of the Act and under Sections 4 and 5 read with Section 8/29 of the Act of 1985 against the accused 4 and 5 being petitioners herein.

5. Petitioners herein being accused 4 and 5 in the charge sheet have challenged the impugned order *inter alia* on the ground that the impugned order has been passed without application of judicial mind and appreciation of legal principles and that the trial court failed to appreciate the plausible defence of the accused petitioners inasmuch as proceeded to charge the petitioners in conflict with the law laid down under the code of Criminal

Procedure and that there has been no *prima facie* case made out against the accused petitioners in the charge sheet connecting the accused petitioners herein with the commission of the alleged offences.

Heard counsel for the parties and perused the record.

6. Before proceeding to advert to the case setup by the petitioners in the instant petition, it would be appropriate and advantageous to refer the provisions of Sections 227 and 228 of the Code of Criminal Procedure, being relevant and germane to the controversy hereunder;

227. Discharge. If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

228. Framing of charge.—(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which—

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, [or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate] shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.

As is manifest from above provisions, the object and purpose of the same is to ensure that the court should be satisfied at the stage of framing of charge/discharge that accusation made against the accused is not frivolous

and that there is some material for proceeding against the accused. A reference to the judgement of the Apex Court passed in case titled as “**Kewal Krishan Vs. Surag Bhan and Anr**”, reported in **1980 (supp) SCC 499** would also be relevant herein wherein it has been, *inter alia*, held that Section 227 of CrPC is a beneficent provision to save the accused from prolonged harassment which is a necessary concomitant of a protracted trial and that under Section 227 the court is merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused and the sufficiency of grounds would take within its fold the nature of evidence recorded by the police or the documents produced before the court which *ex facie* disclose that there are suspicious circumstances against the accused so as to frame a charge against him, and if the evidence which the prosecution were proposed to adduce to prove the guilt of the accused even if fully accepted before it challenged in the cross examination or rebutted by the defence evidence, if any, cannot show that the accused has committed the offence, then there will be no sufficient ground for proceeding with the trial.

It is also significant to mention here that the Apex Court in case titled as “**State of Rajasthan Vs. Ashok Kumar Kashyap**”, reported in **2021 (11) SCC 191**, has also held that at the stage of framing of charge or discharge, the defence on merits is not to be considered and that the standard of test proof and judgement which is to be applied finally before finding the accused guilty or otherwise is not exactly to be applied at the stage of framing charge or discharge of an accused, in that, while considering the question of framing of charge, the court has the undoubted power to sift and

weigh the material for the limited purpose of finding out whether or not the “prima facie case is made out”

7. Keeping in mind the aforesaid position of law and reverting back to the case in hand, admittedly petitioners herein have been charged for commission of offences under Section 8/29 of the Act by the trial court fundamentally having taken cognizance of the disclosure statement made by the primary accused namely Rahmat Shah who has connected the accused/petitioner 1 herein with the commission of the alleged offences and whereafter the said accused petitioner 1 herein in turn has connected the accused petitioner 2 herein with the commission of alleged offences and therefore, the statements of the primary accused Rahmat Shah be it made under Section 67 of the Act of 1985 or under Section 161 CrPC inasmuch as the statements made by accused petitioner 1 herein qua accused petitioner 2 made under Section 67 of the Act of 1985 or under Section 161 CrPC cannot be discarded at this stage merely on account of the contention of counsel for the petitioner that there is no material in the charge sheet connected them with the commission of the alleged offences.

As has been noticed in the preceding paras, the role of the court at the stage of framing of charge/discharge is very limited and charge can be framed against an accused if there is prima-facie evidence against the accused persons connecting him with the commission of an offence.

8. A deeper and closer examination of the material available on the file, it cannot, but, be said that there is ground *prima facie* pressing that the accused petitioners have committed the offences and seemingly has rightly been taken cognizance by the trial court.

9. Resultantly, the impugned order does not call for any interference and thus petition accordingly is **dismissed**.

10. Scanned record called from the court below shall be retained on the instant file.

11. It is made clear that any observation made hereinabove shall not be construed to be expression of any opinion qua the guilt or innocence of the accused petitioner but shall be deemed to have been made only for the disposal of the instant petition.

SRINAGAR

08.10.2025

Ishaq

**(JAVED IQBAL WANI)
JUDGE**

Whether order is speaking ? Yes

Whether approved for reporting ? Yes