

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

CRM(M) No.748/2025
CrIM(1865/2025)

ISHFAQ AHMAD RATHER

.....Petitioner(s)

Through: Mr.Abdul Musavir Tak, Advocate

V/s

UNION TERRITORY OF J AND K AND ANR.

... ..Respondent(s)

Through : None

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

28.11.2025

1. The petitioner through the medium of present petition under Section 528 BNSS, has challenged charge sheet arising out of FIR No.05/2021, for offences under Section 8/20, 29 NDPS Act, registered with Police Station Chadoora, which is stated to be pending before the Court of learned Principal Sessions Judge, Budgam.
2. Heard and Considered.
3. It appears that on the basis of an information received from a reliable source by the Police to the effect that co-accused Gulzar Ahmad Bhat and Imtiyaz Ahmad Teli have stored and packed contra band in their house for the purpose of selling the same, FIR No.05/2021 for offences under Section 8/20 NDPS Act was registered and investigation of the case was started.

During the investigation of the case search of the house of accused Abdul Qayoom Bhat was conducted in presence of the Executive Magistrate and 16 boxes containing 13 kgs and 100 gms of poppy straw in each box was recovered. Thus, total 209.60 kgs of poppy straw was recovered by the police during the search. The accused named in the FIR were arrested and thereafter during investigation of the case involvement of the petitioner and one more accused namely, Mohd Iqbal Bhat was also established. Accordingly, the charge sheet was filed against the petitioner and the co-accused before learned Sessions Judge, Budgam. However, the petitioner and co-accused Mohd Iqbal Bhat were not arrested during the investigation of the case as they were absconding. It seems that the learned trial Court vide order dated 08.10.2022 proceeded under Section 299 Cr.P.C in respect of the petitioner and co-accused Mohd Iqbal Bhat. The petitioner was declared as absconder and general warrants of arrest were issued by learned trial Court.

4. Now the petitioner has approached this Court for assailing the impugned charge sheet on the ground that his involvement in alleged occurrence is based upon statement made by co-accused in presence of the Police and the Executive Magistrate, which is inadmissible in evidence. Therefore, the impugned charge sheet deserves to be quashed as against him.

5. It is to be noted that the petitioner has been declared as absconder by learned trial Court. Instead of approaching the learned trial Court by surrendering before the said Court and applying for bail, he has rushed to this Court and invoked the jurisdiction under Section 528 of BNSS. If at all what the petitioner is contending, is correct, he can always apply for grant of anticipatory bail before the Court of first instance and can even urge these contentions at the time when his case for framing of charges is considered by the learned trial Court. Without adopting the said procedure, the petitioner has invoked jurisdiction of this Court under Section 528 BNSS which is not permissible in law.

6. In the aforesaid facts and circumstances, this Court would refuse to entertain the present petition, relegating the petitioner to approach the trial Court either with an application for grant of bail in anticipation of his arrest or after surrendering before the trial Court he may seek his discharge on the basis of the grounds urged in the present petition. The petition is disposed of accordingly.

(SANJAY DHAR)
JUDGE

SRINAGAR
28.11.2025
Sarveeda Nissar

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No