

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

Crl R No. 10/2026
CrlM No. 337/2026

Shakeel Ahmed Khan

.....Appellant(s)/Petitioner(s)

Through: Mr. Rishav Vaid, Advocate
Mr. Anirudh Gupta, Advocate
Ms. Ishna Vaid, Advocate

vs

Union of India Th. Narcotics Control
Bureau (NCB), Jammu.

..... Respondent(s)

Through: Mr. Vishal Sharma, DSGI with
Mr. Eishaan Dadhichi, CGSC

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER (ORAL)

27.02.2026

1. The petitioner, who figures as an accused in the complaint titled '*Narcotics Control Bureau vs. Shiraj Akber Sheikh & Ors.*' pending before the court of learned Special Judge, NDPS Cases, Jammu (for short 'the trial court'), has been charged for commission of offences under Sections 8/20/29 NDPS Act vide order dated 24.11.2025.
2. The petitioner has impugned the order dated 24.11.2025 passed by the learned trial court on the ground that no reasons have been assigned by the learned trial court while framing the charge against the petitioner and further that there is no *prima facie* evidence against the petitioner that connects him with the commission of above mentioned offences.
3. Notice.
4. Mr. Eishaan Dadhichi, learned CGSC waives notice.
5. Heard learned counsel for the parties and perused the record.

6. The allegations, as levelled in the complaint are that a secret information was received by Sh. Anil Nautiyal, Inspector, ACB from a reliable source on 28.03.2025 at about 1015 hrs that two persons, namely, Siraj Akbar Shaikh and Kadeer Khan are going to buy and sell large quantity of Narcotics Drugs (Charas) at Hotel Garden, Prem Nagar, Jammu between 1400 Hrs to 1600 Hrs on 28.03.2025. On the same day, the information was reduced into writing by Sh. Anil Nautiyal, Inspector, and transmitted to superior officer Sh. Raj Kumar Shaw, Superintendent NCB, Jammu, who detailed a team comprising of Sh. Anil Nautiyal, Inspector (Seizing Officer) in case of recovery, Sh. Ram Shankar Paswan (SI), Sh. Ravinder Singh (SA), Sh. Gurmeet Singh (SA), Sh. Ravinder Kumar (Sepoy), Sh. Kuldeep Dixit (Havaldar), Sh. Purshottam Kumar (Driver) of NCB, for taking action in terms of NDPS Act. After completing initial formalities, the team reached at Hotel Garden, Prem Nagar, Jammu at 1350 Hrs on 28.03.2025 and after reaching there, Sh. Anil Nautiyal, Inspector introduced himself and his team to the person at the reception, namely Ishtiaq Ahmad and told him about the secret information. Thereafter, Inspector Anil Nautiyal requested Ishtiaq Ahmed to be an independent witness during search/seizure proceedings, which was acceded to by Ishtiaq Ahmed. Thereafter, Inspector, Anil Nautiyal requested Ishtiaq Ahmed to show the hotel register for checking the details of the persons staying in the hotel as per available information. On inspecting the register, it came to the fore that one person, namely Siraj Akbar Shaikh was staying in room No. 106, which was booked

by him on 28.03.2025. The hotel employee Ishtiaq Ahmed intimidated verbally that two persons went to his room to meet him. Thereafter, NCB team along with independent witness knocked at the door of room no. 106 and Sh. Anil Nautiyal, Inspector entered the room and asked the persons there in the room to disclose their identities. They showed their Aadhar Cards and introduced themselves as Siraj Akbar Shaikh, Kadeer Khan and Shakeel Ahmad Khan i.e. petitioner herein. Thereafter, Sh. Anil Nautiyal, Inspector requested Siraj Akbar Shaikh to open the bag wherein two packets wrapped in brown coloured tape were found. Siraj Akbar Shaikh replied that both packets were having charas. The packets were weighed by an electronic weighing machine. The 1st packet weighed 1.259 kg and the 2nd packet weighed 0.960 kg. The total weight of the contraband was 2.219 kg with packaging material, and without packaging material the total weight was 2.033 kg. After completing requisite formalities and obtaining report from CRCL, New Delhi, a complaint for commission of above-mentioned offences was filed against the petitioner and other accused as the samples had tested positive for Charas. The prosecution has also placed on record CDRs that all the accused were inter-connected with each other.

7. It goes without saying that at the time of considering the issue of charge/discharge, the Court is not expected to conduct a mini trial. It is a settled law that while considering the issue of framing charge against the accused or his discharge, the Court can neither examine the material brought on record in detail nor examine the sufficiency of the

material to establish the offence against the accused. In **‘State v. Anup Kumar Srivastava, (2017) 15 SCC 560**, the Hon’ble Apex Court has held that the court can discharge the accused if the court is of the opinion that no offence is made out, but the court cannot examine the material in detail brought on record. The relevant paras are reproduced as under:

“25. Framing of charge is the first major step in a criminal trial where the court is expected to apply its mind to the entire record and documents placed therewith before the court. Taking cognizance of an offence has been stated to necessitate an application of mind by the court but framing of charge is a major event where the court considers the possibility of discharging the accused of the offence with which he is charged or requiring the accused to face trial. There are different categories of cases where the court may not proceed with the trial and may discharge the accused or pass such other orders as may be necessary keeping in view the facts of a given case. In a case where, upon considering the record of the case and documents submitted before it, the court finds that no offence is made out or there is a legal bar to such prosecution under the provisions of the Code or any other law for the time being in force and there exists no ground to proceed against the accused, the court may discharge the accused. There can be cases where such record reveals the matter to be so predominantly of a civil nature that it neither leaves any scope for an element of criminality nor does it satisfy the ingredients of a criminal offence with which the accused is charged. In such cases, the court may discharge him or quash the proceedings in exercise of its powers under the provisions.

30. It was contended by the learned counsel for the appellant State that the High Court exceeded its jurisdiction while quashing the order of charge passed by the Special Court, CBI Cases. **The legal position is well settled that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons. At the stage of charge the court is to examine the materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. It is also well settled that when the petition is filed by the accused under Section 482 of the Code seeking for the quashing of charge framed against him the court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the court, a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions.** The court is required to consider the “record of the case” and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exist, then the court would be right in

presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case.”

(emphasis added)

8. In ‘**State v. R. Soundirarasu, 2022 SCC Online SC 1150**’, the Hon’ble Supreme Court after taking note of the various provisions contained in the Criminal Procedure Code for discharge of the accused, observed as under:

56. Despite the slight variation in the provisions with regard to discharge under the three pairs of Sections referred to above, the settled legal position is that the stage of framing of charge under either of these three situations, is a preliminary one and the test of “prima facie” case has to be applied — if the trial court is satisfied that a prima facie case is made out, charge has to be framed.

57. The nature of evaluation to be made by the court at the stage of framing of charge came up for consideration of this Court in *Onkar Nath Mishra v. State (NCT of Delhi)*, (2008) 2 SCC 561, and referring to its earlier decisions in *State of Maharashtra v. Som Nath Thapa*, (1996) 4 SCC 659, and *State of M.P. v. Mohanlal Soni*, (2000) 6 SCC 338, **it was held that at that stage, the Court has to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged and it is not expected to go deep into the probative value of the materials on record.** The relevant observations made in the judgment are as follows:

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

(emphasis added)

9. The Hon’ble Supreme Court, after considering its various pronouncements, has further delineated the principles to be applied by the Court while considering issue of framing charge/discharge in

‘Ghulam Hassan Beigh v. Mohd. Maqbool Magrey, (2022) 12 SCC

657’ and the relevant para is reproduced as under:

“27. Thus from the aforesaid, it is evident that the trial court is enjoined with the duty to apply its mind at the time of framing of charge and should not act as a mere post office. The endorsement on the chargesheet presented by the police as it is without applying its mind and without recording brief reasons in support of its opinion is not countenanced by law. **However, the material which is required to be evaluated by the court at the time of framing charge should be the material which is produced and relied upon by the prosecution. The sifting of such material is not to be so meticulous as would render the exercise a mini trial to find out the guilt or otherwise of the accused. All that is required at this stage is that the court must be satisfied that the evidence collected by the prosecution is sufficient to presume that the accused has committed an offence. Even a strong suspicion would suffice.** Undoubtedly, apart from the material that is placed before the court by the prosecution in the shape of final report in terms of Section 173CrPC, the court may also rely upon any other evidence or material which is of sterling quality and has direct bearing on the charge laid before it by the prosecution.”

(emphasis added)

10. In *Sajjan Kumar v. CBI*, (2010) 9 SCC 368, the Hon’ble Apex Court has held as under:

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find

out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

11. Though the name of the petitioner does not find mention in the secret information received by Inspector Anil Nautiyal but in the secret information, it was specifically mentioned that Siraj Akbar Shaikh and Kadeer Khan were going to buy and sell large quantity of Narcotics Drugs at Hotel Garden, Prem Nagar, Jammu between 1400 Hrs to 1600 Hrs on 28.03.2025. The recovery has been effected from room No. 106, where Siraj Akbar Shaikh was staying and the other accused who was named in the secret information and the petitioner were found in the room. The petitioner at this stage has not been able to justify his presence in the room along with two persons, whose names were specifically recorded in the secret information and from the perusal of complaint, it is evident that the petitioner was in contact with Kadeer Khan and there were 59 calls between them.

12. Learned counsel for the petitioner is correct in submitting that the statement of the co-accused under Section 67 NDPS Act cannot be relied upon for the purpose of implicating the petitioner for commission of offences mentioned above but equally true is that there was a secret information with regard to two persons that they were going to buy and sell the contraband between 1400 Hrs to 1600 Hrs and the recovery has been effected from the room, where Kadeer Khan

and the petitioner were also present. The petitioner can justify his presence on spot during trial, if he has any cause for being there on spot, more particularly when the place of recovery is not a residence but a Hotel.

13. The petitioner along with other accused has been charged for commission of offences under Section 8/20/29 NDPS Act and at this stage, there was sufficient material before the learned trial court for charging the petitioner for commission of above mentioned offences.

14. Though the learned trial court has not examined in detail the factual aspects of the case warranting the framing of charge against the petitioner and other accused but after having heard learned counsel for the parties and examining the record, this Court does not find that the order passed by the learned trial court is illegal/improper warranting interference at the end of this court.

15. Viewed thus, there is no merit in the petition, as such, the same is **dismissed.**

(RAJNESH OSWAL)
JUDGE

Jammu
27.02.2026
Neha-II

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