

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

CRM(M) 87/2022 CrIM(309/2022)

GAMBIR SINGH

...Petitioner(s)/appellant(s)

Through: Mr. Aarif Javaid Khan, Advocate (Th. VM)

Vs.

UNION TERRITORY THROUGH POLICE
STATION BUDGAM

...Respondent(s)

Through: Mr. Bikramdeep Singh, Dy. AG

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER

10-08-2026

1. The petitioner has challenged order dated 28-09-2021 passed by learned Additional Sessions Judge, Budgam, whereby, in a challan arising out of FIR No. 406/2020, charges for offences under Section 8/15, NDPS Act have been framed against the petitioner.

2. Heard and considered.

3. It appears that a docket was received in the Police Station, Humhama Budgam, on 29-10-2020 along with a report written in English from Station Security Incharge, Tata SIA Airlines Limited (Vistara), Humhama Budgam, alleging therein that a powder like substance was detected from a passenger, the petitioner herein, who was traveling in Flight No. UK 612. It was further alleged that the passenger had confessed that the said powder is 'bhukki', which is a narcotic substance. The passenger was offloaded from the flight.

4. On the basis of aforesaid report, the FIR came to be registered and investigation was set into motion. The passenger, namely the petitioner herein, was subjected to arrest. During the course of investigation, the

recovered substance was seized and it was found to be weighing 250 grams. Sample from the recovered substance was obtained and it was sent to the FSL for chemical examination. As per the report of the FSL dated 10-2-2021, the recovered substance, upon its chemical, microscopic and chromatographic examination, was found to be nicotine, (Tobacco Alkaloid).

5. The contention of the petitioner is that the recovered substance i.e., Nicotine, is neither a manufactured drug nor a psychotropic substance as defined in Section 2 of the NDPS Act. It has been submitted that the substance recovered does not find mention in the Schedule to NDPS Act nor its possession is prohibited in terms of any of the provisions of the said Act. Therefore, it was not open to the learned trial judge to frame a charge for offences under Section 8/15 of NDPS Act, or for any other offence against the petitioner.

6. There appears to be merit in the submission of learned counsel for the petitioner inasmuch as “Nicotine” does not fall within the definition of either a “psychotropic substance” or a manufactured drug within the meaning of NDPS Act. Its possession is not prohibited under any provisions of the NDPS Act. Therefore possession of a substance containing nicotine is not punishable under the provisions of the said Act.

7. The learned trial judge has mechanically, on the basis of opinion framed by the investigating agency, proceeded to frame charges against the petitioner. It is a settled law that a criminal court, while considering the question of framing of charges against an accused, has to apply its mind to the material annexed to the charge sheet and it has to frame an opinion whether or not there are grounds for presuming that the accused has committed any offence. The trial judge is not expected to act as a

mouthpiece of the investigating agency, but he has to sift the material annexed to the charge sheet for the limited purpose of ascertaining whether or not any offence is made out against the accused. Unfortunately in the present case, the learned trial judge has proceeded in a mechanical manner and thereby he has failed to follow the mandate of Section 227 and 228 of the Cr.P.C which has resulted in erroneous framing of charges against the petitioner.

8. For the foregoing reasons, the impugned order is not sustainable in law and is, therefore, liable to be set aside. Accordingly, the petition is allowed, the impugned order is set aside and the petitioner is discharged. The charge sheet filed against him stands **dismissed**.

9. A copy of this order be sent to learned trial judge.

(SANJAY DHAR)
JUDGE

SRINAGAR

10-08-2026

Aamir