

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

CRM(M) 796/2026
CrIM(1816/2026)
CrIM(1815/2026)

MUDASIR AHMAD BABA

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

Through: Mr. Malik Faraz, Advocate

Vs.

GHULAM NABI MIR

...Respondent(s)

Through:

CORAM:

HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
29.09.2026

1. Learned counsel for the petitioner, after arguing for some time, fairly concedes, that insofar as the challenge to the order taking cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 (for short, “the N.I. Act”) is concerned, the chances of success of the petition appear to be bleak, as the impugned order satisfies all the parameters required to be observed for taking cognizance of an offence in terms of Section 142 of the N.I. Act. He, however, laid emphasis on the contention that, since an offence under Section 138 of the N.I. Act is tried as a summons case, the Trial Court committed a grave error in directing the issuance of a non-bailable warrant against the petitioner for securing his appearance after cognizance had been taken in terms of the impugned order dated 01.06.2026. He, therefore, submits that, having regard to the nature of the accusations levelled against the petitioner, there was no occasion for the Trial Court to direct the issuance

of a non-bailable warrant against him. To that extent, he seeks allowing of the petition and setting aside of the impugned order.

2. In view of the aforesaid submission, this petition is taken up for consideration at the admission stage. The petitioner has been accused of an offence under Section 138 of the N.I. Act, cognizance whereof has been taken by the Trial Court in terms of the impugned order dated 01.06.2026. On the face of it, the impugned order satisfies the conditions laid down under Section 142 of the N.I. Act, read with Section 139 thereof. Therefore, no exception can be taken to the order taking cognizance against the petitioner in respect of the offence under Section 138 of the N.I. Act.

3. Having said so, the said offence has been made compoundable in terms of Section 147 of the N.I. Act. Similarly, Section 144 of the said Act provides for the mode in which summons may be served upon an accused or a witness. In terms of Section 145 thereof, the evidence of the complainant in respect of an offence under Section 138 of the N.I. Act may be given by way of an affidavit, subject to the exceptions incorporated under the Code. Section 143 further provides that offences under the N.I. Act shall be tried by a Judicial Magistrate of the First Class or by a Metropolitan Magistrate in accordance with the procedure prescribed therein.

4. In view of the aforesaid statutory scheme and the legal position obtaining in the matter, an offence under Section 138 of the N.I. Act is to be tried as a summons case. Having regard to the procedure contemplated under Section

143 of the N.I. Act, it is relevant that the offence is punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both. Once that is the position, the classification of the offence has to be considered in accordance with the relevant provisions of the BNSS governing offences under laws other than the BNS-2023.

5. A “summons-case”, in terms of Section 2(x) of BNSS-2023, means a case relating to an offence which is not a warrant-case. Once such a case is instituted before a Court and cognizance thereof is taken, the procedure applicable to summons cases is required to be followed. Section 274 BNSS-2023 contemplates that, when the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him. In that background, once cognizance was taken by the Trial Court in terms of the order dated 01.06.2026 in respect of the offence under Section 138 of the N.I. Act, which is to be tried as a summons case and may also be tried summarily in accordance with law, the accused ought to have been issued summons in the first instance instead of a non-bailable warrant.

6. It is only in the event of the petitioner avoiding appearance, refusing to accept summons, or otherwise failing to comply with the process issued by the Court that recourse to coercive measures could appropriately be considered in accordance with law. The position is further clarified by Section 144 of the N.I. Act, which provides for service of summons upon an accused or a witness. It permits service of summons by speed post or by such

courier service as may be approved by the Court of Session, at the place where the accused or witness ordinarily resides, carries on business, or personally works for gain. Thus, having regard to the nature of the offence and the statutory procedure prescribed for securing the appearance of an accused, it was not proper for the Trial Court to issue a non-bailable warrant against the petitioner at the first instance instead of taking recourse to Section 144 of the N.I. Act, which specifically provides for the mode of service of summons. Accordingly, the impugned order, to the extent it directs issuance of a non-bailable warrant against the petitioner, is set aside.

7. Since the petitioner has approached this Court by filing the present petition, the filing thereof shall be deemed sufficient notice to the petitioner of the proceedings before the Trial Court. The petitioner shall, therefore, appear before the Trial Court on **12.10.2026** and move an appropriate application regarding his appearance and participation in the trial, which shall be dealt with in accordance with law.

8. The petition is, accordingly, **disposed of** along with the connected CrIM.

(SANJAY PARIHAR)
JUDGE

Srinagar
29.09.2026
"Imtiyaz"