

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:
The Hon'ble Justice Md. Shabbar Rashidi

C.R.R. 3582 of 2025

**Md. Nishek Alam @ Nishek Alam & Anr.
Vs.
State of West Bengal & Anr.**

For the petitioners : Mr. Soumyajit Das Mahapatra, Adv.
Ms. Shalini Bairagi, Adv.
Mr. Priyankar Ganguly, Adv.

For the State : Mr. Debasish Roy, Ld. P.P.,
Mr. Rudradipta Nandy, Ld. A.P.P.,

Heard and Judgment on : September 25, 2025

Md. Shabbar Rashidi, J.:-

1. The instant criminal revisional application has been filed by the accused petitioners being aggrieved by an order no. 12 dated August 2, 2025 passed by the learned 1st Additional Sessions Judge, Hooghly in connection with Sessions Case No. 131 of 2025.
2. By the impugned order, the learned Trial Court refused the prayer of the petitioner challenging a charge under Section 317 (4) of the Bharatiya Nyaya Sanhita (for short, 'B.N.S').
3. It is submitted on behalf of learned advocate for the petitioners that the offence under Section 317 (4) of the B.N.S. relates to habitual offenders. The prosecution has not been able to bring any material in the case diary to substantiate that the petitioners were

habitual offenders. In spite of that, learned Trial Court proceeded to frame charge against the petitioners under Section 317 (4) of the B.N.S. Learned advocate for the petitioners refers to several Acts pertaining to different States including West Bengal in India where the term of habitual offender has been defined. It is submitted by learned advocate for the petitioners that for framing the charge against the petitioners under Section 317 (4) of the B.N.S., the prosecution ought to have brought materials to establish that the petitioners were previously convicted for similar nature of offences.

4. On the other hand, learned Public Prosecutor submits that the petitioners have misappropriated money in respect of some State Government Scheme. There are as many as eleven criminal cases involving similar nature of offences pending as against the petitioners. Learned Public Prosecutor also submits that the learned Trial Court was justified in refusing the prayer of the petitioner as against the charge under Section 317 (4) of B.N.S.
5. Having considered the rival contentions and on perusal of the materials including the impugned order, it transpires that the petitioners are accused in Sessions Case No. 131 of 2025 under Sections 318(4)/316(2)/61(2)/317(4) of the B.N.S. The police investigated the case and submitted charge sheet under the aforesaid Sections against the petitioners. Accordingly, the Trial Court proceeded to frame charge against the petitioners. At the time of consideration of charge, the petitioners preferred an

application seeking *inter alia* that no charge under Section 317 (4) of the B.N.S. could be framed as the prosecution was not in a position to bring materials substantiating such charge, specifically with regard to previous conviction of the accused in the similar nature of cases.

6. From the impugned order, it transpires that while disposing of the petition filed by the present petitioners, the learned Trial Court noted that the accused persons, forming a nexus, had tempted the young students of different schools of the State including the complainant school, in feeding their bank particulars in the fake portals. The learned Trial Court also observed that the petitioners and another accused person used different bogus IP addresses, enticed the students and misappropriated their monies from their bank accounts. Learned Trial Court also noted that several criminal cases were pending against the petitioners and another accused person, which involved similar nature of offences.
7. By the impugned order, the learned Trial Court specifically held, at the time of deciding the petition filed by the appropriate application to the effect that, *“the accused persons forming nexus withdrew the students’ monies using different fake IPs, details of which are available in CD. They, thereby, accessed the victims’ online banking details from the different remote locations. The proceeds of the crime were diverted to different bank accounts. The alleged crime on hand does not require habitual conduct. The online act and conduct of the*

accused persons was to fool and camouflage the official government '**Banglar Siksha Portal**'. Monies are withdrawn for the wrongful gains. Victim students were made to believe that they were authorized to access the account and thereby they were defrauded. Mobile phones, SIM Cards, bank related documents were seized during the case investigation. There are several statements of the witnesses including that of the accused persons under Section 161 Cr.P.C. I.O. collected the beneficiary bank statements. Section 317 (4) BNS is certainly applicable in cybercrime cases as on hand where the accused persons using spoofed IPs have withdrawn the monies of the students by several accounts which were supposed to be granted under '**Taruner Swapner Scheme**' by its official portal for TAB grant of Rs.10,000/- for each student.

At the charge framing stage, only prima facie evidence is required. Evidence in CD and the case record need not be meticulously examined. There are sufficient grounds to presume that the accused persons committed the offence. The alleged crime does not require habitual conduct. There are abundant materials in the CD to frame charge against the accused persons in the sections in which they are chargesheeted along with Section 317 (4) of the BNS.

With the above observations, charge should be framed against all the accused persons as per first charge sheet and the supplementary charge sheet."

8. It is found that the charges were framed against the petitioners and the trial of the case has commenced. The case is fixed for recording evidence of the prosecution witnesses. The concept of habitual offenders should not be misunderstood with bringing on record the materials to secure enhanced punishment in certain offences, on the ground of previous convictions. There are numerous cases involving similar nature of offences pending against the petitioners. Such cases may or may not result in conviction. A charge under Section 317 (4) of the B.N.S. cannot be said to be without any basis, at this stage.
9. Having regard to the provision of Section 317(4) with reference to the pendency of several cases as against the petitioners involved in similar nature of offences, I find no infirmity with the order impugned. It is upto to the prosecution to prove the factum of previous conviction at the trial which has already began.
10. In such circumstances, I find no reason to interfere with the impugned order and the same is affirmed.
11. Accordingly, the instant criminal revisional application being **C.R.R. 3582 of 2025** is **dismissed**.
12. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties upon compliance of all the formalities.

(Md. Shabbar Rashidi, J.)