Sr. No. 27

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 3328/2026

Date of pronouncement:21.10.2026
Date of uploading: 22.10.2026

1. **Hilal Yaqoob Deva** S/o Mohd. Yaqoob Deva R/o Village Kanipora, District Shopian, Kashmir
   At present lodged at District Jail, Ambphalla, Jammu.
2. Musaib Fayaz Baba, S/o Fayaz Ahmed Baba R/o Village Gund-e-Hadoo Shanpora, Shopian.
   At present lodged at District Jail, Ambphalla, Jammu

.....Applicant(s)/Petitioner(s)

Through :- Mr. Shariq Hussain Qazi, Advocate vice
Mr. I H Bhat, Advocate

v/s

National Investigation Agency, Jammu .....Respondent(s)

Through :- Mr. Vishal Sharma, DSGI with
Mr. Karan Sharma, CGSC,
Mr. Ashwani Verma & Mr. Chandan Kumar Singh, PP, NIA

CORAM: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR. JUSTICE MA CHOWDHARY, JUDGE

ORDER (ORAL)
21.10.2026

Sanjeev Kumar 'J'

1. In this petition, filed under Article 226 read with Article 227 of the Constitution of India, the petitioners seek to set aside an order dated 29.08.2026, whereby the learned Special Judge, NIA Cases, Jammu, has rejected the application moved by the petitioners for calling and recording the statement of prosecution witnesses PW-38 & 40 to 50. The petitioners also pray for an appropriate direction to the prosecution to examine the said eyewitnesses in the first instance, before examining the other witnesses.

2. Learned counsel appearing for the petitioners has placed reliance upon a couple of judgments passed by the Hon'ble Supreme Court in this regard.

3. Having heard learned counsel for the parties and perused the material available on record, we are of the considered opinion that the trial Court as well as the prosecution is obliged in law to record the statement of material witnesses, including the eye-witnesses, if any, before embarking upon examining the official and other formal witnesses in the challan. Acting otherwise, would be at the cost of jeopardising the right of the accused to apply for bail on the basis of the testimony of the material/eyewitnesses.

4. Without going into the contentions of learned counsel appearing for the parties in detail, suffice it to say that it is trite law that it should always be the endeavour of the Court and the duty of the prosecution to examine the material eyewitnesses, including the eye-witnesses in the first instance, before embarking upon examining the official and other formal witnesses.

5. For the foregoing reasons, we dispose of this petition with a direction to the trial Court to ensure examination of material prosecution witnesses, including the eyewitnesses, before undertaking the examination of formal and official witnesses.

6. ***Disposed of.***

(MA Chowdhary)
Judge

(Sanjeev Kumar)
Judge

JAMMU
21.10.2026
Diksha

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