

(2025) 09 J&K CK 0517
In the Jammu And Kashmir High Court
Case No : CrLM No. 347 Of 2023

UT of J&K Through Police Station, Gandhi Nagar, Jammu

APPELLANT

Vs

Anas

RESPONDENT

Date of Decision : 30-09-2025

Acts Referred:

National Investigation Agency Act, 2008 — Section 21

Evidence Act, 1872 — Section 24, 25, 27

Indian Penal Code, 1860 — Section 18, 20, 23, 38, 39, 120(B), 121

Citation : (2025) 09 J&K CK 0517

Hon'ble Judges : Sanjeev Kumar, J; Sanjay Parihar, J

Bench : Division Bench

Advocate : Monika Kohli, Surjeet Singh Andotra

Final Decision : Disposed Of

Judgement

Sanjay Parihar, J

1. This Criminal Appeal under Section 21 of the NIA Act calls in question the order dated 26.11.2022 passed by the 3rd Additional Sessions Judge, Jammu (Special Judge, NIA) (hereinafter referred to as 'the trial Court') in FIR No. 278/2021, whereby the respondents have been discharged. The discharge has been ordered because the material relied upon by the prosecution is not of such a nature as could be translated into admissible evidence. The trial Court held that most of the material was based on confessional statements recorded during the investigation, which are inadmissible under Sections 24 and 25 of the Indian Evidence Act, and therefore proceeded to discharge the respondents.

2. The impugned order is challenged inter alia on the ground that the trial Court has failed to appreciate the material collected by the Investigating Officer in its correct perspective. At the stage of consideration of the charge, the Court was only required to examine whether a prima facie case existed and whether there was sufficient material giving rise to a grave suspicion against the respondents to warrant framing of the charge. Instead, the trial Court has exceeded its

jurisdiction by appreciating the material as if the matter was at the stage of trial, thereby embarking upon a roving inquiry which is impermissible at the charge stage.

3. The finding recorded by the trial Court that "there is no evidence" against the respondents is erroneous, since the record reflects grave suspicion regarding their involvement in spreading terrorism in the Union Territory of Jammu & Kashmir, pursuant to directions received from their handlers across the border in Pakistan/POK. The CDRs, IPDRs and tower location details of the mobile numbers used by the respondents establish their nexus with the handlers sitting across the border. Without allowing the prosecution to prove these allegations during trial, the trial Court has prematurely discharged the respondents. Furthermore, the case of the prosecution was not founded solely on confessional statements, but also on material like discovery and recovery within the ambit of Section 27 of the Evidence Act, which is admissible in law.

Brief Facts of the Case:

4. As per the prosecution case, it was on credible inputs that respondent No. 1 was found taking photographs and video clips of vital installations and on 10.10.2021, he was found roaming in Gandhi Nagar area, where he was detained and on being questioned had confessed his involvement being in contact with PAK handler through WhatsApp and Telegram on Mobile No. +923237323776, +447518752127 and +923558001451. He was assigned the task to take photographs/video clips of vital installations and business establishments particularly of a renowned media house and for sending the same to the PAK handlers. The respondent No. 1 herein further confessed that he send a number of photographs/video clips of vital installations as per the directions of the PAK handlers and was tasked to carry out the terrorist activities and target killing in Jammu City in coming days. The respondent No. 1 is highly motivated and there is apprehension that he can carry the terrorist activities on the direction of PAK ISI handlers for creating terror in Jammu. The act of the respondent No. 1 is highly objectionable, amounting to waging war against the republic of India posing threat to the security and integrity of India. In view of this, an FIR No. 275/2021, offence under Section 120-B/121 IPC Ss 18/20/23/38/39 UA(P) Act was lodged and the investigation was undertaken by SDPO, City South Jammu.

5. It is further alleged that during sustained interrogation, A-1 named respondent No. 2, Sheran Nawaz Sheikh (hereinafter referred to as A-2), a habitual consumer of intoxicating drugs, who too was found to be in touch with Pakistani handlers. It is alleged that A-2 had permitted the handlers to use WhatsApp linked to the mobile number. +923558001451. The handlers were allegedly operating through the above-mentioned foreign numbers to communicate with both respondents. It also surfaced that a sum of ₹ 27,000/- had been deposited in the account of A-1, out of which ₹ 13,000/- was withdrawn for the purchase of a new Oppo mobile phone with Idea SIM No. 9027449683. On disclosure by A-1, A-2 was arrested from Kishtwar and a

Samsung Galaxy A30 mobile phone, along with an Airtel SIM No. 89910009012486719002U linked to mobile No. 7051059975, was seized from him.

6. During the investigation, it was further revealed that the handlers had directed the respondents to arrange for a tamancha (locally made pistol). Respondent No. 1 allegedly procured the said weapon from a

dealer in Uttar Pradesh for a sum of ₹ 9,000/-. To establish his bona fides before the handlers, A-1 is alleged to have taken a photograph of the weapon and transmitted the same through WhatsApp, in addition to sending a video via YouTube. The respondents are also alleged to have photographed the residence of a well-known correspondent of a national news channel at Jammu and transmitted the same to their handlers, intending to facilitate his selective killing. It was thus alleged that both respondents, in conspiracy with Pakistani handlers, engaged in activities intended to spread terrorism in the Union Territory of Jammu & Kashmir, thereby disturbing peace and communal harmony in Jammu city. On the strength of the investigation, a charge-sheet was filed against them for offences under Sections 120-B & 121 IPC and Sections 18, 20, 23, 38 & 39 of the Act.

Findings of the Trial Court:

7. The trial Court, however, held that none of the prosecution's witnesses disclosed that the respondents had hatched a conspiracy at the behest of Pakistani handlers to spread terrorism. No material was found attributing any specific role to respondent No.2. There was also no evidence to establish that the alleged handlers, namely Hamid and Jamaal Khan, were associated with any terrorist organisation or unlawful outfit. The Investigating Officer had failed to collect details regarding their identity or organisational links.

8. The trial Court further noted that although A-1 was alleged to have transmitted photographs and the tamancha to the handlers, no material was brought on record to show that the photographs related to any vital installation. The Court emphasised that there was no independent corroboration of the allegations, since most of the prosecution witnesses were police officials, and that the case rested substantially on confessional statements made before police officers, which are inadmissible under the law. Holding that the essential ingredients of the charged offences had not been established even at a prima facie level, the trial Court discharged both respondents.

Submissions of Counsel & Legal Position:

9. Learned counsel for the appellant has drawn our attention to the seizure memo recorded on the file as also to the WhatsApp chats, which, according to the prosecution, establish that respondent No. 1 was in direct touch with certain persons residing across the border. Reliance has further been placed on the bank statements of respondent No. 1, which reflect that a sum of ₹ 27,888/- was

transferred into his account through Indo Sind Bank by AL Ghurair International Exchange Account No. 200000174921 (NRI Account), Branch Opera House, Mumbai. It has also been pointed out that an amount of ₹ 20,000/- was deposited into the said account on 30.09.2021 by way of cash deposit at SBI ATM, Gandhi Nagar, Jammu. Apart from this, the record also indicates cash transactions between respondents No. 1 and 2. The Call Detail Records (CDRs) and Internet Protocol Detail Records (IPDRs) of the mobile phones of the respondents were obtained, which, according to counsel, clearly demonstrate their nexus with Pakistan-based ISI handlers. It is further alleged that, at their behest, the respondents were transmitting pictures, videos and, significantly, one such photograph related to a renowned correspondent of a national news channel. Ld. counsel for the appellant has also taken us through the forensic report obtained during the investigation to substantiate that the respondents were actively engaged in unlawful activities.

9. We have carefully examined the record and have heard the rival submissions at length.

10. Since the order under challenge pertains to the discharge of the respondents by the trial Court, it would be useful to recapitulate the legal principles governing the stage of framing of charge. The Hon'ble Supreme Court, in *Union of India v. Prafulla Kumar Samal* (1979) 3 SCC 4, laid down the following principles:

(1) The Judge, while considering the question of framing charges under Section 227 of the Code, has the undoubted power to sift and weigh the evidence for the limited purpose of determining whether a prima facie case is made out against the accused.

(2) Where the material placed before the Court discloses a grave suspicion against the accused, which has not been properly explained, the Court is justified in framing charges and proceeding with the trial.

(3) The test to determine a prima facie case depends on the facts of each case; however, if two views are equally possible and the evidence raises only suspicion and not grave suspicion, the Judge would be justified in discharging the accused.

(4) In exercising jurisdiction under Section 227, the Judge, who is a senior and experienced officer, cannot act merely as a post office or a mouthpiece of the prosecution. He must consider the broad probabilities of the case, the total effect of the evidence and documents produced, and any basic infirmities appearing in the case. This, however, does not entitle him to undertake a roving enquiry into the merits or to weigh the evidence as if conducting a trial.

11. The above principles were reiterated by the Apex Court in *Dilawar Balu Kurane v. State of Maharashtra* (2002) 2 SCC 135, wherein it was observed:

"...the Judge has the undoubted power to sift and weigh the evidence for the limited purpose of determining whether or not a prima facie case has been made out; where the material discloses a grave suspicion against the accused which

has not been properly explained, the Court will be justified in framing a charge. However, the Judge should not embark upon a roving enquiry into the matter as if conducting the trial itself.”

12. In *Sajjan Kumar v. CBI* (2010) 11 SCR 669, the Supreme Court further clarified that at the initial stage, if there exists a strong suspicion giving rise to the presumption that the accused has committed the offence, the Court must proceed with the trial. The presumption of guilt at this stage is only for the limited purpose of determining whether charges should be framed, not for conviction.

Consideration of Material on Record:

13. It is not in dispute that the mobile phones of both respondents were seized during the investigation and that the account of respondent No. 1 reflected monetary transactions, including a credit entry of ₹ 27,888/-, which was traced to an international exchange account alleged to have been routed by handlers operating as co-hosts of terrorist elements from across the border. The charge-sheet further reveals that data extracted from the seized mobile phones, including WhatsApp chats and messages spanning over 35 pages, established that the respondents had shared photographs and videos with two conduits located across the border. Significantly, the conversations also contained the location details of a correspondent of a national news channel residing in Jammu. This material, on its face, raised grave suspicion regarding the respondents' role in carrying out preparatory acts towards the commission of a terrorist act. By transmitting photographs and location details of the said correspondent, they exposed him to potential danger from hostile elements seeking to disturb peace and communal harmony in the Union Territory of Jammu & Kashmir.

14. Section 18 of the Act criminalizes any act preparatory to the commission of a terrorist act, while Section 19 relates to harbouring persons known to be terrorists. Sections 38 and 39 concern membership of, or support for, a terrorist organization. In the instant case, the allegation is not of organisational membership but of sharing incriminating material with handlers situated across the border.

Trial Court's Approach

15. The trial Court proceeded on the premise that the prosecution's case was based solely on confessional statements of the respondents. This sweeping conclusion is not borne out by the record. The FIR itself was registered based on credible information regarding the photographing of vital installations, and upon apprehension, incriminating material in the form of mobile chats and data was seized from respondent No. 1. The charge-sheet further alleged that respondent No. 1, a labourer by profession, and respondent No. 2, a drug addict, were exploited by handlers across the border who took advantage of their vulnerability, transferred funds into their accounts, and engaged them to transmit videos, photographs, and even the location of the said journalist. In

light of such material, the finding of the trial Court that there was no evidence against the respondents is unsustainable. At the stage of consideration of charge, the Court is not required to conduct a meticulous appreciation of evidence with a view to recording a conviction or acquittal. The limited test is whether the material on record discloses a grave suspicion against the accused which, if left unexplained, warrants framing of a charge and proceeding with trial.

Prima Facie Satisfaction:

16. The present case was not one of mere suspicion but one raising grave suspicion, as the incriminating chats, videos, and photographs detected from the mobile phones of the respondents stood corroborated by the monetary credits received through international fund transfers. Having regard to the socio-economic background of the respondents and the probabilities of their being roped in by elements across the border, the prosecution had disclosed a prima facie case meriting determination during trial. At the stage of charge, what is required is only a prima facie satisfaction of the Court and not an in-depth appreciation of evidence as would be necessary at the stage of conviction or acquittal. The trial Court, therefore, erred in discharging the respondents by assessing the probative value of evidence instead of examining whether it disclosed sufficient ground for proceeding with the trial.

Conclusion:

17. For the foregoing reasons, we are of the considered view that the trial Judge committed a manifest error in discharging the respondents. By denying the prosecution an opportunity to establish the culpability of the respondents through evidence during trial, grave prejudice has been caused to the prosecution. The discharge of the respondents at this premature stage was unwarranted.

Directions:

18. Accordingly, the order dated 26.11.2022 passed by the 3rd Additional Sessions Judge, Jammu (Special Judge, NIA) is set aside by allowing this appeal, and the charge sheet is restored for determination afresh. The parties are directed to appear before the trial Court on the date fixed or as may be notified by it. The trial Court shall thereafter proceed in accordance with law and return a finding as to whether a case for framing of charge is made out, keeping in view the observations made hereinabove. The appeal, alongwith all connected applications, stands disposed of in the above terms. Copy of the order be notified to the trial Court for further sequential steps.