

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

CRM(M) 471/2025 CrIM 1133/2025

Mohammad Sidiq Lone

...Petitioner/Appellant

Through: Mr. S.M. Saleem, Advocate.

Vs.

Union Territory of J and K and Ors.

...Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE.

ORDER

13.08.2025

1. Heard.
2. Through the medium of the instant petition filed under the provisions of Section 528 Bharatiya Nagarik Suraksha Sanhita (hereinafter referred to as the 'BNSS' for short), the petitioner has sought the quashment of the order dated 12.12.2022 of the learned Principal Sessions Judge (Special Judge under 'NDPS' Act), Kupwara (hereinafter referred to as the 'Trial Court' for short) as being illegal and against procedure.
3. The case of the petitioner in nutshell is that he has been involved in the case FIR No. 72/2022 dated 15.10.2022 of P/S Sogam under Section 8/20, and 29 NDPS Act on the mere disclosure statement unproceeded by any sort of recovery made by the co-accused who were allegedly apprehended on the incident day from a public bus carrying contraband narcotic drug i.e., charas. That he was not aware of his alleged involvement

in the case FIR during the investigation of the case and now the fact has been learnt by him after the presentation of the final report in the case FIR during the trial of the same. That at the time of presentation of the final report/challan, the SHO concerned/IO of the case made a request before the learned Trial Court for initiation of proceedings under Section 299 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code' for short) corresponding to Section 335 of BNSS on the mere allegation of his avoiding the process of law and absconding to evade the arrest. That the learned Trial Court vide its order dated 12.12.2022 passed on the final report/challan initiated proceedings under Section 299 of the Code against him on the mere asking of the Investigating Officer concerned. That the trial of the case is at its advanced stage and some of the prosecution witnesses have already been recorded. That the order dated 12.12.2022 of the learned Trial Court is bad in law for having been passed on the mere asking of the IO without recording its own satisfaction on the basis of documents i.e., proclamation and warrant of arrest.

4. It is submitted by the learned counsel for the petitioner that the initiation of proceedings under Section 299 of the Code against the petitioner can have adverse effects on his credibility. It is also submitted by the learned counsel, that petitioner is not at all involved in the case concerned and has been falsely and frivolously involved in the same on the mere disclosure of the co-accused.

5. The perusal of the impugned order dated 12.12.2022 of the learned Trial Court clearly reveals that the proceedings under Section 299 of the Code corresponding to Section 335 of BNSS were initiated against the petitioner on the mere asking of the Investigating Officer. The learned Trial

Court was required to satisfy itself on the basis of documents that the petitioner, as alleged, can be supposed to be absconding with no immediate prospect of his arrest through normal process.

6. The learned counsel for the petitioner in support of his arguments placed reliance on an authoritative judgment of the Hon'ble Supreme Court of India in **“Jayendra Vishnu Thakur vs. State of Maharashtra and Anr (2009) AIR SCW 3898”** decided on 11th May, 2009. It is profitable to reproduce the Para-10 of the judgment for ready reference.

“10. Mr. Manoj Goel, learned counsel appearing on behalf of the appellant, inter alia would submit: -

1. The impugned order is wholly unsustainable as the Designated Judge, TADA, in its order dated 1st January, 1994 on the application under Section 299 of the Code did not assign sufficient and cogent reasons which would satisfy the jurisdictional facts contained in first part thereof or the legal requirements contained in the second part.

2. Since the jurisdictional facts require proving of not only the abscondance of an accused but also a situation where immediate prospect of his arrest was absent and which being a condition precedent; and as in the facts and circumstances of this case the appellant's presence could have been obtained as he was under arrest in a Delhi case which fact was known to the prosecution, the impugned order cannot be sustained.

3. Right to confront a witness being a fundamental right in terms of [Article 21](#) of the Constitution of India and Section 299 of the Code being an exception thereto, the same should be strictly construed.

4. Admittedly appellant having been arrested by the Delhi police on 23rd July, 1993 and in all subsequent applications as also in the letters the prosecution it having not been shown that the appellant had been absconding, the order of the

learned Designated Judge dated 1st January, 1994 must be held to be illegal and without jurisdiction.

5. The legal requirements to attract the provisions of [Section 33](#) of the Evidence Act having not been complied with by prosecution as no finding has been arrived at by the designated court that the materials brought on record were sufficient to attract the same.

6. The requirements of law for the purpose of issuance of a proclamation in terms of [Section 82](#) of the Code being only 'reason to believe' and the requirement for exercise of jurisdiction by the Court under Section 299 of the Code being "proved" and, thus, only because an accused had been absconding the same by itself could not have been a ground for invoking the jurisdiction under Section 299 of the Code in absence of any finding that not only the appellant was absconding but he has intentionally been avoiding arrest.

7. . The purported evidence of the ten witnesses who had been examined in the first phase of trial having been collected illegally, the same was not admissible in evidence in the present case and in that view of the matter the impugned judgment cannot be sustained.”

7. It was submitted by the learned counsel for the petitioner during his arguments that petitioner was kept away from defending a false and frivolous case against him. The learned counsel during his arguments also submitted that the Investigating Officer of the case was under a legal obligation to initiate the process under Section 82 of the Code before proceeding to make a prayer for initiation of proceedings under Section 299 of the Code against the petitioner which has not been done and the learned Trial Court was satisfied just on the statements of the IO and some 'tamili constable'.

8. The words, “If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the court competent to try or commit for trial such person for the offences complained of, may in his absence examine the witnesses, if any, produced on behalf of the prosecution and record their depositions and any such deposition may, on arrest of such person be given in evidence against him on the enquiry into or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without any amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable”. Pre suppose that a criminal court before initiating the process under Section 299 of the Code corresponding to Section 335 of the BNSS against any accused is needed to be fully satisfied regarding proof that said accused is absconding and there are no immediate prospects of his arrest.

9. In the facts and circumstances of the case, this Court is of the opinion that matter can be disposed at this threshold stage without notice to the other side by passing of appropriate orders which are not likely to prejudice the interest of any party.

10. The matter is accordingly taken up for final disposal and is accordingly disposed of with the quashment of the order dated 12.12.2022 of the learned Trial Court regarding initiation of proceedings under Section 299 of the Code against the present petitioner-accused.

11. The petitioner-accused is directed to surrender before the learned Trial Court and the learned Trial Court shall deal with him in accordance with law. The petitioner is at liberty to seek bail in the case FIR from the learned Trial Court and in case such prayer is made through a proper

motion, the learned Trial Court shall deal with the same in an expeditious manner under law.

12. Before parting, it is felt needful to observe that the criminal courts use to initiate proceedings against the accused persons in terms of the provisions of Section 299 of the erstwhile repealed Code of Criminal Procedure, 1973, corresponding to the provisions of Section 335 of the BNSS on the mere asking of the SHO/IO concerned. In most of the said cases, the Investigating Officers do not take any pains to proceed in accordance with the law for effecting the arrest of the said accused during investigation of the case and for the sake of their convenience prefer to make requests before the criminal courts for initiation of proceedings under Section 335 of BNSS. The recording of the prosecution evidence in the absence of such accused may, in some circumstances, result in serious repercussions especially when the witnesses recorded in the absence of such accused are dead or become subsequently incapacitated to come and face the cross-examination of the accused subsequently brought at the trial. The criminal courts are required to be mindful of any such situations by fully satisfying regarding the proof of the fact that such accused have absconded and there are no immediate prospects of their arrest.

13. Disposed of.

(MOHD YOUSUF WANI)
JUDGE

SRINAGAR:

13.08.2025

15.06.2025
"Shahid Manzoor"

Whether the order is speaking

Yes/No

Whether approved for reporting

Yes/No