

Certified copy of order dt. 12/08/2025

IN THE COURT OF PRINCIPAL SESSIONS JUDGE, UDHAMPUR
(SPECIAL JUDGE UNDER NDPS ACT)

File No: CMA/216 of 2025
CNR No.: JKUD010004242025
Date of Institution: 28.05.2025
Date of Order: 12.08.2025

LT. COL. Dr. Charanpreet Singh (Retd.)

...Complainant

Through: Mr. Aseem Kumar Sawhney, Advocate

Vs

1. Shiva Sharma S/o Sandeep Kumar R/o District Kapurthala (Punjab) Proprietor of M/S Jeevanjyoti Neuro Psychiatric Centre Jakhani Chowk, Udhampur.
2. Babir Hussain S/o Zakir Hussain R/o Kencha Doda (Pharmacist of M/S Jeevanjyoti Neuro Psychiatric Centre)

In the matter of: Application for presenting the complaint afore titled before the learned special judge NDPS Udhampur in compliance of the orders of the Ld. CJM Udhampur dated 22.05.2025. Alternatively to exercise powers of revision and set aside the order of Ld. CJM Udhampur as the Ld. Sessions Judge Udhampur is not a special court under Section 36 of the NDPS Act, 1985.

Present: Virinder Singh Bhou
J.O CODE: JK-00067

ORDER

1. That the complainant/ applicant had filed an application before the Learned CJM Udhampur seeking invocation of powers under section 175 (3) of the BNSS 2023 seeking investigations against the respondents/ prospective accused. This application was returned to the applicant vide order dated 22.5.2025 by the Ld. Chief Judicial Magistrate observing that the powers to pass such orders lies with the Special Judge NDPS cases which is the Pr Sessions Judge Udhampur and not that Court and therefore the applicant/ complainant re-presented the said complaint before this Court.

SL/1
Pr. Sessions Judge will hear
On the alternative prayer of treating the same as a Revision petition the counsel for applicant has not pressed that part of the prayer, at bar as the powers under NDPS are admittedly with this Court being a Special Court under NDPS Act. Hence this Court has been called upon only to determine whether the powers under 175 (3) BNSS 2023 are to be exercised and the concerned Police officer/ official is to be directed to register the FIR under the relevant provisions of BNS 2023, NDPS Act 1985 - viz Sections 61, 212, 228, 229(2), 318, 335, 336 (3), 340 of BNS, 2023 and Section 8, 9A, 25A, 21, 22, 25 NDPS Act, 1985 and other penal laws attracted in the present case and investigate the matter under law And/Or direct the SSP Udhampur to constitute a Special Investigating Team (SIT) to investigate the serious offences under BNS 2023, NDPS Act 1985 - viz Sections 61, 212, 228, 229(2), 318, 335, 336 (3), 340 of BNS, 2023 and Section 8, 9A, 25A, 21, 22, 25 NDPS Act, 1985.

FACTS:

As far as the facts of the complaint are, it has been submitted that the complainant/ applicant is a Retired Lieutenant Colonel of the Indian Army and

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being a veteran of the Indian Army especially a doctor being MBBS, MD (Psychiatry) has filed this complaint to highlight the serious offences being committed by the accused persons concerning the medicinal narco-psychotropic drugs. The Complainant has submitted that he has retired from the Army service from Pune, Kirkee and is presently a private practising doctor with specialization in Psychiatry. Being a MBBS, MD in Psychiatry, Command Hospital, and Eastern Command. The Complainant has served as a medical officer at Command Hospital, Northern Command (tertiary care hospital) for about six months and thereafter served as a regimental officer from 2010 to 2013 in different areas of South Kashmir, Kishtwar, playing the role of a primary healthcare provider to soldiers, regiments involved in counter-insurgency operations, and was providing basic medical care to the locals, organizing medical camps, etc. The Complainant thereafter has served as the Medical Officer with Field Hospital in Punjab from 2013 to 2015 and served as the Medical Officer from 2016 to 2017 at Jammu. Thereafter, the Complainant was promoted as a senior resident, followed by assistant professor from July 2020 to November 2023 in Armed Forces Medical College (AFMC) Pune. The Complainant was actively involved in UG and PG training activities from 2020 to 2021 and designated as a faculty Assistant Professor at (AFMC), affiliated to MUHS from July 2020. So much so that the Complainant also held the appointment of Head of Department of Psychiatry at Military Hospital Kirkee Pune (HOD Psychiatry), (tertiary care hospital and spinal injury centre) from July 2020 to November 2023. The Complainant has also served as an advisor to the board of medical officers, recommending employability, restrictions, advised or sheltered employment for diagnosed cases of mental illnesses, with an aim to help them rehabilitate, continue military service, and integrate into society.

3. That the complainant has submitted that after retirement the complainant's services were hired/engaged by the accused no. 1 namely Shiva Sharma as a "Person Incharge" of M/s Jeevanjyoti Neuro Psychiatric Centre Jakhani, Udhampur on 8.01.2024 and it was further submitted that the running of the this Jeevanjyoti Neuro Psychiatric Centre is governed under the Clinical Establishments (Registration and Regulation) Act, 2010 and the Jammu and Kashmir Govt. has framed the rules bearing SO no. 168, framed under the act with its appendixes, forms, etc and operational procedural guidelines. In this regard, it was submitted that the clinic which was started by the accused no. 1 with the name Jeevanjyoti Neuro Psychiatric Centre at Jakhani Chowk, Udhampur was governed under the Clinical Establishments (Registration and Regulation) Act, 2010 and SO 168 rules; hence, the dispensing of the medicines/drugs could only be done by the doctor incharge (person incharge) of the clinic and in his presence only. Even the drugs/medicines were to be purchased are on the name of the person incharge/ doctor incharge/ registered medical practitioner as covered under the Drugs and Cosmetic Act 1940 and Rules, 1945 and the drugs in question which were falling under the definition of narcotics and psychotropic drugs were also covered under the Narcotic Drugs and Psychotropic Substances Act, 1985, therefore keeping in view the sensitivity of the drugs because the same are psychotropic drugs, the responsibility of the doctor concerned/RMP is at a much higher pedestal, as the drugs can be misused to a large extent.

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4. It was submitted that after working for about a year; the complainant on 19.01.2025, resigned from the position of "person incharge" of the said clinical establishment and conveyed this to the Owner i.e. respondent/ accused no. 1 and also sent his resignation to the Chief Medical Officer Udhampur (District Registering Authority) and vide communication bearing number CMO/Udh/CEA/2024-25/9566-70 dated 20.01.2025, the CMO Udhampur communicated to the Jeevanjyoti Neuro Psychiatric Centre (the firm of the accused persons) to close all the functioning i.e., OPD/dispensing of medicines in the establishment until the new doctor/person incharge joins the establishment as the complainant had resigned from his position and informed the firm as well as the DRA (CMO Udhampur) with immediate effect i.e., from 19.02.2025 itself. The copy of this communication was also sent to Director Health Services, District Development Commissioner, SSP Udhampur, DDC Udhampur and Nodal Officer National Mental Health Program, Udhampur for information.
5. It has been further averred in the application that, while the complainant had resigned with effect from 19.01.2025 itself; the complainant was shocked to learn that despite his resignation and conveying the same to all concerned, still the accused persons were managing to dispensing medicines/drugs (psychotropic substances defined under the NDPS Act and Rules) to several patients without the doctor concerned or without the presence/authorization of any new doctor or the complainant or any new prescription generated by doctor using the name of the complainant and by entering into a criminal conspiracy hatched amongst themselves have cheated the complainant and the poor patients and besides that, hoodwinked the authorities/ law enforcement agencies. This illegal activity being run by the accused persons as owner of the said clinic and pharmacist of the said clinic was discovered by the complainant and when the complainant came to know that without there being a doctor his "patients" were being administered/ dispensed with these medicines/drugs which fall under the Schedule H1 of the Cosmetic Acts and Rules which is an offence under the NDPS Act, and other penal offences including BNS, 2023 and he immediately rushed to the DC Udhampur and SSP Udhampur to inform them about the illegal sale of the narcotic drugs/medicines misusing the name of the complainant as a doctor.
6. That as per the complainant on these complaints, the DC Udhampur directed the CMO Office Udhampur, Jammu and Kashmir Police and Drug Department to form a team and initiate inquiry/inspection and take legal action in the matter and apropos; the SSP Udhampur also directed for a team consisting of the CMO Udhampur, J&K Police officers and Drug Department officers, and an inspection was conducted on 23.01.2025 on instructions of the SSP. It was revealed by the said inspection team that over 2300 tablets were sold illegally by the accused who are running a narcotic scam in Udhampur. The drug department at that time had freezed the drugs under a form prescribed under the Drugs and Cosmetics Rules, 1945.
7. That the complainant has submitted that despite several complaints/ reminders but no FIR was registered, therefore the complainant moved yet another formal complaint to the SSP Udhampur on 23.01.2025 through email wherein again the complainant reiterated the allegations. Despite the multi-department team having

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conducted an inspection still nothing was done and no criminal action had been initiated as the matter involved illegal sale of narcotic drugs that the complainant had alleged. Further the complainant also categorically submitted that there was tampering in the records and fraud/cheating committed by the accused persons.

8. That after waiting for several days still the concerned department/SHO Udhampur or SSP Udhampur did not register the FIR formally in cognizable offences under BNS, 2023 and NDPS Act, 1985 as spelled out in the complaint of the complainant. Therefore, the complainant yet again sent a complaint through email specifically mentioning about tampering of sale records, illegal sale of narcotics wherein it was submitted before the SSP Udhampur, that post the inspection/raid, it has come to the attention of the complainant that the records have been tampered to misrepresent facts and conceal illegal activities wherein it was disclosed that there was Tampering with Patient Records: An attempt has been made to alter the name and registration number of Latif Ahmed (Serial No. 56) who is a new patient to replace it with Latief Mohd (Previously Registered Patient). Forgery and Bogus Entries: These fraudulent entries (Serial No. 72 and 74) made under the same name Karleep Singh and registration number but bearing different signatures, indicating possible forgery by the proprietor. Further, the proprietor/accused no. 1 and pharmacist accused no. 2 had no authority to dispense medication, procured on the name of the complainant being registered medical practitioner except under his supervision and on a valid prescription issued by him of the same day.

9. That it was averted that since no action was taken by the SSP Udhampur and the SHO Udhampur, despite writing several emails, the complainant yet again sent an email on 13.02.2025 reporting about tampering of sale records and illegal, unauthorized, unsupervised sale of narcotics by accused no. 1 being proprietor of M/s Jeevanjyoti Neuro Psychiatric Centre, Jakhani Chowk, Udhampur and requested for lodging of the FIR against the accused persons.

10. That this Court has perused the complaints that were moved to the SHO Police station Udhampur and SSP Udhampur on 19.02.2025, and various other complaints moved through emails to the SSP Udhampur on various dates and even a reminder that was made to the SHO Udhampur on 18.04.2025 and receipts thereof which have been appended with the complaint. The complainant has also appended his Affidavit with this applicant/ complaint and therefore the prerequisites of complaints to SHO Udhampur, then SSP Udhampur and affidavit have been satisfactorily met.

11. After examination of this complaint, this Court issued notice to the SSP Udhampur/ SHO Udhampur to submit the action taken report regarding the complaints filed by the complainant.

12. That on 30.5.2025 the Dy. SP headquarters Udhampur submitted a compliance report vide No. HQU/2025/4676-77 which was taken on record and Mr. Aseem Kumar Sawhney, Learned Advocate for the complainant, submitted copy of communication no. HQU/RTI/2025/3701-02 pertaining to an RTI reply filed to the RTI application by the complainant alongwith copy of the Order no. CB/Order/2025/8046-48 dated 4.2.2025 and copy of Form no. 15 dated 23.1.2025. It was observed that the report as sought by this Court was not correctly furnished and nothing pertaining to the "preliminary inquiry" as ordered

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by SSP Udhampur vide order no. CB/Order/2025/8046-48 dated 4.2.2025 was mentioned, therefore this Court vide order dated 26.6.2025 observed that the snail pace of inquiry which started in February 2025 raises doubts about the fairness and unbiasedness of the investigation and instead of furnishing the correct action taken report in the matter related to offences as alleged the counter case/FIR against the complainant was mentioned which was unwarranted and not required in this ATR, therefore SSP Udhampur and SHO P/S Udhampur were directed to file a comprehensive action taken report by themselves and also to include the fate of preliminary inquiry.

13. A perusal of this ATR with its documents and annexure would show that the SSP Udhampur has acted not on the complaint of the complainant but on the complaint of the CMO Udhampur, however the complaints sent by complainant through email are also appended, thus were in the knowledge of the SSP Udhampur. The SSP Udhampur vide his order dated 4.2.2025 on this communication no. CMO/Udh/2024-25/9996-99 dated 3.2.2025 (wrongly written as 3.2.2024) received from CMO Udhampur, directed a preliminary inquiry to be conducted by Dy. SP Headquarters Udhampur and it was directed that he would take assistance of CMO and Asst Drugs Controller Udhampur and submit findings in 7 days for further course of action.
14. Mr. Sawhney has brought to notice of this Court that the record submitted by SSP Udhampur with the ATR further has revealed that a communication was addressed by CMO Udhampur to DC Udhampur with copy to the SSP Udhampur wherein the inspection report on the complaint of the complainant was provided to the officers. This inspection team comprising of Sh. Sandeep Bhat JKPS, Addl. Superintendent of Police Udhampur, Dr Anil Saloch, Distt Tuberculosis Officer DTC Udhampur and Rakesh Kumar Drugs Control Officer have furnished a detailed report dated 17.6.2025 wherein the team has giving its findings which are serious in nature.
15. That in pursuance of the Order of this Court an ATR was furnished by the SSP Udhampur through Ld PP of this Court on 22.7.2025 with detailed annexures which also included inquiry reports by a inquiry team constituted in this regard.

ANALYSIS:

Perusal of the record with the ATR would reveal as follows:

- a. The Drugs freezed by the visiting team on 23.1.2025 which were kept under lock and key were found missing as they were illegally removed from the premises of accused's Jeevan Jyoti Neuropsychiatric centre without any authorization, documentation or knowledge. The unauthorized access and removal of such sealed substances undermines integrity of the proceedings and is an attempt to tamper with material evidence and evade prosecution under Section 75 B of NDPS act, as the medicines come under NDPS Act 1985 and Sakshya Adhiniyam, 2023 violations are under the NDPS Rules, besides Form 3D and 3H were not maintained and presented before the inspecting team.
- b. There were manipulations, tampering, overwriting in the files records of the patients and high dosage of these drugs for longer durations were dispensed

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without a doctor that was a violation of NDPS Rules, thus attracting forgery and use of forged documents.

- c. Fake, forged and fraudulent entries of fresh patients as repeat patients were found to have been done.
- d. Concerned Doctor - Charanpreet Singh (complainant) had resigned on 19.1.2025 but thereafter the drugs falling under NDPS Act / Schedule H1 drugs were dispensed illegally and unlawfully which is a violation of NDPS Rules and the drugs were freezed but those too were illegally removed by these accused persons.

16. That the ATR of the SSP Udhampur reveals that the serious allegations of cognizable offences have been prima facie found in the inquiry, besides the fact that the drugs in question have been dispensed and removed illegally and without any permission/ orders, still the Dy Headquarters has not yet culminated the preliminary inquiry and Police have started a formal investigation after lodging of an FIR which was illegal and unwarranted and seems to be done on extraneous considerations to give a long rope to the accused.

17. That a preliminary inquiry under section 173 BNSS 2023 was required to be done within 14 days as per law in offences ranging upto 7 years but here the Police has taken 6 months and failed to register any FIR thus ensuring long rope to the alleged accused and ensuring the witnesses and evidence are compromised, it seems.

*Dr. P. S. Singh Judge
Udhampur*
18.

Ld Counsel for complainant has cited a judgment reported in 2025 INSC 876CRIMINAL APPEAL NO(S). OF 2025 in KHURSHEED AHMAD CHOCHANVERSUS UNION OF TERRITORY OF JAMMU AND KASHMIR & ORS. ETC where in the Hon'ble Supreme Court has dealt with preliminary inquiry and cognizable offences and observed as follows:

..." 5.4 That the learned High Court has committed a grave error in law by failing to recognize the clear and egregious violation of the appellant's fundamental rights under Articles 14 and 21 of the Constitution of India, and committed grave injustice by merely ordering a preliminary enquiry rather than mandatorily directing the registration of an FIR. The settled position of law, as laid down by the Constitution Bench in Lalita Kumari v. State of U.P. unequivocally mandates the registration of an FIR upon disclosure of a cognizable offence, particularly where public officials are alleged to have committed such offences. In the present case, the appellant's wife, Rubina Aktar, submitted a written complaint on 1st March, 2023, within three days of the incident, clearly narrating acts of custodial torture and grievous assault amounting to grave cognizable offences. In view of this, there existed no legal basis for deferring the registration of the FIR or substituting the statutory mandate under Section 154 Cr.P.C (corresponding

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Section 173 of Bharatiya Nagarik Suraksha Sanhita, 2023) with a preliminary inquiry. The High Court's failure to adhere to this binding precedent not only dilutes the legal safeguards against custodial violence but also effectively sanctions immunity for the illegal acts committed by the errant officials under the colour of public authority, thereby undermining the appellant's fundamental right to equality before law and protection of life and personal liberty.

5.5 That the unprecedented severity of the custodial torture inflicted upon the appellant, who is a serving constable in the Jammu & Kashmir Police, and the systematic cover-up orchestrated by the local police apparatus, necessitates immediate transfer of investigation to the CBI in order to ensure a fair, impartial, and credible inquiry. The High Court's direction, in the impugned order, entrusting the inquiry to the very Senior Superintendent of Police, whose signal dated 17th February, 2023 led to the appellant's illegal summoning and subsequent torture, constitutes a clear violation of the principles of natural justice, rendering the inquiry inherently biased and devoid of credibility. For over a year, the appellant and his wife have been compelled to approach multiple forums merely to seek the registration of an FIR. In these deeply disturbing circumstances, only a CBI investigation can vindicate the rule of law, restore public trust and confidence in the system, and ensure that the perpetrators of such in human and shocking offences do not go unpunished.

On the Issue of Registration of an FIR

10. The question of mandatory registration of FIR has been conclusively settled by the Constitution Bench of this Court in Lalita Kumari (supra), which laid down unambiguous principles that brook no exception or deviation. The Constitution Bench categorically held that registration of an FIR is mandatory under Section 154 of Cr. P.C (corresponding Section 173 of BNSS) when information disclosing the commission of a cognizable offence is received by the police, and no preliminary inquiry is required or permissible in such cases. The Constitution Bench emphasized that the police have no discretion in the matter of registration of an FIR once alleged facts disclose commission of cognizable offences. The relevant paragraphs and guidelines framed in Lalita Kumari (supra) are reproduced herein below:

119. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible, etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex-facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR."

120. In view of the aforesaid discussion, we hold:

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The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation

120.2. If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

120.3. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.

120.4. The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.

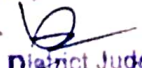
120.5. The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence."

CONCLUSIONS AND DIRECTIONS:

19. Heard Ld. Counsel Aseem Kumar Sawhney for complainant and Learned PP appearing vice SSP Udhampur and SHO Police Station Udhampur and also perused the complaint, annexures reports and documents submitted by respective counsels.
20. As per the facts of the case the allegations so spelled out are cognizable in nature and attracted more than 7 years punishment, so there was no requirement of a preliminary inquiry as per the Supreme Court Judgment read with BNSS 2023 and the SSP Udhampur who has overreached his jurisdiction under BNSS 2023 and ordered the same.
21. Be that it may, even that preliminary inquiry was ordered with the assistance to officers/ doctors of CMO office and Drugs Control Department still the same was to be concluded in 14 days as per mandate of BNSS 2023 but the same has been illegally extended upto 6 months now with no further hope of action which clearly is a case of violation of law by those who were required to uphold and implement it in letter and spirit.
22. That even after the drugs which were freezed and were removed and obliterated still it rang no bell in the ears of the SSP Udhampur and his officials including Dy SP Headquarter - the EO and the SHO Udhampur which in itself is a serious matter and same forms part of the report of the Addl. SP Udhampur and two other members, but that seems to have been conveniently ignored by the concerned SSP Udhampur and others at the helm of affairs.
23. That since the offences are cognizable in nature and spell out seriousness of the matter, therefore, the police was duty bound to register the FIR. However, the

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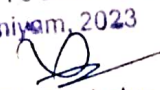
delay in registering of the FIR only reflects about the extraneous consideration and slackness in the matter. The Hon'ble Supreme Court of India in Lalita Kumari judgment, has held that a preliminary inquiry, if at all is being conducted, can only be conducted in the some cases and the time period prescribed is 15 days, even otherwise under BNSS 2023, the preliminary inquiries time period is prescribed fourteen number of days under Section 173(3). Therefore, the failure on the part of the police to take legal action on the complaints of the CMO Udhampur and the complainant cannot be permitted to be brushed aside.

24. In view of the discussions made herein above and after hearing the counsels, this Court directs as follows:
- i. SSP Udhampur and SHO Police Station Udhampur are directed to lodge FIR and start investigation into the matter for the offences spelled out in this complaint and also regarding removal and obliteration of the freezed drugs and thoroughly investigate the findings of the three members committee including ASP Udhampur dated 17.6.2025 which suggests offences under NDPS Act, BNS etc
 - ii. Since the offences alleged pertaining to violation of the NDPS Rules qua opioid and psychotropic drugs therefore; the SSP Udhampur is directed to constitute an SIT comprising of officers with integrity and professionalism and take assistance of Distt Tuberculosis Officer, CMO Udhampur and Drugs Control Officer for investigating this FIR thoroughly.
 - iii. This court being within its power in the light of Lalita Kumari's judgment to recommend action against the erring officers for not registering FIR in cognizable case, may have recommended such action by the higher authorities and proceedings for departmental action, but instead of doing so a note of caution is sounded for the erring officer to be careful and vigilant in future while dealing complaints of like nature involving heinous and serious offences.
25. Copy of this order be sent to SSP Udhampur and SHO P/S Udhampur for information and compliance forthwith and action taken be shared by them with this court within week's time through PP of this court. Complaint along with miscellaneous application stand disposed of, be consigned to records after due compilation.

ANNOUNCED
12.08.2025


(Virinder Singh Bhau)
Principal Sessions Judge
(Special Judge under NDPS Act)
Udhampur

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