

S.C 131/2025
CNR no.WBHG01-002269-2025

Order no.12 dated 02.08.2025

This date is specifically fixed for passing necessary order in the matter of charge consideration petition dated 29.07.2025 filed on behalf of the accuseds Mansur Alam and Sahin Akhtar.

The case record with CD is placed before me.

The learned Advocate for the said accused petitioners submitted that the I.O has submitted chargesheet against all 08 accused persons under the same sections of law. Section 317(4) BNS (Section 413 IPC) is inapplicable to the said accused petitioners. No material has been collected against them to attract the mischief under Section 317(4) BNS for habitually dealing in stolen property. No case has been made out that the accused petitioners had received stolen property on different dates and on different occasions from several persons. Moreover, 317(4) BNS has got nothing to do with cyber or computer related crime. Secs.66/66D Information Technology Act (ITA) is misfit with Section 317(4) BNS. It is emphasized that this section cannot be applied in case of a single offence because element of repetition is mandatory. Pendency of other FIRs is inconsequential for its application upon the accused persons.

In view of the above settled legal position, framing of charge under Section 317(4) BNS would be bad in law. This graver section has been purposely added by the I.O. as being sessions triable offence and punishment is upto 10 years. Said two accused persons should be discharged from S. 317(4) BNS.

The learned Advocates for the rest accused persons have *fully supported* the contentions of the said learned Advocate representing the aforesaid two accused petitioners and the legal propositions. Learned Advocates for the rest accused petitioners also prayed for passing necessary order in the matter of their points of argument on charge consideration and sought for their discharge from Section 317(4) BNS.

Now, the learned junior Advocate attached to the learned Special P.P of this case put forward his submissions.

My attention has been drawn to the section 61(2) of the BNS (old section 120B IPC) revealing criminal conspiracy in between all the 08 accused persons in designing the whole crime and ultimately decoding their mens rea into action. He heavily urged on 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. Their modus operandi is challenging the State machinery and more particularly the very object of the 'Taruner Swapner Scheme'. He accentuated that accused persons through different bogus IP addresses enticed the students and misappropriated their money from their bank accounts. Several criminal cases are pending against them which are vitally of similar nature.

On the point of application of section 317(4) of the BNS, it is argued before me that there are overwhelming materials to attract this section against all of them and therefore, the I.O of the case has very rightly added this section against all of them while submitting chargesheet against seven accused persons except Mumtazul Islam @ Juel and supplementary chargesheet against eight accused persons including Mumtazul Islam @ Juel. He invited my attention to the materials lying in the CD insofar as Section 317(4) BNS and other penal sections are concerned. Application of Section 317(4) BNS and Section 66/66D of ITA is coherent and consistent in application against all the accused persons, being a case of cybercrime. At the time of charge consideration, learned Trial court is not holding trial. The alleged Sections are subject to the final outcome after a full-fledged trial.

He submitted with considerable force that the contention of the accused side is unsustainable on law and the factual evidence collected in CD. The accused persons are to be charged in which they are chargesheeted. Question of discharging the accused persons from Section 317(4) BNS does not arise at all.

Before to proceed with the discussion, this is striking to note that time and again the accused persons have changed their learned Advocates one after the other in a small span of time. Learned Court cannot interfere in changing their counsels but no objection found in their power from their previous counsel. At no occasion, I am told by any of the accused persons over their dissatisfaction with their previously engaged counsels for not prosecuting their defence cause.

Now, let us decide the matter on charge consideration.

It is well settled principle of law that mere suspicion is not enough to frame a charge, there should be reasonable grounds to believe the accused has committed the offence. It is equally settled law that at the time of charge consideration, the court should not usurp as if it is a mini-trial stage. The Learned trial court is to consider only the overall impact of the evidence collected during the investigation and the broad probabilities of the case instead of dissecting the evidence in minor details.

The I.O. while submitting the chargesheet has combined Section 317(4) BNS and other penal sections with Sections 66/66D of the ITA. The alleged incident of large scale fraud through internet syndicate involving many victim students, many transactions, multiple accounts with pre-planned criminal conspiracy leading to mass siphoning of their monies, is sufficient to frame charges under Section 317(4) BNS. Prior conviction or repeated past offences may not be mandatory at the stage of framing charges. There is no such strict requirement of prior similar offences at the charge framing stage.

However, in answer to the allegations of Section 317(4) BNS, from the CD, I do find that several police cases essentially of similar nature is pending in different police stations against those are Birbhum Cyber P.S., Tamluk P.S., Jhargram Cyber P.S., Islampur Cyber P.S., Habibpur P.S., Darjeeling Sadar P.S., Burdwan P.S., Joranagan P.S., Jadavpur P.S., Watgunge P.S., Maniktala P.S., Beniapukur P.S., Kasba P.S.

The accused persons forming nexus withdrew the student 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, banks 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 chargesheet and the supplementary chargesheet.

To date (13.08.2025) for production & framing of charge.

Dictated & corrected by me

Additional Sessions Judge
First Court, Hooghly (Sadar)
J.O. Code no. WB00753.

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First Court, Hooghly (Sadar)
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