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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRR No. 663 of 2025

1 - Krishna Kishor @ Ballu Patel S/o Shri Ramkishore Patel Aged About 27 Years
Occupation- Agriculturist, R/o Ward No. 7, Keshwahi Village Padariya, District :
Shahdol, Madhya Pradesh

... **Petitioner(s)**

versus

1 - State Of Chhattisgarh Through- Station House Officer, Police Station Gourela,
District : Gaurela-Pendra-Marwahi, Chhattisgarh

... **Respondent(s)**

For Petitioner(s) : Mr. Sourabh Kumar Sharma, Advocate.

For Respondent(s) : Mr. S. K. Pandey, Dy. Advocate General.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.

Order on Board

16/09/2025

- The present criminal revision under Section 438 read with Section 442 of the
Bhartiya Nagarik Suraksha Sanhita, 2023 (in short "BNSS, 2023") has been
filed by the petitioner, against the order dated 28-04-2025, passed by learned
Special Judge (NDPS Act), Bilaspur, in Special Sessions Case
(NDPS)/08/2025, whereby the charge under Sections 20(b)(ii)(C) read with
Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985,
have been framed against the petitioner.

2. The brief facts of the case are that on 02-09-2024, the police of the police station Gourela, on the secret information, conducted a raid near the culvert, Main Road, Harratola, and arrested the accused persons Uday Chouhan and Tulsi Sharma, who were transporting 160 KG of Ganja in his car No. MP 18 BB 2530. The Ganja, Car, cash of Rs. 20,000/-, and 02 mobile phones have been seized from them. On being interrogation, they disclosed that they in association with the other 08 accused persons involved in transporting Ganja. They also disclosed that on 30-08-2024, the co-accused Rajkumar Sharma called him on his mobile No. 6260019108 from his mobile No. 7879309122 and 9201312324 and asked them to bring Ganja from Beyopariguda (Odisha) for the present petitioner Ballu Patel and Sajan Choudhary. On 31-08-2024, they proceeded from Odisha along with the Ganja in his car No. MP 18 BB 2530. The other co-accused persons, Sanjay, Suba Kumar, Uttara Khute @ Sahil, Anuj Adile, and Arun Chandra, were piloting his car and came up to Jagdalpur and then to Bilaspur. When they proceeded from Bilaspur to Anuppur, on the way, the Gourela police detained them and seized the Ganja. The accused persons have been arrested, and after due process of investigation, charge sheet has been filed against the 06 arrested accused persons, including the present petitioner and 04 absconding accused persons, for the offence under Section 20(b) and 29 of the NDPS Act. The learned trial Court has framed the charge against the petitioner on 28-04-2025, for the offences under Section 20(b)(ii)(C) read with Section 29 of the NDPS Act, which is under challenge in the present petition.
3. Learned counsel for the petitioner would submit that there is no sufficient evidence against the petitioner to frame charge against him and proceed with the trial. He was not on the spot, and no Ganja or incriminating material was seized from him. Only on the basis of the memorandum statement of the co-accused persons that they are transporting Ganja for the present petitioner,

he has been made an accused in the case. There is no connection between the petitioner with the other co-accused persons. The memorandum statement of the co-accused is inadmissible for the present petitioner. He would also submit that even from the memorandum statement, there is no direct conversation between the accused persons who have been arrested on the spot and the present petitioner. The material collected during the investigation is not sufficient to frame charge and to proceed with the trial of the case. Therefore, the petition may be allowed and the petitioner may be discharged from the alleged offence. He would rely upon the judgment passed by the Hon'ble Supreme Court reported in AIR 2020 SC 5592 (**Toofan Singh v. State of Tamil Nadu**), 2019 (16 SCC 547 (**Dipakbhai Jagdishchandra Patel v. State of Gujrat and Another**), and order dated 08-02-2023, passed by the Madhya Pradesh High Court, Jabalpur, in Cr. R. No. 2324 of 2023 (**Anil Patel v. State of Madhya Pradesh**).

4. On the other hand, learned counsel for the State opposes and has submitted that at the stage of framing of charge, the prima facie material is to be considered, as to whether there is prima facie evidence to proceed with the trial or not. The trial court is not required to meticulously examine the evidence on record, but to consider the prima facie material to proceed with the trial. The material collected during the investigation and from the call details extracted from the mobile phones of the accused persons reveals that they are closely connected with each other and had regular contact. The accused persons organized the crime and, after forming a syndicate, committed the offence for which prima facie evidence is available. Therefore, no merit in the revision petition and the same is liable to be dismissed.
5. I have heard the learned counsel for the parties and perused the documents annexed with the petition as well as the case diary.
6. The learned trial court has framed charge against the petitioner for the offence under Section 20(b)(ii)(B) read with Section 29 of the NDPS Act.

Section 20(b)(ii)(B) of the NDPS Act provides the punishment for the offence if the quantity of seized Ganja involves a commercial quantity, whereas Section 29 of the NDPS Act provides punishment for abetment and criminal conspiracy. Meaning thereby, the petitioner conspired with other accused persons and abetted the other co-accused to commit the offence. Section 29 is relevant to be reproduced herein below, which reads as under:-

“29. Punishment for abetment and criminal conspiracy.- (1) Whoever abets, or is a party to a criminal conspiracy to commit an offence punishable under this Chapter, shall, whether such offence be or be not committed in consequence of such abetment or in pursuance of such criminal conspiracy, and notwithstanding anything contained in section 116 of the Indian Penal Code (45 of 1860), be punishable with the punishment provided for the offence.

(2) A person abets, or is a party to a criminal conspiracy to commit, an offence, within the meaning of this section, who, in India abets or is a party to the criminal conspiracy to the commission of any act in a place without and beyond India which-

(a) would constitute an offence if committed within India; or

(b) under the laws of such place, is an offence relating to narcotic drugs or psychotropic substances having all the legal conditions required to constitute it such an offence the same as or analogous to the legal conditions required to constitute it an offence punishable under this Chapter, if committed within India.”

7. In the present case, though the petitioner was not present on the spot, his name came in the disclosure statement of the co-accused that he was transporting Ganja for the petitioner and the other accused, and the other accused persons are piloting the vehicle in which Ganja was transported. When a person does not carry the illicit Ganja himself and is carried by some other person for carriage in a car, and that person carrying knowingly, then the person who directs him to do so or for whom he is carrying the same, would be the abettor of the offence of transporting Ganja. In the present case, the petitioner is considered to be the abettor of the offence, and the charge has been framed under Section 20(b)(ii)(B) read with Section 29 of the NDPS Act.

8. During the investigation, the police have seized the mobile phone of the petitioner and other accused persons and collected the call details of the seized mobile phones. From the memorandum statement of Tulsi Sharma, it appears that he, from his mobile phone numbers 6260019108 and 9202161458, had conversations with the other co-accused persons. Likewise, Uday Chouhan from his mobile No. 8103904743, had conversations with other co-accused persons. From the document of analysis report of the mobile phones of the accused persons, annexed with the petition at pages 296 to 309, it clearly reveals that the present petitioner is in contact with the other accused persons Anuj Adile, Sahil @ Uttra, Arun Chandra, Uday Chouhan, Tulsi Sharma, regularly. During the interrogation by Tulsi Sharma and Uday Chouhan, it also came out that one Rajkumar Sharma, engaged for the transportation of the Ganja from Odisha for the petitioner and engaged Uttra Khute @ Sahil, Anuj Adile, and Arun Chandra for piloting his vehicle. These accused persons, Uttra Khute, Anuj Adile and Arun Chandra, were in regular contact with the petitioner, which is prima facie available in the mobile analysis report annexed with the charge sheet. Therefore, this court is of the opinion that there is sufficient prima facie evidence available against the petitioner to frame charge and to proceed with the trial.
9. At the stage of framing of charge, the court is not required to meticulously examine the evidence on record nor to conduct a mini-trial. The court would only consider whether prima facie material is there or not to proceed with the trial. The Hon'ble Supreme Court has laid down the principles in the case of **State of M.P. vs. Deepak 2019 (13) SCC 62**, wherein the Hon'ble Supreme Court has held that at the stage of framing of charge, the court has to consider the material only to find out if there is a ground for presuming that the accused had committed the offence. It is also held that the court is required to evaluate the material and documents on record to find out if facts

emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence and at the stage of framing charge, the court is not required to appreciate the evidence on record and consider the allegations on merits and to find out on the basis of the evidence recorded is likely to be convicted or not. In the matter of **Deepak** (Supra), in its judgement, the Hon'ble Supreme Court has held that:-

16. It was also noted that at the stage of framing of charges, the Court has to consider the material only with a view to find out if there is a ground for "presuming" that the accused had committed the offence: (Chitreth Kumar Chopra case, SCC p. 613, para 25)

"25. It is trite that at the stage of framing of charge, the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value, disclose the existence of all the ingredients constituting the alleged offence or offences For this limited purpose, the court may sift the evidence as it cannot be expected even at the initial stage to accept as gospel truth all that the prosecution states. At this stage, the court has to consider the material only with a view to find out if there is ground for "presuming" that the accused has committed an offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction"

10. In the matter of **Manjit Singh Viridi vs. Hussain Mohammad Shattaf 2023 (7) SCC 633**, the Hon'ble Supreme Court has held in para 12 of its judgement that:-

12. The law on the point has been summarised in a recent judgment of this Court in *State of Rajasthan v. Ashok Kumar Kashyap*³ Relevant paras are extracted below: (SCC pp. 197-98, para 11)

"11....11.1. In *P. Vijayan v. State of Kerala*, this Court had an occasion to consider Section 227 CrPC. What is required to be considered at the time of framing of the charge and/or considering the discharge application has been considered elaborately in the said decision. It is observed and held that at the stage of Section 227, the Judge has merely to f sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. It is observed that in other words, the sufficiency of grounds would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him. It is further observed that if g the Judge comes to a conclusion that there is sufficient ground to proceed. he will frame a charge under Section 228 CrPC, if not,

he will discharge the accused. It is further observed that while exercising its judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution, it is not necessary for the court to enter s the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11.2 to the recent decision of this Court in *State of Karnataka v. MR. Memah*, one of us (D. Y. Chandrachud, J) speaking for the Bench has observed and held in para 25 as under: (SCC p. 526)

'25. The High Court ought to have been cognizant of the fact that the trial court was dealing with an application for discharge under the provisions of Section 219 CPC. The parameters which govern the exercise of this jurisdiction have found expression in several decisions of this Court. It is a settled principle of law that at the stage of considering an application for discharge the court must proceed on the assumption that the material which has been brought on the record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary to constitute the offence. In *State of N. v. N. Suresh Rajan*, advertent to the earlier decisions on the subject, this Court held: (N. Suresh Rajan case, SCC 721-22, para 20)

"29..... At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have the offence on t committed the the basis of the materials on record on its probative value, it can frame the charge, though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

11. Further, in the matter of **State by SP through the SPE, CBI vs. Uttamchand Bohra, 2022 (16) SCC 663**, the Hon'ble Supreme Court has held in para 21 of its judgement that:

21. In *CBI v. K. Narayana Rao* this Court, after reviewing the previous decisions that dealt with the question of the applicable standard relating to discharge of accused in a criminal case, summarised the principles in the following terms: (SCC pp. 520-23, paras 12-14)

"12. The first decision in *Ramesh Singh* relates to interpretation of Sections 227 and 228 of the Code for the considerations as to discharge the accused or to proceed with trial. Para 4 of the said judgment is pressed into service which reads as under: (SCC pp. 41-42)

'4. Under Section 226 of the Code while opening the case for the prosecution the Prosecutor has got to describe the charge against the accused and state by what evidence he proposes to prove the guilt of the accused. Thereafter comes at the initial stage the duty of the Court to consider the record of the case and the documents submitted therewith and to hear the submissions of the accused and the prosecution in that behalf. The Judge has to pass thereafter an order either under Section 227 or Section 228 of the Code. If "the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing", as enjoined by Section 227. If, on the other hand, "the Judge is of opinion that there is ground for presuming that the accused has committed an offence which.... (b) is exclusively triable by the court, he shall frame in writing a charge against the accused", as provided in Section 228. Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under Section 227 or Section 228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of deciding *prima facie* whether the Court should proceed with the trial or not. If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial. An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pan as to the guilt or innocence of the accused are something like even, at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under Section 227 or Section 228, then in such a situation ordinarily and generally the order which will have to be made will be one under Section 228 and not under Section 227.'

13. Discharge of the accused under Section 227 of the Code was extensively considered by this Court in *P. Vijayan* wherein it was held as under. (SCC pp. 401-402, paras 10-11)

'10... ..If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage he is not to see

whether the trial will end in conviction or acquittal. Further, the words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact. It is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really the function of the court, after the trial starts.

11. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. In other words, the sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him."

14. While considering the very same provisions i.e. framing of charges and discharge of the accused, again in Sajjan Kumar, this Court held thus: (SCC pp. 375-77, paras 19-21)

'19. It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

20. A Magistrate enquiring into a case under Section 209 CrPC is not to act as a mere post office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 CrPC, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

Exercise of jurisdiction under Sections 227 and 228 CrPC

21. On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving inquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal."

12. The Hon'ble Supreme Court has further held in para 12 of its judgment in the case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao, 2023 SCC Online SC 1294**, that:-

10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

11. This Court in *State of T.N. v. N. Suresh Rajan* adverting to the earlier propositions of law laid down on this subject has held: (SCC pp. 721-22, para 29)

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

12. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 CrPC is to be understood as the documents and articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency.

13. The primary consideration at the stage of framing of charge is the test of existence of a prima facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in *State of Maharashtra v. Som Nath Thapa* and *State of M.P. v. Mohanlal Sonit* has held the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of prima facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial."

13. In the matter of **State (NCT of Delhi) vs. Shiv Charan Bansal and Others, 2020 (2) SCC 290**, the Hon'ble Supreme Court has held that at the stage of framing of charge, the trial court is not required to conduct a meticulous appreciation of evidence or a roving inquiry into the same and has the power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case is made out against the accused to proceed with the trial.
14. In view of the above principles, on examining the material available in the charge sheet, which is filed along with the petition, it prima facie gives sufficient material that the present petitioner is involved in the offence, and there is sufficient prima facie material to frame the charge and to proceed with the trial of the case.
15. From the perusal of the charge memo, this court finds that there is sufficient description in the charge memo of the offence. The allegation against the petitioner requires evidence for which the charge has been framed, and the learned trial court proceeded with the trial.
16. It is a settled legal position that at the stage of framing of charge, the trial judge has to examine the evidence placed by the prosecution in order to prima facie satisfy as to whether or not the evidence is sufficient to proceed with the trial against the accused. The nature of the evidence collected during the investigation or the documents produced with it, which prima facie reveal that there are suspicious circumstances against the accused, would suffice to frame the charge, and they proceed with the trial. If there is no sufficient ground for proceeding against the accused, necessarily the accused would be discharged, but if the court is of the opinion, after considering the material available in the charge sheet, then the charge has to be framed. The defence of the accused is not to be looked into at the stage of framing of the charge. The primary consideration at the stage of framing of

charge is the test of the existence of a prima facie case, and at this stage, the probative value of the material on record need not be gone into.

17. The judgments cited by the learned counsel for the petitioner would not be benefited to him because there is sufficient material against the petitioner to frame charge and to proceed with the trial of the case including the call details which connects the petitioner with the other co-accused persons and the charge of Section 20(b)(ii)(B) of the NDPS Act is framed read with Section 29 of the NDPS Act.
18. This court, therefore, is of the considered opinion that the learned trial court has rightly framed the charge against the petitioner, and there is sufficient prima facie material available in the charge sheet to frame the charge and to proceed with the trial of the case. There is no ground to quash the charge framed by the learned trial court, and no illegality or irregularity is found warranting interference in the impugned order of framing the charge against the petitioner, as such criminal revision deserves to be and hereby **dismissed**.

Sd/-

(Ravindra Kumar Agrawal)
Judge