IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision Nos. 223 and 231 of 2026.

Reserved on: 22.4.2026

Date of Decision: 2.6.2026.

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1. **Cr. Revision No. 223 of 2026**

Ankit Pachwaria ...Petitioner

Versus

State of H.P. ...Respondent

2. **Cr. Revision No. 231 of 2026**

Sarvagya Sharma ...Petitioner

Versus

State of H.P. ...Respondent

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Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] *Yes.*

For the Petitioner(s)	:	Mr. Suneel Awasthi, Advocate, in both the petitions.
For the Respondent/State	:	Mr. Ajit Sharma, Deputy Advocate General, in both the petitions.

Rakesh Kainthla, Judge

Both these petitions have arisen out of the same order; therefore, they are being taken up together for disposal.

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[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. The petitioners have filed the present petitions against the order dated 24.3.2026, passed by learned Special Judge-III, Mandi, H.P. (learned Trial Court) vide which the charges were framed against the petitioners.

3. Briefly stated, the facts giving rise to the present petitions are that the police presented a challan before the learned Trial Court against the accused for the commission of offences punishable under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act (NDPS). It was asserted that police had set up a Naka on 25.5.2023 at the Bhiuli Chowk, Mandi. They stopped a vehicle bearing registration No. HR-51-BU-9902 and asked the driver to produce the documents. The driver prevaricated. The occupants of the vehicle appeared to be frightened. The police became suspicious and searched the vehicle in the presence of Prakash Chand and Anil Sharma. The driver identified himself as Ankit Pachwaria, and the person sitting as a passenger revealed his name as Sarvagya Sharma. The police searched the vehicle after completing the formalities and recovered 328 grams of charas. The police seized the charas and arrested the petitioner/accused. The charas was sent to the Forensic Science Laboratory (FSL), and as per the result of

analysis, the quantity of purified resin in it was found to be 32.86% w/w. The exhibit was an extract of cannabis and a sample of charas. Hence, a charge sheet was filed before the Court for taking action as per the law.

4. Learned Trial Court found sufficient reasons to frame the charges against the accused for the commission of offences punishable under Sections 20 and 29 of the NDPS Act vide order dated 24.3.2026.

5. Being aggrieved by the order passed by the learned Trial Court, the petitioners have filed the present petition asserting that the petitioners were falsely implicated and had nothing to do with the commission of the crime. The investigation was not completed fairly and impartially, and relevant evidence was not obtained from the spot. The recovery was made from the private vehicle, as per the prosecution, and the provisions of Section 42 of the NDPS Act were not complied with. The police had sufficient time to record the reasons before the search of the vehicle, and the petitioners were entitled to discharge solely on this ground. There were material contradictions in the statements of the prosecution witnesses,

which made them doubtful. The Court was required to examine whether there existed sufficient ground for proceeding, and if there was no material, the accused was to be discharged. Learned Trial Court held that the issues raised were a matter of trial, and this conclusion is legally unsustainable. The procedural safeguards were violated. Therefore, it was prayed that the present petitions be allowed and the order passed by the learned Trial Court be set aside.

6. I have heard Mr Suneel Awasthi, learned counsel for the petitioners and Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State.

7. Mr Suneel Awasthi, learned counsel for the petitioners, submitted that the police had not complied with the requirements of Section 42 of the NDPS Act, which is fatal to the prosecution's case. Learned Trial Court erred in holding that the pleas taken by the petitioners were a matter of trial. Therefore, he prayed that the present petitions be allowed and the order passed by the learned Trial Court be set aside. He relied upon the judgment of the Hon’ble Supreme Court in ***Boota Singh and others Vs. State of Haryana (2021) 19 SCC 606, Ram Prakash***

Chadha Vs. State of U.P. (2024) 10 SCC 651 and ***ITC Ltd. Vs. State of Karnataka & anr. 2025 INSC 1111*** in support of his submission.

8. Mr Ajit Sharma, learned Deputy Advocate General for the respondent/State, submitted that the Court has to see a *prima facie* case while framing charges, and the contents of the charge sheet showed a *prima facie* case against the petitioners. The learned Trial Court had rightly held that the pleas taken by the petitioners were required to be seen at the time of the Trial. There is no infirmity in the order passed by the learned Trial Court. Hence, he prayed that the present petitions be dismissed.

9. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

10. It was laid down by the Hon'ble Supreme Court in ***Vishnu Kumar Shukla v. State of U.P., (2023) 15 SCC 502: 2023 SCC OnLine SC 1582*** that the Court framing the charges has to see a *prima facie* case. It is impermissible to examine the material threadbare to determine whether the accused is likely to be convicted or not. It was observed: -

> "**12.** 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 materials on

> record need not be gone into. This Court, by referring to its earlier decisions in the ***State of Maharashtra* v. *Som Nath Thapa*, *(1996) 4 SCC 659*** and the ***State of MP* v. *Mohan Lal Soni*, *(2000) 6 SCC 338,*** has held that the nature of evaluation to be made by the court at the stage of framing of the charge is to test the existence of the *prima facie* case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion on the existence of factual ingredients constituting the offence alleged, and it is not expected to go deep into the probative value of the material on record and to check whether the material on record would certainly lead to a conviction at the conclusion of the trial.

11. It was held in ***Ram Prakash Chadha v. State of U.P., (2024) 10 SCC 651: (2025) 1 SCC (Cri) 253: 2024 SCC OnLine SC 1709*** that the Court can sift and weigh the evidence to determine if a *prima facie* case exists against the accused. It was observed at page 661:

> "**24.** In the light of the decisions referred supra, it is thus obvious that it will be within the jurisdiction of the Court concerned to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused concerned has been made out. We are of the considered view that a caution has to be sounded for the reason that the chances of going beyond the permissible jurisdiction under Section 227 CrPC, and entering into the scope of power under Section 232 CrPC, cannot be ruled out, as such instances are aplenty. In this context, it is relevant to refer to a decision of this Court in ***Om Parkash Sharma* v. *CBI*, *(2000) 5 SCC 679: 2000 SCC (Cri) 1014***. Taking note of the language of Section 227CrPC, is in negative terminology and that the language in Section 232 CrPC, is in the positive terminology and considering this distinction between the

> two, this Court held that it would not be open to the Court while considering an application under Section 227 CrPC, to weigh the pros and cons of the evidence alleged improbability and then proceed to discharge the accused holding that the statements existing in the case therein are unreliable. It is held that doing so would be practically acting under Section 232 CrPC, even though the said stage has not been reached. In short, though it is permissible to sift and weigh the materials for the limited purpose of finding out whether or not a prima facie case is made out against the accused, on appreciation of the admissibility and the evidentiary value such materials brought on record by the prosecution is impermissible as it would amount to denial of opportunity to the prosecution to prove them appropriately at the appropriate stage besides amounting to exercise of the power coupled with obligation under Section 232 CrPC, available only after taking the evidence for the prosecution and examining the accused.

12. It was held in ***Yuvraj Laxmilal Kanther v. State of Maharashtra, 2025 SCC OnLine SC 520,*** that the Court is not to undertake a threadbare analysis of the material but to see if there is sufficient material to frame charges. It was observed:

> "**16.** Section 227 CrPC deals with discharge. What Section 227 CrPC contemplates is that if, upon consideration of the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this behalf, the judge considers that there are no sufficient grounds for proceeding against the accused, he shall discharge the accused and record his reasons for doing so. At the stage of consideration of discharge, the court is not required to undertake a threadbare analysis of the materials gathered by the prosecution. All that is required to be seen at this stage is that there are sufficient grounds to proceed

> against the accused. In other words, the materials should be sufficient to enable the court to initiate a criminal trial against the accused. It may be so that at the end of the trial, the accused may still be acquitted. At the stage of discharge, the court is only required to consider whether there are sufficient materials that can justify the launch of a criminal trial against the accused. By its very nature, a discharge is at a higher pedestal than an acquittal. Acquittal is at the end of the trial process, may be for a technicality or on the benefit of doubt, or the prosecution could not prove the charge against the accused; but when an accused is discharged, it means that there are no materials to justify the launch of a criminal trial against the accused. Once he is discharged, he is no longer an accused."

13. The present petitions have to be adjudicated as per the parameters laid down by the Hon'ble Supreme Court.

14. The copy of the charge sheet placed on the record specifically mentions that the petitioners were occupying the vehicle. The police searched the vehicle after becoming suspicious of the petitioners' conduct in the presence of Prakash Chand and Anil Sharma and recovered 328 grams of charas from it. The petitioners were occupying the vehicle when it was intercepted by the police. In ***Madan Lal versus State of H.P. (2003) 7 SCC 465: 2003 SCC (Cri) 1664: 2003 SCC OnLineSC 874***, the contraband was recovered from a vehicle, and it was held that all

the occupants of the vehicle would be in conscious possession of the contraband. It was observed:

> "19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record are that all the accused persons were travelling in a vehicle, and as noted by the trial court, they were known to each other, and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.
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> 20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act, which relates to offences for possession of such articles. It is submitted that to make the possession illicit, there must be conscious possession.
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> 21. It is highlighted that unless the possession was coupled with the requisite mental element, i.e., conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.
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> 22. The expression "possession" is a polymorphous term that assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in the ***Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274: 1979 SCC (Cri) 1038: AIR 1980 SC 52]*** to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.
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> 23. The word "conscious" means awareness of a particular fact. It is a state of mind which is deliberate or intended.
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> 24. As noted in ***Gunwantlal v. State of M.P. [(1972) 2 SCC 194: 1972 SCC (Cri) 678: AIR 1972 SC 1756],*** possession in a given case need not be physical possession but can be constructive, having power and control over the article in

the case in question, while the person to whom physical possession is given holds it subject to that power or control.

25. The word "possession" means the legal right to possession (see ***Heath v. Drown [(1972) 2 All ER 561: 1973 AC 498: (1972) 2 WLR 1306 (HL)]***). In an interesting case, it was observed that where a person keeps his firearm in his mother's flat, which is safer than his own home, he must be considered to be in possession of the same. (See ***Sullivan v. Earl of Caithness [(1976) 1 All ER 844: 1976 QB 966: (1976) 2 WLR 361 (QBD)]***.)

26. Once possession is established, the person who claims that it was not a conscious possession has to establish it because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54, where a presumption is also available to be drawn from possession of illicit articles.

27. In the factual scenario of the present case, not only possession but conscious possession has been established. It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act."

15. Therefore, the allegations in the charge sheet *prima facie* show that the petitioners were in possession of 328 grams of charas.

16. It was submitted that the Court is required to record the reasons while framing the charge. The petitioners had filed applications for discharge, taking various grounds which were not considered. Hence, the order is bad. This submission cannot

be accepted. In ***Tara Dutt versus State of H.P., 1991 Cr. Law Journal, 3339***, this Court discussed the relevant law and held that there is no requirement of writing a detailed order, and it is sufficient that an inference can be drawn that the Court was aware of the material on the record justifying the framing of the charge. It was observed:

> "42. Both under Ss. 228 and 240 Cr. P.C., the accused person has a right to be heard before the trial Court forms an opinion that there is ground for presuming that he has committed an offence. This right, coupled with the fact that the trial court has to consider the record of the case and the evidence brought by the prosecution on it till then, does suggest that the attention of the Court should, at that stage, be attracted to the material for and against the accused, even for the opinion that the material disclosed a grave suspicion that the accused person has committed an offence. The trial court should, therefore, pass a speaking order in the sense that it should appear to a court exercising supervisory jurisdiction over it that the trial court was alive to the material for and against the accused existing on the record of the case till that stage. The order should not be cryptic or laconic or a bald one merely saying that "there is ground for presuming that the accused has committed an offence". Such an order, by itself, cannot be characterised as disclosing application of mind by the Court but where the order ex - facie, or read with some earlier order made by the trial court, can reasonably lead to an inference that the trial court was alive to the material which was relevant, the order would be unexceptionable and would not call for interference only on the ground that it does not specifically refer to each and every piece of evidence incriminating the

accused persons which had been placed on the record of the case for the consideration of the Court till that stage.

43. There is another manner of looking at the matter. Since, giving elaborate reasons for the opinion that a charge should be framed in the case is ruled out, by necessary implication, by the provisions of the Code noticed earlier, all that the law would require in such a case would be that the order of the trial court is such as leads to an inference that the Court was aware of the material on the record justifying the framing of charge. In other words, the order should disclose ex facie that the Court had not proceeded mechanically in framing the charge merely because an accusation had been made by the prosecution against the accused persons, but that it had looked into the material brought on the record till then. That would be sufficient compliance with the requirements of law. After all, the opinion that there was material disclosing 'grave suspicion' that the accused persons had committed an offence is to be formed by a judicial officer trained to examine things objectively without being influenced by considerations of policy or expediency. The training of the judicial mind in that respect is a sufficient guarantee of the fact that he would base his opinion on relevant material.

44. One of the submissions of Shri Chandel is that inasmuch as the correctness or propriety of the order was also open to scrutiny by the revisional Court, the requirement of a speaking order in the sense that it contains reasons, therefore, should be necessarily there even in the matter of framing of a charge by the trial court. This submission overlooks that while exercising powers of revision under S. 397 Cr. P.C., the revisional Court may call for and examine the record of any proceedings before an inferior criminal court before deciding whether the order under challenge merits interference or not. The revisional court invariably does so except where it feels that the challenge is unsustainable on the face of it for some legally

permissible ground. This ensures that the fact of the existence or otherwise of relevant material, leading to the opinion formed by the trial court that the case was one in which there existed grounds to do so, on the record, will normally be available for scrutiny by the revisional court.

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46. *The submission that the order should be so worded as to give an idea to the accused person as to why the plea made on his behalf for not framing the charge against him came to be rejected by the Court overlooks, firstly, that reasons are not to be given for such an order under the Scheme of the Code of Criminal Procedure and, secondly, that an order of the nature canvassed for by Shri Chandel may sometimes give rise to a plea on behalf of the accused person that the Court had disclosed its mind regarding his culpability at that early stage itself. Obviously, such a situation is to be avoided when the culpability or otherwise of the accused person is yet to be decided on the basis of the evidence to be brought before the Court at the trial.*" (Emphasis supplied)

17. This question was also considered in ***Kanti Bhadra Shah v. State of W.B., (2000) 1 SCC 722: 2000 SCC (Cri) 303: 2000 SCC OnLine SC 137***, and it was held that there is no legal requirement to pass an order specifying the reasons for framing charges. Framing of the charge itself is a *prima facie* order that the Trial Judge has formed the opinion upon considering the police record and the documents that there is a ground for presuming that the accused has committed the offence. It was observed:

"8. We wish to point out that if the trial court decides to frame a charge, there is no legal requirement that it should pass an order specifying the reasons as to why it opts to do so. Framing of the charge itself is a prima facie order that the trial Judge has formed the opinion, upon considering the police report and other documents and after hearing both sides, that there is ground for presuming that the accused has committed the offence concerned. Chapter XIX deals with provisions for a trial of warrant cases instituted on a police report. Section 239 reads thus:

> "239. When accused, shall be discharged.—(1) If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing."

9. The said section shows that the Magistrate is obliged to record his reasons if he decides to discharge the accused. The next section (Section 240) reads thus:

> "240. Framing of charge.—(1) If, upon such consideration, examination, if any, and hearing, the Magistrate is of the opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.
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> (2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried."

10. It is pertinent to note that this section required a Magistrate to record his reasons for discharging the accused, but there is no such requirement if he forms the opinion that there is ground for presuming that the accused had committed the offence which he is competent to try. In such a situation, he is only required to frame a charge in writing against the accused.

11. Even in cases instituted otherwise than on a police report, the Magistrate is required to write an order showing the reasons only if he is to discharge the accused. This is clear from Section 245. As per the first sub-section of Section 245, if a Magistrate, after taking all the evidence, considers that no case against the accused has been made out which, if unrebutted, would warrant his conviction, he shall discharge the accused. As per sub-section (2), the Magistrate is empowered to discharge the accused at any previous stage of the case if he considers the charge to be groundless. Under both sub-sections, he is obliged to record his reasons for doing so. In this context, it is pertinent to point out that even in a trial before a Court of Session, the Judge is required to record reasons only if he decides to discharge the accused (vide Section 227 of the Code). But if he is to frame the charge, he may do so without recording his reasons for showing why he framed the charge.

12. *If there is no legal requirement that the trial court should write an order showing the reasons for framing a charge, why should the already burdened trial courts be further burdened with such extra work? The time has reached to adopt all possible measures to expedite the court procedures and to chalk out measures to avert all roadblocks causing avoidable delays. If a Magistrate is to write detailed orders at different stages merely because the counsel would address arguments at all stages, the snail-paced progress of proceedings in trial courts would further be slowed down. We are coming across interlocutory orders of Magistrates and Sessions Judges running into several pages. We can appreciate it if such a detailed order has been passed for culminating the*

proceedings before them. But it is quite unnecessary to write detailed orders at other stages, such as the issuing process, remanding the accused to custody, framing of charges, and passing over to the next stages in the trial. It is a salutary guideline that when orders rejecting or granting bail are passed, the court should avoid expressing one way or the other on contentious issues, except in cases such as those falling within Section 37 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

13. In the present case, as the Metropolitan Magistrate has chosen to frame the charge, the High Court, when moved by the accused for quashment of the charge, could have re-examined the records to consider whether the charge framed was sustainable or not. If the High Court decides to quash the charge, it is open to the High Court to record the reasons thereof. The present order of the High Court is one of setting aside the charge without stating any reason. But the direction to the Magistrate to consider the materials once again and then to frame a charge for the same offence (if the Magistrate reaches the opinion that there is ground for presuming the commission of the offence) is simply to repeat what the Metropolitan Magistrate had done once at the first instance. To ask him to do the same thing over again is adding unnecessary extra work to the trial court. Be that as it may, the State has not challenged the order of the High Court. Hence, we are not in a position to set aside the impugned order of the High Court. We leave the order as such by making the aforementioned observations. We leave it to the Metropolitan Magistrate to exercise his functions under Section 239 or Section 240 of the Code as he deems fit in the light of the observations made above." (Emphasis supplied)

18. It was held in ***Dinesh Tiwari v. State of U.P., (2014) 13 SCC 137: (2014) 5 SCC (Cri) 614: 2014 SCC OnLine SC 545***, that the

reasons are required to be recorded for discharging the accused, but no reasons are required to frame the charge. It was observed:

> "10. From Section 228, it is clear that no separate hearing is required to be given for framing the charge if the accused is not discharged upon consideration of the record of the case and documents and after hearing the submissions under Section 227.
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> 11. Relative scope of Sections 227 and 228 CrPC was noticed and considered by this Court in ***Amit Kapoor v. Ramesh Chander [(2012) 9 SCC 460: (2012) 4 SCC (Civ) 687: (2013) 1 SCC (Cri) 986]***. This Court held as follows: (SCC pp. 477-79, paras 17 & 19)
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> > "17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the 'record of the case' and documents submitted therewith, and, after hearing the parties, may either discharge the accused or, where it appears to the court and in its opinion, there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the section exist, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for the exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court, while Section 228 is tentative. Thus, to

say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.

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19. At the initial stage of framing a charge, the court is concerned not with proof but with a strong suspicion that the accused has committed an offence, which, if put to trial, could prove him guilty. All that the court has to see is whether the material on record and the facts would be compatible with the innocence of the accused or not. The final test of guilt is not to be applied at that stage. We may refer to the well-settled law laid down by this Court in ***State of Bihar v. Ramesh Singh [(1977) 4 SCC 39: 1977 SCC (Cri) 533]***: (SCC pp. 41-42, para 4)

> '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 on that behalf. The Judge has to pass an order thereafter 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 the 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 in the law by one more example. If the scales of the 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 the 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.' (emphasis in original)

12. In the instant case, it is not alleged that the Sessions Judge has not followed Sections 226 and 227 CrPC before framing the charge. Further, it is not the case of the appellant that the court has not given him a hearing at the stage of discharge under Section 227 CrPC. For framing of a charge under Section 228, the Judge is not required to record detailed reasons as to why such a charge is framed. On perusal of the record and hearing the parties at the stage of discharge under Section 227 CrPC, if the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, he

> is competent to frame a charge for such offence even if not mentioned in the charge-sheet. We find no merit in this appeal. The appeal is accordingly dismissed."

19. It was held in ***Bhawna Bai v. Ghanshyam*, *(2020) 2 SCC 217: (2020) 1 SCC (Cri) 581: 2019 SCC OnLine SC 1540***, that the Judges are not required to record detailed reasons or conduct an elaborate inquiry while framing charges. It was observed:

> 17. As discussed above, in the present case, upon hearing the parties and considering the allegations in the charge sheet, the learned Second Additional Sessions Judge was of the opinion that there were sufficient grounds for presuming that the accused has committed the offence punishable under Section 302 IPC read with Section 34 IPC. The order dated 12-12-2018 framing the charges is not a detailed order. For framing the charges under Section 228 CrPC, the Judge is not required to record detailed reasons. As pointed out earlier, at the stage of framing the charge, the court is not required to hold an elaborate enquiry; only a prima facie case is to be seen. As held in ***Kanti Bhadra Shah v. State of W.B. [Kanti Bhadra Shah v. State of W.B., (2000) 1 SCC 722: 2000 SCC (Cri) 303]***, while exercising power under Section 228 CrPC, the Judge is not required to record his reasons for framing the charges against the accused. Upon hearing the parties and based upon the allegations and taking note of the allegations in the charge sheet, the learned Second Additional Sessions Judge was satisfied that there was sufficient ground for proceeding against the accused and framed the charges against the accused-Respondents 1 and 2. While so, the High Court was not right in interfering with the order of the trial court framing the charges against the accused-Respondents 1 and 2 under Section 302 IPC read with Section 34 IPC and the High Court, in our view, erred in quashing the charges framed

> against the accused. The impugned order cannot, therefore, be sustained and is liable to be set aside.

20. Thus, it is apparent from the Judgments of the Hon'ble Supreme Court and this Court that the Court is not required to give elaborate reasons while framing the charges, and the order framing the charge by itself is sufficient to show that the mind was applied and the material was perused. In the present case, the order cannot be held to be bad because no detailed reasons for framing the charges were mentioned in it.

21. It was submitted that the police had failed to comply with the requirement of Section 42 of the NDPS Act, which is a mandatory requirement, and the petitioners are entitled to discharge. This submission will not help the petitioners. It was laid down by the Allahabad High Court in ***Dr Mahesh Chander Gupta Vs. State of U.P. 2015 SCC OnLine Allahabad 6173*** that the non-compliance of Sections 42 and 50 of the NDPS Act is a matter of trial, and the accused cannot be discharged on the ground of non-compliance of Sections 42 and 50 of the NDPS Act. It was observed: -

> "**17.** Against the above backdrop, this Court is of the view that ***Roy V.D***, which placed reliance on ***Balbir Singh*** and distinguishes ***Baldev Singh*** for quashing the pending trial

> underwent a sea-change with the exposition of law in ***Baldev Singh*** involving Section 50, ***Karnail Singh*** involving Section 42 and ***Vijaysinh Chandubha Jadeja*** involving Section 50 of the NDPS Act to hold that provisions of Section 50 of the Act are mandatory and that Section 42 of the Act can be substantially complied with, but whether the same are complied with or not is a question of fact involving appreciation of evidence. In other words, the issue of non-compliance of Sections 41/42/50 of the Act cannot be a subject matter either of discharge or for quashing of the pending proceedings."

22. Therefore, the petitioners could not have been discharged on the ground of non-compliance with Section 42 of the NDPS Act.

23. The allegations in the FIR show that the police had no prior information, and it was a case of a chance recovery. It was laid down by the Full Bench of this Court in ***State of H.P. Vs. Vidya Devi 1993 (2) ShimLC (6)*** that there is no requirement to comply with the provision of Section 42 of the ND&PS Act in case of a chance recovery. It was observed: -

> "17. After giving our careful consideration to the problem posed before us, we are of the considered opinion that in chance recovery compliance with Sections 41, 42 and 50 of the Act may not be possible, however, in order to succeed on this plea, the prosecution will have to satisfy the conscious of the Court that in the facts and circumstances of the case, it could not comply with the requirements of these provisions and that by the non-compliance thereof, no prejudice or miscarriage of justice was caused to the accused. Then, the burden would shift

over to the accused to prove prejudice caused to him. Thereafter, the investigation should be immediately handed over to the authorised officer, and if circumstances justify, the accused could be detained till the arrival of the competent officers. Thereafter, the investigation has to be carried out in accordance with the provisions of the Act, and the accused is punished in accordance with the provisions of the Act if found guilty. The provisions of the Act, like Sections 52, 52-A, 55, 57, 58, 61, 62, etc., are still applicable and have to be followed while conducting the investigation.

18. In view of the aforesaid discussion, the opinion of the Division Bench in ***Sudarshan Kumar's case (1989 Cri LJ 1412) (Him Pra)*** that in a chance recovery where there is no compliance of Section 41 and 42 of the Act, the matter can be investigated under the provisions of the Code is, with respect, wrong and is, therefore, over-ruled to this extent."

24. A similar view was taken in ***Hamidbhai Azambhai Malik v. State of Gujarat, (2009) 3 SCC 403,*** wherein it was observed: -

12. Coming to the factual background, it has to be noted as follows:

The search was made by the raiding party at about 4.30 p.m. on 15-12-1995. Section 42 will be invocable only if the search is made by the police officer or the authority concerned, upon the prior information. If such a person has reason to believe from personal knowledge or information given by any person and is obliged to take down in writing as such the information about the accused having possessed and dealt with a contraband article like "charas" came to be apprised of by the PSI concerned, Mr K.D. Pandya, LCB Branch of Bharuch Police Station, in the course of his investigation of

> an offence, registered vide CR No. II-135 of 1995. Therefore, it is a settled proposition of law that when such information or intimation or knowledge comes to the notice of the investigating officer in the course of the regular patrolling or an investigation of some other offence, it is not necessary to follow in all cases the conditions incorporated in Section 42.

25. Similar is the judgment in ***Kallu Khan v. State of Rajasthan, 2021 SCC OnLine SC 1223,*** wherein it was observed: -

> **11.** After hearing and on perusal of the record and the evidence brought, it is apparent that on apprehending the accused, while making a search of the motorcycle, 900 gm of smack was seized, to which seizure and sample memos were prepared, as proved by the departmental witnesses. In the facts of the case at hand, where the search and seizure were made from the vehicle used, by way of chance recovery from the public road, the provisions of Section 43 of the NDPS Act would apply. In this regard, the guidance may be taken from the judgments of this Court in ***S. K. Raju*** (supra) and ***S.K. Sakkar*** (supra). However, the recovery made by Pranveer Singh (PW6) cannot be doubted in the facts of this case.

26. This position was reiterated in ***Jagat Singh vs. State of H.P. 2023 STPL 10148 HP,*** wherein it was observed:

> 63. We have gone through the entire record and find no material placed on record so as to infer that there was any prior information; rather, the case is clearly one of chance recovery. Thus, ameliorating the requirement to comply with Section 42 of the Act, as held by the Hon'ble Constitutional Bench of the Hon'ble Supreme Court in ***State of Punjab vs. Baldev Singh (1999) 6 SCC 172*** and also in ***Ram Kumar vs. Central Bureau of Narcotics(2008) (5) SCC 385.***

27. The judgment in ***ITC Ltd.*** (supra) will not apply to the present case because the present case deals with the chance recovery and not prior information. Thus, no advantage can be derived from the above-cited judgment by the petitioners.

28. It was submitted that the police had failed to collect the CCTV Footage from the spot and produce it before the Court. This submission will not help the petitioners. First, it is a matter of the evidence that there was a CCTV on the spot. Secondly, even if the Investigating Officer has failed to collect material evidence, it is a case of defective investigation, which will not result in the acquittal of the accused. It was held in ***Karnel Singh vs. State 1995 (5) SCC 518*** that the prosecution's case cannot be doubted due to the defective investigation. It was held:

> "4. We have very carefully scrutinised the evidence, having regard to the fact that (PW 6) the Investigation Officer had not taken the care expected of him. He did not record the statements of the two witnesses, nor did he refer to the attachment of the 'Chaddi' in his oral evidence. That was a very vital piece of evidence to which little or no attention was paid. If the seizure of that article was properly proved, the article with semen stains would have lent strong corroboration to the evidence of the prosecutrix. There is no doubt that the investigation was casual and defective. But despite these deficiencies, both the Courts below have recorded a conviction. The question is: are they right?

> 5. Notwithstanding our unhappiness regarding the nature of the investigation, we have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation, the Court has to be circumspect in evaluating the evidence, but it would not be right in acquitting an accused person solely on account of the defect; to do so would be tantamount to playing into the hands of the Investigating Officer if the investigation is designedly defective. Any Investigating Officer, in fairness to the prosecutrix as well as the accused, would have recorded the statements of the two witnesses and would have drawn up a proper seizure memo regarding the 'Chaddi'. That is the reason why we have said that the investigation was slipshod and defective.
>
> 6. We must admit that the defective investigation gave us some anxious moments, and we were at first blush inclined to think that the accused was prejudiced. But on closer scrutiny, we have reason to think that the loopholes in the investigation were left to help the accused at the cost of the poor prosecutrix, a labourer. To acquit solely on that ground would be adding insult to injury."

29. This position was reiterated in ***Sachin Kumar Singhraha v. State of M.P. (2019) 8 SCC 371: 2019 SCC OnLine SC 363,*** and it was held:

> "At this juncture, we would like to recall that it is well-settled that criminal justice should not become a casualty because of the minor mistakes committed by the Investigating Officer. We may hasten to add here that if the Investigation Officer suppresses the real incident by creating certain records to make a new case altogether, the Court would definitely strongly come against such action of the Investigation Officer. There cannot be any dispute that the benefit of doubt arising

out of major flaws in the investigation would create suspicion in the mind of the Court, and consequently, such an inefficient investigation would accrue to the benefit of the accused. As observed by this Court in the case of ***State of H.P. v. Lekh Raj, (2000) (1) SCC 247***, a criminal trial cannot be equated with a mock scene from a stunt film. Such a trial is conducted to ascertain the guilt or innocence of the accused arraigned, and in arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial."

30. It was laid down by the Hon'ble Supreme Court in ***Srichand K. Khetwani v. State of Maharashtra, 1966 SCC OnLine SC 32: (1967) 1 SCR 595: AIR 1967 SC 450: 1967 Cri LJ 414 : (1967) 2 SCJ 178*** that no adverse inference can be drawn for failure to collect the evidence. It was observed:

8. Further, an adverse inference against the prosecution can be drawn only if it withholds certain evidence and not merely on account of its failure to obtain certain evidence. When no such evidence has been obtained, it cannot be said what that evidence could have been and therefore, no question of presuming that that evidence would have been against the prosecution, under Section 114, illustration (*g*) of the Evidence Act, can arise.

31. This position was reiterated in ***Chand Khan v. State of U.P., (1995) 5 SCC 448: 1995 SCC (Cri) 915,*** wherein it was observed:

> "In the FIR, which was lodged within two hours of the incident, the substratum of the entire prosecution case finds place, including a statement that during the incident, Sm. Naeema Parveen had, in defending herself, given a blow to one of the accused with a vegetable-cutting knife. In view of the above statement recorded in the FIR, the Investigation Officer (PW 16) ought to have taken steps to seize the knife even if PW 5 had not produced it for, one of the essential requisites of a proper investigation is the collection of evidence relating to the commission of the offence and that necessarily includes, in a case of assault, seizure of the weapon of offence, but then failure to collect evidence and failure to produce evidence collected during investigation at the trial carry two different connotations and consequences. While the former may entitle the court to hold the investigation to be perfunctory or tainted, affecting the entire trial, in the case of the latter, the court may legitimately draw a presumption in accordance with Section 114(*g*) of the Evidence Act. As the case presented before us comes under the first category of failures, we have to find out whether we will be justified in discarding the prosecution case solely for the remissness of the Investigating Officer in seizing the knife. The consistent and reliable evidence of the eyewitnesses, coupled with the nature of injuries sustained by some of them and Chand Khan, and the fact that in the FIR it has clearly been stated that one of the miscreants had been assaulted by a vegetable cutting knife, do not persuade us to answer the question in the affirmative."

32. Therefore, the accused cannot be discharged because of a defective investigation.

33. It was submitted that there are various contradictions in the statements of the witnesses, which made the prosecution's case suspect. This submission is only stated to be rejected. The Court does not sift the evidence while framing the charges. It was laid down by the Hon'ble Supreme Court in ***Tuhin Kumar Biswas v. State of W.B., 2025 SCC OnLine SC 2604*** that a grave suspicion at the time of framing of charges is sufficient to frame the charge. Therefore, no advantage can be derived from the contradictions in the statements of the witnesses.

34. It was laid down by the Hon'ble Supreme Court in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, 2023 SCC OnLine SC 1294,*** that the revisional court does not sit in appeal over the order sought to be revised and only examines the legality or regularity of the procedure. It was observed:

> **13.** The power and jurisdiction of the Higher Court under Section 397 Cr. P.C., which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an

error of jurisdiction or law or the perversity which has crept into such proceedings. It would be apposite to refer to the judgment of this court in ***Amit Kapoor v. Ramesh Chandra, (2012) 9 SCC 460,*** where the scope of Section 397 has been considered and succinctly explained as under:

> "**12.** Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance with the law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored, or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even the framing

of a charge is a much-advanced stage in the proceedings under the CrPC."

14. This Court in the aforesaid judgment has also laid down principles to be considered for the exercise of jurisdiction under Section 397, particularly in the context of a prayer for quashing of a charge framed under Section 228 Cr. P.C. is sought for as under:

> "**27.** Having discussed the scope of jurisdiction under these two provisions, i.e. Section 397 and Section 482 of the Code, and the fine line of jurisdictional distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for the proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:
>
> **27.1.** Though there are no limits to the powers of the Court under Section 482 of the Code, the more the power, the more due care and caution are to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly the charge framed in terms of Section 228 of the Code, should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.
>
> **27.2.** The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion, and where the basic ingredients of a

> criminal offence are not satisfied, then the Court may interfere.
>
> **27.3.** The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in a conviction or not at the stage of framing of charge or quashing of charge.
>
> **27.9.** Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.
>
> **27.13.** Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit the continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to deciding admissibility and reliability of the documents or records, but is an opinion formed prima facie."

15. The revisional court cannot sit as an appellate court and start appreciating the evidence by finding an inconsistency in the statement of witnesses, and it is not legally permissible. The High Courts ought to be cognizant of the fact that the trial court was dealing with an application for discharge."

35. Applying the yardstick laid down by the Hon'ble Supreme Court, there is no infirmity in the order passed by the learned Trial Court, and no interference is required with it.

36. Consequently, the present petitions fail and are dismissed.

37. A copy of this judgment be forwarded to the learned Trial Court for information.

38. Pending applications, if any, also stand disposed of.

39. The observation made herein before shall remain confined to the disposal of the instant petitions and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

2nd June, 2026
(Chander)