

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

Pronounced on:20.04.2026

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*Whether the operative part
or full order is pronounced:*

Full

Ref(Crl.) No.01/2026

UT OF J&K

...PETITIONERS/APPELLANT(S)

Through: - Mr. Mohsin Qadiri, Sr. AAG.

Vs.

SAMEER AHMAD BHAT & ORS.

...RESPONDENT(S)

Through: -

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER(ORAL)

1) The instant reference has been made by the learned Principal Sessions Judge, Kulgam, seeking appropriate directions in the matter.

2) It appears that an FIR bearing No.96/2016 for offences under Section 147, 148, 149, 188, 336, 332, 188, 302, 307, 427, 436, 511 RPC, 7/27 Arms Act, 3 PSS Act, 3/2 PPD Act and 13 ULAP Act came to be registered with Police Station, Yaripora. After investigation of the case, offences under Section 147, 148, 149, 188, 336, 332, 436, 511, 427 RPC, 3 PSS Act and 3/2 PPD Act were found established against accused Shiraz Ahmad Dar, Asif Ahmad Ganai, Zahoor Ahmad Nengroo, Towseef Ahamd

Bhat, Sheikh Abdul Bari, Tariq Ahmad Parray, Khalid Hussain Malik, Siyar Ahmad Kumar, Sameer Ahmad Bhat and Sarjan Ahmad Wagay whereas offences under Section 302 RPC, 7/27 Arms Act and Section 13, 20, 38 ULAP Act, were found established against accused Farooq Ahmad Bhat, Hilal Ahmad Wani, Umar Majeed and Muzamil Manzoor.

3) It appears that during investigation of the case, accused Farooq Ahmad Bhat, Hilal Ahmad Wani, Umar Majeed and Muzamil Manzoor died. The Investigating Agency, it appears, presented a separate challan against aforementioned accused before the Court of Special Judge (Designated under NIA), Kulgam, as the offences under Section 13, 20 and 38 of UAPA were also found established against these accused. However, a separate challan came to be filed against other accused before the Court of Principal Sessions Judge, Kulgam, as none of the offences under UAPA was found established against them.

4) Learned Special Judge (Designated under NIA), vide his order dated 31.12.2024 recorded that the proceedings against four accused, who had been killed and against whom offences under UAPA were also found established, stand abated. However, the learned Principal Sessions

Judge, Kulgam, vide his order dated 03.03.2025 after relying upon the ratio laid down by the Supreme Court in the case of **Essar Teleholdings Ltd. Vs. Registrar General High Court of Delhi**, (2013) 3 SCC 744, observed that because all the offences including the offences under UAPA have been committed in the same transaction, therefore, in terms of Section 223 of the Cr. P. C, all the accused persons are required to be tried together. After holding so, the learned Sessions Judge transferred the case to the Court of learned Special Judge (Designated under NIA), Kulgam.

5) Vide order dated 06.11.2025, learned Special Judge (Designated under NIA) Kulgam, observed that the order of transfer has been passed by the learned Principal Sessions Judge, Kulgam, in ignorance of order dated 31.12.2024, whereby it was recorded that proceedings against the accused, who had been killed and against whom offences under UAPA had been established, stand terminated. The learned Special Judge further observed that since there is no accused left to be tried separately warranting invocation of Section 220 of the Cr. P. C, the case is required to be tried by the learned Sessions Judge. Accordingly, the file was returned to the court of learned Principal Sessions Judge, Kulgam.

6) On 20.11.2025, the learned Sessions Judge, Kulgam, after observing that there is no provision to transfer a criminal case by Additional Sessions Judge to the Court of Principal Sessions Judge. Thus, the chargesheet was again sent to the Court of learned Special Judge (Designated under NIA), Kulgam, for trial.

7) On 12.03.2026, the Special Judge (Designated under NIA), Kulgam, passed a detailed order observing therein that in terms of Section 20 of the National Investigation Agency Act, 2008 (for short “the NIA Act”), a Special Court has the power to transfer cases to regular courts. Accordingly, in exercise of the said power, the learned Special Judge (Designated under NIA), Kulgam, transferred the case back to the Court of learned Principal Sessions Judge, Kulgam.

8) Upon receipt of the case file, the learned Principal Sessions Judge, Kulgam, expressed his disagreement that the course adopted by the learned Special Judge (Designated under NIA) and has made the present reference seeking guidance in the matter.

9) Learned Senior AAG, Mr. Mohsin Qadiri, was requested to assist this Court on the issue involved in the reference. Accordingly, he has been heard in the matter.

10) The facts relevant to the present case are that initially FIR came to be registered in respect of several offences including the offences under UAPA, which is a schedule offence. After investigation of the case, offences other than offences under UAPA came to be established against 11 accused whereas against four more accused offences under UAPA were also established. However, these four accused persons got killed in various encounters with the security forces while the investigation of the case was still in progress. The Investigating Agency chose to file two separate charge sheets, one against 11 accused persons, who were alive, before the court of learned Principal Sessions, Judge, Kulgam and against these 11 persons offences under UAPA were not found established. In respect of other four accused who got killed during investigation of the case, a separate charge sheet was filed before the court of learned Special Judge (Designated under NIA) Kulgam after their death. Since these accused had died before the charge sheet could be filed against them, therefore, proceedings against them stood terminated as having abated. Thus, inquiry/trial of the case in these circumstances is confined to offences other than offences under UAPA.

11) It is a settled law that in a case where even after taking cognizance of offences, a Special Court finds that no scheduled offence is made out against the accused, the case as to be transferred to the normal Criminal Court. This is clear from the language of Section 20 of the NIA Act, which reads as under:

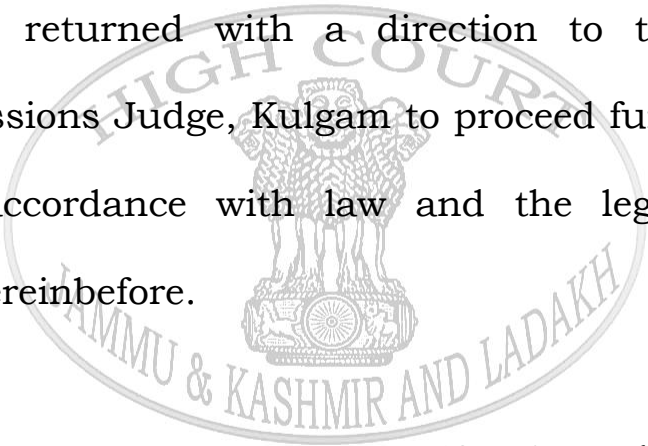
20. Power to transfer cases to regular courts.-

Where, after taking cognizance of any offence, a Special Court is of the opinion that the offence is not triable by it, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for the trial of such offences to any court having jurisdiction under the Code and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

12) In the present case even if the inquiry is held by the Special Judge (Designated under NIA), the only conclusion that can be drawn by the said court is that none of the offences is triable by it. Section 14 of the NIA Act gives jurisdiction to a Special Court to try any other offence with which the accused may be charged at the same trial if the offence is connected with the scheduled offence. Since the charge sheet against the accused who are alive does not disclose commission of offences under UAPA, therefore, Section 14 of the NIA Act cannot be invoked by the Special Judge for retaining the challan with it. The only option available with the Special Judge (Designated under NIA), in these circumstances, was to exercise its power of transfer

in terms of Section 20 of the NIA Act, which the learned Judge rightly exercised by passing a detailed and lucid order dated 12.03.2026. The learned Principal Sessions Judge, Kulgam, has mis-appreciated the whole facts and the legal position which has resulted in tossing of the case from one court to another court, as a consequence whereof, even the inquiry of the case has not been completed despite the challan having been presented about more than a year before.

13) In view of what has been discussed hereinbefore, the reference is returned with a direction to the learned Principal Sessions Judge, Kulgam to proceed further in the matter in accordance with law and the legal position discussed hereinbefore.



**(Sanjay Dhar)
Judge**

**SRINAGAR
20.04.2026**

“Bhat Altaf-Secy”

Whether the Order is speaking:	YES
Whether the Order is reportable:	YES/NO