

# Nawaz Sharief Through Sakina Bibi vs Union Territory Of J&K Through Incharge ... on 22 April, 2022

**Author: Javed Iqbal Wani**

**Bench: Javed Iqbal Wani**

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S. No.  
Supp Cause List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT JAMMU  
Pronounced through Virtual Mode

CRM(M) No. 720/2021  
CrIM No. 2101/2021 c/w  
Bail App No. 195/2021

Reserved: 01.04.2022  
Pronounced: 22.04.2022

Nawaz Sharief through Sakina Bibi

...Petitioner(s)

Through: Mr M. A. Goni, Sr. Advocate with  
Mr. S. Tanzeel Illahi, Advocate.

Vs.

Union Territory of J&K through Incharge SHO P/S  
Nagrota Jammu

...Respondent(s)

Through: Mr Amit Gupta, AAG.  
CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE  
JUDGEMENT

1. Inherent jurisdiction of this Court under Section 482 Cr.PC is being invoked by the petitioner seeking quashment of order dated 31.03.2021 (for short the impugned order) to the extent of charge framed against the petitioner under Section 27-A of NDPS Act by the court of Principal Sessions Judge, Jammu (for short the trial court) in case titled as "State Vs. Nazir Ahmad" arising out of FIR No. 202/2019 dated 10.05.2019 registered at Police Station Nagrota Jammu.

2. The background facts under the shade and cover of which instant petition has been filed by the petitioner would reveal that according to the police report on 10.05.2019 during a patrol duty in Majheen area police party seen two persons namely Nazir Ahmad S/o Bashir Ahmad and Nawaz

Sharief S/o Masoom Ali coming from Majheen area towards Sidhra at about 7:00 pm and allegedly on seeing Naka party tried to flee and upon being caught and searched on spot 10 injections of Buprenorphine Rexogesic, 10 injections of Promethazine and 10 Diazepam of 2 ML each were recovered from Nazir Ahmad and 05 injections of Buprenorphine Rexogesic, 05 injections of Promethazine and 05 Diazepam of 2 ML each were recovered from Nawaz Sharief/petitioner herein. A docket is stated to have been addressed from Police Station Nagrota, Jammu, and consequently an FIR No. 202/2019 dated 10.05.2019, registered with Police Station Nagrota, Jammu, for offences under Section 8/21/22/27(a)/29 NDPS Act. Upon completion of the investigation in the said FIR, charge sheet is stated to have been laid and is pending before the trial court.

3. It is next stated in the petition that during the course of investigation, the petitioner herein is alleged to have made a statement that one more person namely Zulfaqar Hussain is involved in the business and the said Zulfaqar Hussain is stated to have been arrested and in his possession 57 injections of Bupremorphine, 112 injections of Ophnargon, 61 Diazepam, 41 unused needles, 33 used needles, 550 used injections and 130,000/- cash recovered from his house situated at Upper Paloura, Jammu.

4. It is being next stated that during disclosure statement made by said Zulfaqar Hussain persons namely Masoom Ali and Muneer Hussain both residents of Sidhra, Jammu, were alleged to be involved in the drug business and are stated to be absconding.

5. It is being further stated that the petitioner has been falsely implicated in the case and that merely on the disclosure statement made by (A-2) Zulfaqar Hussain, (A-3) Muneer Ahmad and (A-5) Masoom Ali were alleged to be involved in the drug trade and that A-3 Muneer Ahmad came to be discharged by the trial court in terms of the impugned order on the grounds that no recovery of Narcotic drug was recovered from him as he was arrested on the basis of disclosure statement made by the A-2 Zulfaqar Hussain.

6. It is being next stated that Zulfaqar Hussain did not allege anything against the petitioner herein in his disclosure statement inasmuch as there had been no material on record that could have attracted the provisions of the Section 27-A of the NDPS Act against the petitioner. Heard learned counsel for the parties and perused the record.

7. According to learned counsel for the petitioner the charge framed against the petitioner under Section 27(1) NDPS Act in terms of the impugned order is legally misconceived. To buttress his submissions learned counsel would contend that A-2 Zulfaqar Hussain during the course of investigation has made a statement before the police officers that A-3 Muneer Hussain and A-5 Masoom Ali used to purchase intoxicating injections from him for selling them to youngsters in the Jammu city and its adjoining areas.

8. According to learned counsel for the petitioner, the trial court while noticing the said statement made by the accused No. 2 has rightly held that confession made to the police officer is clearly inadmissible and consequently discharged A-3 Muneer Hussain in respect of the allegations made in the charge sheet.

9. According to learned counsel for the petitioner once the trial court did not find any prima-facie case under Section 27-A of NDPS Act, against A-3 Muneer Hussain on the basis of the statement made by A-2 Zulfaqr Hussain, trial court ought not to have, as such, framed charge under Section 27-A NDPS Act against the petitioner when he was not even mentioned in the said statement by Zulfaqr Hussain.

10. According to the learned counsel for the petitioner the trial court has grossly erred while framing charge against the petitioner under Section 27-A, as such, framing of charge under the said Section in terms of the impugned order is liable to be quashed.

11. Per contra, Mr Amit Gupta, AAG, counsel for the respondent would controvert and resist the contentions raised by learned counsel for the petitioner.

12. According to Mr Gupta, the petition filed by the petitioner is without any merit and the grounds urged are against the facts and circumstances of the case.

13. According to Mr Gupta, the petitioner was having complete knowledge with regard to the fact that accused Zulfaqr Hussain was indulging in warehousing, possession and concealment of drugs in his house and therefore, the trial court rightly framed charge under Section 27-A NDPS against the petitioner.

14. Before advertng to the issues involved in the instant petition, it would be appropriate and advantageous to refer to the principles of law laid down by the Apex Court with regard to the framing of charge. The Apex court in case titled as "Dipakbhai Jagdishchandra Patel Vs. State of Gujarat and Anr, reported in 2019 (16) SCC 547", has held at para 23 as follows: -

"23. At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the Court is expected to do is, it does not act as a mere post office. The Court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the Court dons the mantle of the Trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the Court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence.

15. Keeping in mind the aforesaid principle of law and reverting back to the case in hand, as the petitioner has impugned the framing of the charge by the trial court against him under Section 27-A of the NDPS Act, therefore, a reference to the said provision becomes imperative here under: -

"[27-A. Punishment for financing illicit traffic and harbouring offenders-

Whoever indulges in financing, directly or indirectly, any of the activities specified in sub-clauses(i) to (v) of clause (viii-a) of Section 2 or harbours any person engaged in any of the aforementioned activities, shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgement, impose a fine exceeding two lakh rupees.]"

16. A bare perusal of the aforesaid provision would reveal that the same would be applicable to a person who indulges him financing directly or indirectly any of the activities specified in Section 2 sub-clauses(i) to (v) of clause (viii-a) of NDPS Act, or harbours any person engaged in any of the said activities. The expression "financing" appearing in Section 27-A is not defined in the NDPS Act, however, according to Black's Law Dictionary the verbal meaning of financing is shown as "to raise or to provide funds". Thus, to attract the application of Section 27-A there must be an allegation of indulging in financing directly or indirectly harbouring any person engaged in any of the activities provided there under in Section 27-A. According to the Black's Law Dictionary harbouring means the act of affording, lodging, sheltering or refuge to a person.

17. Perusal of the prosecution case and record would reveal that the petitioner is alleged to have been found in possession of drugs having purchased the same from A-2 Zulfaqr Hussain from whose house at Roop Nagar intoxicating injections/drugs came to be recovered along with the cash of Rs. 130,000/-.

18. Perusal of the record would further reveal that the said A-2 Zulfaqr Hussain had made a confessional statement before the two constables namely Bashir Ahmad and Mohd Jameel alleging that A-3 Muneer Hussain and A-5 Masoom Ali used to purchase drugs from him for selling to the youngsters in the Jammu city and its adjoining areas. There is neither any allegation, as such, leveled against the petitioner herein nor is there any prima-facie evidence on record collected during the course of investigation that the petitioner had indulged in financing directly or indirectly in the activities specified in clauses (i) to (v) of clause (viii-a) or else has been harbouring any person including the other accused persons in any of the said activities which would have attracted the application of the Section 27-A.

19. Perusal of the record tends to show that the trial court has manifestly not considered this fundamental and vital aspect of the matter and instead has framed the charge under Section 27-A

against the petitioner herein in the process having overlooked the principle of law laid down by the Apex court in "Dipakbhai Jagdishchandra Patel's judgement supra, wherein the Apex court while risking repetition has laid down that the court at the time of framing charge does not act as a mere post office but indeed has sift to the material before it being produced and relied upon by the prosecution. While the sifting has not to be meticulous. In law even though there may be a strong suspicion for framing charge, yet the said strong suspicion must be founded on some material which must be such as can be translated into evidence at the stage of trial.

20. Record further reveals that apart from mentioning Section 27-A as an offence which is alleged to have been committed by the petitioner herein there is no factual foundation for allegation that the petitioner has committed the offence contemplated under Section 27-A.

21. Law is settled that order of framing of charge should disclose that court has not proceeded mechanically in framing the charge merely because accusation had been made by the prosecution against the accused but that it had looked into the material brought on record till then. The object of framing charge is to give notice of the essential facts which the prosecution proposes to establish to bring home the charge to the accused so that he may not be prejudiced in his defence. Court is not expected to frame the charge mechanically but has to exercise its judicial mind to the given facts of the case.

22. For all what has been observed, considered and analyzed hereinabove, the petition merits acceptance and is accordingly allowed as a consequence whereof impugned order dated 31.03.2021 passed by the trial court is set aside.

23. List the Bail application on 19.05.2022.

(JAVED IQBAL WANI) JUDGE SRINAGAR 22.04.2022 "Ishaq"

Whether the judgment is speaking:	Yes
Whether the judgment is reportable:	Yes