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

CRM(M) 26/2026
C/W
CRM(M) 819/2025

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ARIF AHMAD SHEIKH AND OTHERS …Petitioner(s)/Appellant(s)

Through: Ms. Vrinda Grover, Sr. Advocate with
Mr. Adil Pandit, Advocate
Mr. Huzaif, Advocate
Mr. Z. A. Qureshi, Sr. Advocate with
Mr. Anurag Verma, Advocate in CRM(M) No. 819/2025

Vs.

UNION TERRITORY OF J & K AND ANOTHER ...Respondent(s).

Through: Mr. Mohsin Qadri, Sr. AAG with
Ms. Maha Majeeed, Assisting Counsel.

CORAM:

HON'BLE THE CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE MOHD YOUSUF WANI, JUDGE

JUDGMENT

Mohd Yousuf Wani-(J)

1. Through the medium of the instant petitions having been filed by invoking the provisions of Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as the 'BNSS' for short), the Petitioners/Accused have sought the quashment of the order dated 08.11.2025 passed by the court of learned Additional Sessions Judge, TADA/POTA (Special Court designated under the NIA Act), Srinagar (hereinafter referred to as the 'trial court' for short), whereby the learned trial court has expressed its prima facie satisfaction regarding the commission of the offences punishable under Sections 120-B, 147, 148, 149. 224, 225, 427, 332, 336, 307, 435 and 436 of the Jammu & Kashmir State Ranbir Penal Code, 1989 (1932 A.D.), (repealed but applicable in the case

& hereinafter referred to as the 'RPC' for short) and 13, 16 and 18 of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the 'ULA(P) Act' for short) by the accused persons including the petitioners and adjourned the case for framing of formal charges against the A-1 to A-4 under Sections 120-B, 224, 225 RPC, 16 & 18 of ULA(P) Act and against the accused persons A-6 to A-26 under Sections 120-B, 147, 148, 149, 224, 225, 427, 332, 307, 435 and 436, RPC, 13, 16 & 18 of the ULA(P) Act, in the case titled as **"U T of Jammu & Kashmir v/s Arif Ahmad Sheikh & Ors.",** bearing FIR No. 19/2019 of Police Station Rainawari, Srinagar.

2. The instant petitions have been filed mainly on the grounds that the petitioners/accused are innocent and have not committed the alleged offences. That although they plead their defence of innocence *qua* all the charges levelled against them, yet they mainly resist their involvement in the offences punishable under Sections 16 and 18 of the ULA(P) Act, under which, as per the impugned order dated 08th November 2025, they are also needed to be formally charged. That the learned trial court, without perusing the record of the prosecution case for the purpose of appreciating as to whether the offences mentioned in the impugned order, more especially under Sections 16 and 18 of the ULA(P) Act, were prima facie made out, as required by law, proceeded to record its satisfaction regarding the commission of all such offences by the petitioners by being influenced by the allegations in the charge sheets to the effect that they, on the incident day, utilized inflammable, hazardous and poisonous substances like LPG gas cylinders to arson jail buildings, damage public property, injure jail employees and security personnel to facilitate a jailbreak under a conspiracy by demonstrating a high degree of recklessness. That the learned trial court did not satisfy itself as to whether the ingredients of the offences directed to

be charged against them, and especially under Sections 16 and 18 of the ULA(P) Act, were prima facie made out against them. That the second supplementary charge sheet was filed on 28th October 2024 without there being any fresh evidence-direct or documentary, justifying the same. That the second supplementary charge sheet under Sections 16 and 18 of the ULA(P) Act was filed against the petitioners merely on the basis of earlier evidence by re-evaluating and re-assessing the same. That the learned trial court, in view of the law on the subject, was required to sift and weigh the record of the Investigating Agency for the purpose of satisfying itself as to whether the commission of the offences mentioned in the impugned order was prima facie made out in the facts and circumstances of the case in terms of the required ingredients of the same. That the second supplementary charge sheet dated 28th October 2024 was filed by misusing the provisions of Section 173(8) of the Code, which permit further investigation for the purpose of unearthing the real facts so as to ensure a fair and transparent investigation.

3. The facts of the prosecution case relevant for the disposal of these petitions are that Police Station, Rainawari, received a telephonic call from Central Jail, Srinagar, on 04.04.2019, to the effect that the jail inmates, created huge disruption and disorder inside the jail, resorted to setting the barracks on fire, blurted out anti-national slogans and also pelted stones on the jail staff/employees. That, accordingly, case FIR No 19/2019 U/S 336, 436 RPC, 13 ULA (P) Act' was registered and investigation was set into motion. That, on reaching to the spot, all the senior formations of officers including DM Srinagar, were informed about the incident. That subsequently, DM Srinagar along with subordinate Magistrates, SSP Srinagar, SP North, and SDPO Khanyar, reached the Central Jail. That, all

the necessary and relevant measures were undertaken to pacify the violent mob of the jail inmates who had set ablaze the barracks of the jail, raised anti-national slogans and had pelted stones on the jail staff and other nafri, but the efforts to pacify the vehemently enraged and violent mob did not prove adequately effective, as the mob got extra furious and initiated heavy stone pelting on all the officials present, resulting in the infliction of grave injuries to officials. That, after exhausting all the possible measures, the violent mob was finally brought under control, whereafter the inmates were shifted to different barracks of the jail.

That during the course of investigation, all the fundamental and procedural formalities/requirements were undertaken. That the Investigating Officer drafted the site plan in presence of witnesses. That the statements of multiple witnesses of the incident/occurrence of offences were recorded under relevant sections of law. That all the eye-witnesses testified the involvement of all the accused mentioned in the charge sheet in the commission of offences. That the material evidence in the form of combustible/ablaze substances was seized on spot in presence of Magistrate and was sent to the Forensic Science Laboratory (FSL), Srinagar, for examination and expert opinion.

That, a Special Investigation Team of three (03) members including SP City North, SDPO Khanyar & SHO Police Station Rainawari, came to be constituted for effectively investigating the case for its logical conclusion on merits, vide PHQ J&K Order No:- Prisons/Camp-PCR/2019/ESTT-347-53 dated 06.04.2019.

That, moreover, as per the statements of witnesses, the accurate details of all the accused were collected with the further collection of other relevant details from the jail staff. That the history tickets and the CCTV footage, being the primary evidence were seized and sent to the CFSL, Gujarat, for examination and expert opinion. The formalities including the payment of the required charges of Rs 1,85,614/-, to the CFSL, Gujarat, for furnishing the requisite opinion were completed. That accordingly, vide communication No. Nil dated 30.03.2024, the Scientific Officer, Photography Division, CFSL, Gujarat, communicated that the expert opinion would be sent through mail/ post, after the same is finalized. However, the exhibits of the same were received.

That, during the course of investigation, statements of ten (10) witnesses were got recorded under section 164 of the code of criminal procedure, 1973 (hereinafter refered to as the 'code' for short) before the competent Magistrates when eighty-six (86) statements of witnesses under Section 161 of the code were recorded.

4. That after obtaining the requisite sanction required in terms of the provisions of the Section 45 of the NIA Act, from the competent authority under Notification S.O. 109 dated 15.02.2024, **the main challan/police report under Section 173(2) of the code) was filed before the learned trial court on 21.02.2024 against** four Accused persons including some petitioners namely Arif Ahmad Sheikh, Sameer Ahmad Khan, Imran Nabi Khan and Imran Aslam Baba with the mention of Accused No. 5 namely Zia Mustafa, therein as having already died during investigation (abate challan to his extent), under Sections 147. 148, 149, 427, 332, 307,336, 435, 436 RPC and 13 ULA (P) Act. That however the mention of twenty-one (21) more accused persons was made in the said main challan, regardless of filing the same as also against them, on account of ongoing investigation to their extent.

That after conducting further investigation, the first supplementary challan/charge report under Section 173(8) of the code came to be filed before the learned trial court on 03.09.2024 against twenty-one (21) accused persons, including some of the petitioners.

That, up to the filing of the first supplementary challan, the Special Investigation Team got the statements of ten (10) witnesses recorded in terms of Section 164 of the code and examined a further eighty-six (86) witnesses in terms of Section 161 of the code.

That, the first supplementary challan mentioned above was filed before the learned trial court after obtaining the requisite sanction from the competent authority vide Notification S.O. 281 dated 06.05.2024 against further twenty-one (21) accused persons under Sections 120 B, 147, 148, 149, 224, 225, 427, 332, 307, 435, 436 RPC and 13 ULA(P) Act.

That further investigation revealed that incident was the outcome of a well-planned conspiracy among the accused jail inmates who engaged in raising anti-national slogans, participating in unlawful activities, conspiring against the state, damaging government property, and using jail LPG kitchen gas cylinders to create explosions and commit arson. That by causing these explosions, they damaged the jail walls to facilitate their escape. That the said inmates attempted to murder jail employees and other security forces, resulting in many injuries among the jail staff and police personnel.

That the accused group formed a terrorist gang within the central jail with the primary objective of engaging in unlawful and terrorist acts. That they utilized inflammable, hazardous, and poisonous substances, such as LPG gas cylinders, to set jail buildings on fire, damage public property, injured jail employees and security forces, and enable a jailbreak. That their activities included creating explosions with LPG cylinders, rioting, arson, stone pelting, damaging public property, attempting to escape from jail, and facilitating others in doing the same. That they also attempted murder during these events. That these terroristic acts by the gang instilled fear among the neighboring residents, who were terrorized by the severity of the incidents. That the new leads and evidence in this case led to the incorporation of offences under sections 16, 18, and 20 of the ULA (P) Act, and sections 120-B, 224, 225 of the RPC, in the case FIR.

That the evidence surfaced, revealing a meticulously orchestrated conspiracy among accused inmates within the central jail. That these inmates engaged in nefarious activities, including the raising of anti-national slogans, participation in unlawful acts, and the deliberate sabotage of government property. It also surfaced during the ongoing further investigation that the accused inmates demonstrated a high degree of recklessness by using LPG gas cylinders, inflammable substances, and other hazardous materials to execute their plans. That the use of these dangerous materials not only posed a significant risk to the immediate environment but also had the potential to cause widespread panic and destruction. That the explosions caused by the LPG cylinders led to significant structural damage to the jail, enabling the inmates to attempt an escape. That, in the process, they also set fire to various parts of the jail, resulting in substantial property damage and creating chaos within the premises. That, moreover, the inmates’ actions were not limited to property damage and escape attempts but also exhibited a blatant disregard for human life. That in their bid to escape, they attacked jail employees and security personnel, resulting in numerous injuries. That these assaults were part of a broader strategy to incapacitate the jail's defenses and facilitate an escape. That the inmates' willingness to use violence and hazardous materials underscores the severity of their criminal intent and the potential threat they posed to public safety.

That CCTV footage and history tickets of accused were seized and were sent to the Central Forensic Science Laboratory (CFSL) in Gujarat, along with a questionnaire for detailed analysis and opinion. That, however, the SIT was yet to receive a final expert opinion from CFSL, and the investigation of the case is ongoing.

That test identification parade of 04 bailed out accused persons namely Imran Asalm Baba, Asif Sultan Syeda, Eycon Parvaiz and Arif Ahmad Sheikh, was conducted within the premises of Tehsil Office Khanyar in presence of Executive Magistrate (Tehsildar Khanyar), 02 independent witnesses/Crime Photographers as well as SIT members. That commission of offences punishable under Sections 16, 18, and 20 of the ULA (P) Act came to be established against all the twenty-six (26) accused persons including the deceased Zia Mustafa. That the requisite sanction for prosecution of the accused persons under the newly added sections to the extent of Sections 16 and 18 of the ULA (P) Act, was accorded by the competent authority vide Notification S.O. 524 dated 25.10.2024. **That the second supplementary charge sheet under Section 173(8) of the Code, was presented before the court on 28.10.2024, which, however, concludes with the statement of the In-charge SIT to the effect that the investigation of the case will be kept open by taking recourse to the provisions of Section 173 (8), of the Code, as the final opinion is still awaited from CFSL Gujarat. That the statements of witnesses so recorded under Sections 164/161 of the Code, seizure memo and other relevant documents had already been presented before the learned Trial**

Court on 21.02.2024 and 03.09.2024, respectively, as annexures to the charge sheets.

5. We have heard the learned counsel for the parties on both the sides.

6. The learned counsel for the petitioners submitted that without prejudice to their stand regarding the innocence of the petitioners as regards the allegation of commission of all the offences under the main and two supplementary challans (final reports) respectively dated 21.02.2024, 03.09.2024 & 28.10.2024, their involvement under sections 16 & 18 of ULA (P) Act, is totally illegal and unjustified.

They submitted that the requirement of "*mens rea*" stands expressly/impliedly imported in all the penal offences and in the backdrop of motive/circumstances leading to the occurrence, said important constituent of offences, levelled against the petitioners is supposed to be lacking.

They submitted that as per the statements of the ocular witnesses recorded in terms of Section 164 of the Code, during investigation by the Special Investigation Team, the accused persons, including the petitioners, are alleged to have got infuriated when some contractor along with the laborers entered Barrack No. 1, during the night hours in connection with the repairment/renovation, work of the said Barrack.

They submitted that no meticulously orchestrated conspiracy among the petitioners, within the Central Jail, as alleged, could be inferred from the facts and circumstances of the case. That the alleged acts of the petitioners do not fall within the ambit of offences punishable under Sections 16 and 18 of the ULA (P) Act. They submitted that the second supplementary challan dated 28.10.2024 was, deliberately filed under Sections 16, 18, and 20 of the ULA (P) Act, on the basis of the earlier evidence on the strength of which the main and the first supplementary challans dated 21.02.2026 and 03.09.2024 had already been filed, with a view to prevent them from being bailed out in the case FIR.

The learned counsel submitted that the second supplementary challan dated 28.10.2024, for the filing whereof, sanction by the competent authority was granted vide notification S.O. 524 dated 25.10.2024 for the offences under Sections 16 & 18 ULA (P) Act only, itself reads in its operative portion that the statements of the witnesses so recorded under Sections 164/161 of the code, Seizure memos and other relevant documents have already been presented before the learned trial court on 21.02.2024 and 03.09.2024 respectively with charge-sheets.

The learned counsel further submitted that the details of "properties/ articles/documents, recovered/seized during investigation and relied upon", as per Column No. 14, are the same in all the three charge sheets, i.e., the main charge sheet dated 21.02.2024, first supplementary charge sheet dated 03.09.2024, and second supplementary charge sheet dated 28.10.2024, which clearly demonstrates that no new evidence or document was collected/identified by the SIT, justifying the involvement of the petitioners in the second supplementary charge sheet dated 28.10.2024.

The learned counsel submitted that the power of the investigating agency to investigate further in terms of the provisions of Section 173(8) of the Code, corresponding to the provisions of Section 193(9) of BNSS, cannot be misinterpreted and misused for unjustifiably adding heinous offences in the case FIR.

The learned counsel further submitted that the learned trial court has failed to properly evaluate the material and the documents produced by the investigating agency in the case and has rather acted as a mere post office by relying upon the offences as mentioned in the charge sheets.

The learned counsel, during their arguments, further contended that it is a settled legal position that a court, while considering the question of framing of charges, 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 the prima facie case depends upon the facts of each case.

They submitted that at the stage of consideration of framing of charge, a criminal 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.

The learned counsel for the petitioners vehemently contended that the commission of the offences punishable under Sections 16 & 18 of the ULA (P) Act are not prima facie made out in the facts and circumstances of the case, having regard to the allegations against the petitioners. They submitted that the petitioners were lodged in the Central Jail, Srinagar, in connection with different cases and became infuriated on the spur of the moment when their barrack was opened suddenly on the day of the incident during night hours in connection with carrying out the proposed repairs/renovation of the same. They submitted that the petitioners are alleged to have acted illegally by taking the law into their own hands, but the same can be supposed to have been done under sudden provocation. They submitted that the acts alleged to have been committed by the petitioners/accused while being lodged in the jail cannot be supposed to be terrorist acts as defined under Section 15 of the ULA (P) Act. They submitted that on the basis of the same evidence, the SIT was not earlier of the opinion that, in the facts and circumstances of the case, the offences punishable under Sections 16 and 18 of the ULA (P) Act, appear to be made out against the petitioners/accused.

The learned counsel for the petitioners in support of their contention that charges under Sections 16 and 18 of ULA (P) Act are not made out against the Petitioners/Accused in the light of the facts and circumstances of the case, contended that it has been authoritatively laid down by the Hon'ble Supreme Court of India in **AIR 1994 SC 2623,** that an activity to amount to a terrorist act has to be such as cannot be tackled as mere criminal activity under ordinary penal law by formal enforcement agencies because the intended extent and reach of activity of terrorist travels beyond the gravity of a mere disturbance of public order.

He contended that Petitioners/Accused who were lodged in the jail in different cases, cannot be supposed to commit terrorist activity.

The learned counsel further submitted that the second supplementary challan is based on no new evidence but reflects the reevaluation and reassessment of the material already collected and considered by the investigating agency while submitting earlier police reports.

The learned counsel for the petitioners in support of their contentions placed reliance on the case law cited as **"Sajjan Kumar v. Central Bureau of Investigation, (2010) 9 SCC 368; Asim Shariff v. NIA (2019) 7 SCC 148; State of Orissa v. Debendra Nath Padhi, (2005) 1 SCC 568; Amit Kapoor v. Ramesh Chander, (2012) 9 SCC 460; State v. S. Selvi, (2018) 13 SCC 455; Soma Chakravarty v. State, (2007) 5 SCC 403; P. Vijayan v. State of Kerala, (2010) 2 SCC 398; State of Bihar v. Ramesh Singh,**

(1977) 4 SCC 39; M. E. Shivalingamurthy v. CBI, (2020) 2 SCC 768; Naranjan Singh Karan Singh Punjabi v. Jeetadar Bim Raj (AIR 1990 SC 1962); Dipak Bhai Jagdish Chandra Patel v. State of Gujarat (2019) 16 SCC 547; Vernon v. State of Maharashtra & Anr; Shashikant Sharma & Ors. v. State of Uttar Pradesh and another, 2023 Live Law (SC) 1037; Ali Mohammad Lone v. Union Territory of Jammu & Kashmir CrlA(D) No. 67/2025; Mariam Fasihuddin v. State by Adugodi Police Station; Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762; Surender @ Tannu v. State (NCT of Delhi), Crl. Rev. P. No. 197/2018, decided on 13.06.2022; Vijay Thakur v. State & Anr., 2026:DHC:311; Manilal Keshri v. State of Bihar, 2006 SCC Online Pat 635 and Yamuna Pathak v. State of Bihar, 1992 SCC Online Pat 246", AIR 1994 Supreme Court 2023.

7. *Per contra*, the learned Senior AAG, arguing for the respondents, vehemently contended that there is no merit at all in the petitions filed by the petitioners/accused. He submitted that after filing the main charge-sheet on 21st February 2024, further investigation into the said FIR, being of a highly sensitive and heinous nature, was kept open by the Special Investigation Team as a matter of right in terms of the provisions of Section 173 (8), of the Code, so as to unearth and unveil the well-knit and meticulously orchestrated conspiracy hatched by the jail inmates, which had transformed them into a terrorist gang within the Central Jail with the primary object of engaging in unlawful and terrorist acts. It was further submitted that they utilized inflammable, hazardous, and poisonous substances like LPG Gas cylinders to arson jail buildings, damage public property, injure jail employees and forces, and facilitate jail break.

That they were involved in making explosions through use of LPG cylinders, rioting, arson, stone pelting, damaging public property, attempting to escape jail, facilitating others to do the same, and attempting to murder. That these acts and activities of terror by this gang had instilled a sense of fear among the neighboring residents who were terrorized.

The learned Senior AAG, further contended that this group formed a terrorist gang within the central jail with the primary object of engaging in unlawful and terrorist acts. That they utilized inflammable, hazardous, and poisonous substances, such as LPG gas cylinders, to set jail buildings on fire, damage public property, injure jail employees and security forces, and enable a jailbreak.

He further contended that these terror acts by the gang instilled fear among the neighboring residents, who were terrorized by the severity of the incidents. That the evidence surfaced, revealing a meticulously orchestrated conspiracy among inmates within the central jail. That these inmates engaged in nefarious activities, including the propagation of anti-national slogans, participation in unlawful acts, and the deliberate sabotage of government property. That 2nd supplementary report aims to elucidate the severity and intricacy of their criminal activities, which included the use of LPG cylinders to orchestrate explosions and incite arson, with the overarching objective of facilitating a jailbreak and committing acts of terror.

That the accused inmates, operating with a clear and malevolent intent, engaged in a concerted effort to undermine national security. That they raised incendiary anti-national slogans designed to foment dissent and destabilize the jail. That this act, was part of a broader conspiracy to challenge the authority of the state and incite further unrest among the prisoners.

The learned AAG further contended that, in furtherance of their conspiracy, the inmates caused extensive damage to government property. That by utilizing LPG kitchen gas cylinders, they engineered a series of LPG cylinder explosions aimed at weakening the structural integrity of the jail walls. That this deliberate act of sabotage was intended to create an escape route, thereby compromising the security of the faculty and endangering the lives of the prison staff and other inmates.

He further contended that the inmates demonstrated a high degree of recklessness by using LPG gas cylinders, inflammable substances, and other hazardous materials to execute their plans. That the use of these dangerous materials not only posed a significant risk to the immediate environment but also had the potential to cause widespread panic and destruction. That the explosions caused by the LPG cylinders led to significant structural damage to the jail, enabling the inmates to attempt an escape. That in the process, they also set fire to various parts of the jail, resulting in substantial property damage and creating chaos within the faculty.

He further contended that the inmates' actions were not limited to property damage and escape attempts but also exhibited a blatant disregard from human life. That, in their bid to escape, they attacked jail employees and security personnel, resulting in numerous injuries. That these assaults were part of a broader strategy to incapacitate the jails defences and facilitate an escape. That the inmates willingness to use violence and hazardous materials underscores the severity of their criminal intent and the potential threat they posed to public safety.

That the investigation into these events uncovered evidence of a well-coordinated terrorist gang operating within the central jail. That their activities, driven by a desire to engage in unlawful and terrorist acts, resulted in rioting, arson, stone pelting, and other forms of violent behavior. That the terror instilled by this gang extended beyond the confines of the jail, spreading fear among neighboring residents who were alarmed by the severity of the incidents.

That the accused jail inmates had also formed a terrorist gang in conspiracy with deceased terrorist Zia Mustafa, who was affiliated with a banned terrorist organization (L.e.T) and were involved in different kinds of unlawful activities within the jail. That their primary objective was to challenge the unity, integrity, security, and sovereignty of the country.

That during the course of further investigation that led to filing of 1st supplementary report dated 03.09.2024, sections 120-B, 224, 225 of the RPC were incorporated in this case.

He further contended that while continuing the further investigation in the case, a request was made with Director of CFSL Gujarat for providing working copy of CCTV footage, and accordingly via letter No. DES/ EE/ 2019/ PHOTO/ 168/ ONHAND/ 2024 dated 30-05-2024, CFSL Gujarat, had provided a hard drive for analysis along with a Certificate under section 65B (4) (C) of the Evidence Act-1872.

That the analysis of the working copy of the CCTV footage was conducted by SIT members. The analysis report was accompanied by fifty (50) screenshots taken from the CCTV footage. That these screenshots were showing the real date and timing and formed the crucial evidence of the inmate's unlawful activities. That each screenshot's description highlights the specific actions and behaviors observed, such as the raising of slogans, damage to property, and the use of stones, lathis, fire and explosives like LPG cylinders etc.

Learned Senior AAG, further contended that besides, on 01-08-2024 test identification parade of four (4) bailed out accused persons namely Imran Aslam Baba, Asif Sultan Syeda, Eycon Parvaiz & Arif Ahmad Sheikh was conducted within the premises of Tehsil Office Khanyar, in presence of Executive Magistrate (Tehsildar Khanyar), two (02) independent witnesses/Crime Photographers as well as SIT members.

The learned senior AAG submitted that the ingredients of Section 15 of ULA (P) Act, which defines the terrorist act stand clearly made out in the facts and circumstances of the case. He contended that the Special Investigation Team constituted for investigating the highly heinous and well-coordinated case from all angles, got the statements of ten (10) witnesses recorded during investigation before the Judicial Magistrates in terms of provisions of Section 164 of the code, whereas the statements of about 86 witnesses came to be recorded by the SIT in terms of the provisions of Section 161 of the code.

The learned Senior AAG further contended that the witnessing and evaluation of the CCTV footage, the perusal of the history tickets with photographs of the accused jail inmates (26), seizure of hammer, iron rod, pieces of burnt gas cylinder in juxtaposition with the statements of the witnesses recorded during investigation prima facie established the commission of the offences punishable under Sections 16 & 18 besides the earlier referred offences under Sections 120 B, 147, 148, 149, 224, 225, 427, 332, 307, 435, 436 RPC and 13 of UL A (P) Act.

The learned Senior AAG contended that the accused persons, including the present petitioners, used LPG gas cylinders, which are highly inflammable, while creating huge disruption and disorder inside the jail, resulting in the barracks being set on fire, raising anti-national slogans, and pelting stones at the jail staff and other employees. He submitted that it is a well-settled position of law that, at the stage of consideration of the framing of charge, the court is not required to conduct a mini-trial or to weigh the evidence to the extent of exploring the possibility of the case ending in conviction or acquittal. He submitted that it is well-settled that a charge can be framed on the basis of grave suspicion. He contended that, at this stage, the court is required to see whether a prima facie case is made out for the accused to be put to trial.

The learned Senior AAG submitted that proper evaluation and assessment of the evidence, even if already collected, is not barred under law, because the omission of any offence that stands fully established on the given set of evidence can still be agitated by the investigating agency even at a subsequent stage.

He submitted that what is barred is the framing of any charge which is not at all made out in the given facts and circumstances of the case, having regard to the evidence collected and the documents identified by the investigating agency. The learned senior AAG prayed for the dismissal of the petitions.

8. **We have carefully perused the petitions in hand as well as the trial court record consisting of the main and two supplementary charge sheets respectively dated 21st February 2024, 3rd September 2024 and 28th October 2024. As hereinbefore mentioned, the main charge sheet dated 21st February 2024 was filed against five accused persons, including accused No. 5, namely Ziya Mustafa, reported as dead. However, reference to the remaining twenty-one (21) accused persons was made in**

the charge sheet without the same being filed against them on account of the investigation continuing in respect of them. The main charge sheet against five accused persons, including accused Ziya Mustafa, was filed under Sections 147, 148, 149, 336, 427, 332, 307, 435, 436 RPC and Section 13 of the ULA (P) Act. The subsequent supplementary charge sheet dated 3rd September 2024, came to be filed by the SIT before the learned trial court against twenty-one (21) accused persons, not including the five accused persons who already figured in the main charge sheet dated 21st February 2024. This first supplementary charge sheet was filed under Sections 120-B, 147, 148, 149, 224, 225, 427, 332, 307, 435, 436 RPC and Section 13 of the ULA (P) Act.

Subsequent to the main and the first supplementary charge sheet, the second supplementary charge sheet dated 28th October, 2024 was filed against all the 26 accused persons, including the petitioners, for the additional offences falling under Sections 16, 18 and 20 of the ULA (P) Act. However, the sanction was accorded by the competent authority in respect of the second supplementary charge sheet, vide Notification S.O. 524 dated 15th October, 2024, for offences under Sections 16 and 18 of the ULA (P) Act only.

9. The case of the petitioners/accused is that, although they plead their innocence in respect of all the offences, yet there was no justification under law for filing the second supplementary charge sheet dated 28th October, 2024, against them under Sections 16 and 18 of the ULA (P) Act. That no new evidence, direct or documentary, was collected by the Special Investigation Team during further investigation of the case, which could have warranted the involvement of the accused, including the petitioners, under Sections 16 and 18 of the ULA (P) Act.

It has been pleaded by the petitioners that the second supplementary charge sheet dated 28th October, 2024, appears to be the outcome of re-evaluation and re-assessment of the already collected and relied upon evidence, which is not permissible under law. The learned counsel for the petitioners, *inter alia*, submitted during their arguments that the learned trial court, unmindfully and while acting as a mere post office and a mouthpiece of the prosecution, proceeded to frame the charges against the petitioners for the offences alleged by the investigating agency. They submitted that the learned trial court was required under law to evaluate and weigh the evidence and the record of the investigation/prosecution case for the limited purpose of assessing whether the ingredients of the offences charged against them were made out in the facts and circumstances of the case.

They also submitted during their arguments that the framing of charges against the petitioners for the offences under Sections 16 and 18 of the ULA (P) Act as well, without any legal justification or ground, tantamounts to the deprivation of their liberty, as the said charges, under heinous offences attracting the statutory bar under Section 43D of the ULA (P) Act, are likely to prolong their detention.

While perusing the record of all the charge sheets, we do not find any new articles/documents recovered or seized during the further investigation, as is borne out from Column No. 14 of all the charge sheets. Although the first and the second supplementary charge sheets, respectively dated 3rd September 2024 and 28th October 2024, reveal an increase in the number of witnesses from the previous ones, yet at the same time, it is also mentioned in the second supplementary charge sheet, at page No. 13, that the original papers had already been presented

before the trial court in the previous charge sheets dated 21st February 2024 and 3rd September 2024.

The Special Investigation Team was required to submit, with the second supplementary challan, as an enclosure thereto, at least the statements of the additional witnesses, if any, recorded.

We have not been able to lay our hands on any statement of witness recorded under Section 161 or 164 of the Code by the SIT subsequent to the filing of the first supplementary charge sheet dated 3rd September 2024.

10. We feel fortified with the law laid down by the **"Hon'ble Apex Court in Mariam Fasihuddin and Another vs State by Adugodi Police Station and Another" 2024 INSC 49;** under similar circumstances, also relied upon by the learned counsel for the petitioners to the effect that provisions for submitting a supplementary report pursuant to further investigation under section 173(8) of the code infer that fresh oral or documentary evidence should be obtained rather than re-evaluating or re-assessing the material already collected and considered by the investigating agency, while submitting the initial police report.

It is profitable to reproduce the paras 25 to 27 of the judgment for a ready reference:-

> …25. As previously noted, the Appellants stand accused of forging the signatures of Respondent No. 2 on the passport application of the minor child. The investigating agency initially found insufficient evidence to support charges under Sections 468 and 471 IPC. Accordingly, no chargesheet was filed under these provisions. However, in compliance with the Trial Magistrate's order dated 24.06.2015, a supplementary chargesheet was submitted under Sections 468, 471 and 201 IPC and Section 12(b) of the Passports Act, 1967.
>
> 26. It is a matter of record that in the course of 'further investigation', no new material was unearthed by the investigating agency. Instead, the supplementary

> chargesheet relies upon the Truth Lab report dated 15.07.2013, obtained by Respondent No. 2, which 17 Page was already available when the original chargesheet was filed. The term 'further investigation' stipulated in Section 173(8) CrPC obligates the officer in charge of the concerned police station to 'obtain further evidence, oral or documentary', and only then forward a supplementary report regarding such evidence, in the prescribed form.
> 27. The provision for submitting a supplementary report infers that fresh oral or documentary evidence should be obtained rather than reevaluating or reassessing the material already collected and considered by the investigating agency while submitting the initial police report, known as the chargesheet under Section 173(2) CrPC. In the absence of any new evidence found to substantiate the conclusions drawn by the investigating officer in the supplementary report, a Judicial Magistrate is not compelled to take cognizance, as such a report lacks investigative rigour and fails to satisfy the requisites of Section 173(8) CrPC. What becomes apparent from the facts on record of this case is that the investigating agency acted mechanically, in purported compliance with the Trial Magistrate's order dated 24.06.2015.

11. It has been laid down by the Hon'ble Apex Court in a catena of judgments that an Investigating Officer may exercise his statutory power of further investigation in several situations as, for example, when new facts come to his notice, when certain aspects of the matter had not been considered by him and he found further investigation is necessary to be carried out from a different angle(s), keeping in view the fact that new or further materials come to his notice.

A reading of Section 173(8) of the code is deemed necessary at this stage for understanding the power given to the Investigating Agency in connection with further investigation in a case.

> "Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains

> further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form as the State Government may, by rules, provide; and the provisions of sub-sections (3) to (8) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2):"

A very wide power is vested with the investigating agency to conduct further investigation after it has filed the initial report in terms of section 173(2). The legislature has specifically used the expression "nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form as the State Government may, by rules, provide; and the provisions of sub-sections (3) to (8) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).

12. The Hon'ble High Court of Delhi, in a recent judgment titled "**Vijay Thakur v. State & Anr., 2026:DHC:311"** CRL. M. C. 4716/2025 decided on 14.01.2026, relied upon by the learned counsel for the petitioners, *inter alia*, observed that the law for carrying out further investigation in the light of Section 173(8) of the code is well settled. While the police retains the power to conduct further investigation, this power is not unbridled, and obtaining the leave of the court is a salutary check to ensure that the investigation is not used as a tool to harass the accused. More importantly, "further investigation" must be based on new facts.

13. Admittedly, there is no legal bar against further investigation. Section 173(8) of the Code does not restrict the reopening of a case in which a charge sheet has already been filed and cognizance has been taken. The only preconditions are that the reopening must be based on fresh material which was not available earlier and that permission of the Court should be obtained.

The observations of the Hon'ble Supreme Court in case titled "**P. Vijayan v. State of Kerala & Another, AIR 2010 SC 663**," which are relevant in the backdrop of the controversy raised before us, deserve a needful mention as under:

> …."If at the stage of framing of charge, two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused from the charge against him."

14. In "**Hitendra Vishnu Thakur and others, (Appellants) versus State of Maharashtra and others, (Respondents), AIR 1994 SC 2623"**, also relied upon by the learned counsel for the Petitioners/Accused, it has been authoritatively held by the Hon'ble Supreme Court that "a terrorist activity has to be such as cannot be tackled as mere criminal activity under ordinary penal law by formal enforcement agencies, because the intended extent and reach of the activity of the terrorist travels beyond gravity of mere disturbance of public order even of virulent nature and at times transcend frontiers of locality."

The provisions of Section 15 of the ULA (P) Act, which defines a terrorist act, resemble with the provisions of Section 3 of the repealed Terrorist and Disruptive Activities (Prevention) Act, 1987.

It is profitable to reproduce paras 11 and 15 of the judgment supra for the sake of convenience: -

> "11.Thus, keeping in view the settled position that the provisions of Section 3 of TADA have been held to be constitutionally valid in Kartar Singh case' and from the law laid down by this Court in Usmanbhai and Niranjan cases, it follows that an activity which is sought to be punished under Section 3(1) of TADA has to be such which cannot be classified as a mere law and order problem or disturbance of public order or even disturbance of the even tempo of the life of the community of any specified locality but is of the nature which cannot be tackled as an ordinary criminal activity under the ordinary penal law by the normal law-enforcement agencies because the intended extent and reach of the criminal activity of the 'terrorist' is such which travels beyond the gravity of the mere disturbance of public order even of a 'virulent nature' and may at times transcend the frontiers of the locality and may include such anti-national activities which throw a challenge to the very integrity and sovereignty of the country in its democratic polity. The Constitution Bench in Kartar Singh case repelled the submission of Mr Jethmalani that the preamble of the Act gives a clue "that the terrorist and disruptive activities only mean a virulent form of the disruption of public order" and found the argument to be "inconceivable and unacceptable". Thus, unless the Act complained of falls strictly within the letter and spirit of Section 3(1) of TADA and is committed with the intention as envisaged by that section by means of the weapons etc. as are enumerated therein with the motive as postulated thereby, an accused cannot be tried or convicted for an offence under Section 3(1) of TADA. When the extent and reach of the crime committed with the intention as envisaged by Section 3(1), transcends the local barriers and the effect of the criminal act can be felt in other States or areas or has the potential of that result being felt there, the provisions of Section 3(1) would certainly be attracted. Likewise, if it is only as a consequence of the criminal act that fear, terror or/and panic is caused but the intention of

committing the particular crime cannot be said to be the one strictly envisaged by Section 3(1), it would be impermissible to try or convict and punish an accused under TADA. The commission of the crime with the intention to achieve the result as envisaged by the section and not merely where the consequence of the crime committed by the accused create that result, would attract the provisions of Section 3(1) of TADA. Thus, if for example a person goes on a shooting spree and kills a number of persons, it is bound to create terror and panic in the locality but if it was not committed with the requisite intention as contemplated by the section, the offence would not attract Section 3(1) of TADA. On the other hand, if a crime was committed with the intention to cause terror or panic or to alienate a section of the people or to disturb the harmony etc. it would be punishable under TADA, even if no one is killed and there has been only some person who has been injured or some damage etc. has been caused to the property, the provisions of Section 3(1) of TADA would be squarely attracted. Where the crime is committed with a view to overawe the Government as by law established or is intended to alienate any section of the people or adversely affect the harmony amongst different sections of the people and is committed in the manner specified in Section 3(1) of TADA, no difficulty would arise to hold that such an offence falls within the ambit and scope of the said provision. Some difficulty, however, arises where the intended activity of the offender results in striking terror or creating fear and panic amongst the people in general or a section thereof. It is in this situation that the courts have to be cautious to draw a line between the crime punishable under the ordinary criminal law and the ones which are punishable under Section 3(1) of TADA. It is of course neither desirable nor possible to catalogue the activities which would strictly bring the case of an accused under Section 3(1) of TADA. Each case will have to be decided on its own facts and no rule of thumb can be applied.

15. Thus, the true ambit and scope of Section 3(1) is that no conviction under Section 3(1) of TADA can

> be recorded unless the evidence led by the prosecution establishes that the offence was committed with the intention as envisaged by Section 3(1) by means of the weapons etc. as enumerated in the section and was committed with the motive as postulated by the said section. Even at the cost of repetition, we may say that where it is only the consequence of the criminal act of an accused that terror, fear or panic is caused, but the crime was not committed with the intention as envisaged by Section 3(1) to achieve the objective as envisaged by the section, an accused should not be convicted for an offence under Section 3(1) of TADA. To bring home a charge under Section 3(1) of the Act, the terror or panic etc. must be actually intended with a view to achieve the result as envisaged by the said section and not be merely an incidental fall out or a consequence of the criminal activity. Every crime, being a revolt against the society, involves some violent activity which results in some degree of panic or creates some fear or terror in the people or a section thereof, but unless the panic, fear or terror was intended and was sought to achieve either of the objectives as envisaged in Section 3(1), the offence would not fall stricto sensu under TADA. Therefore, as was observed in Kartar Singh case' by the Constitution Bench: (SCC p. 759, para 45 1) "Section 3 operates when a person not only intends to overawe the Government or create terror in people etc. but he uses the arms and ammunition which results in death or is likely to cause death and damage to property etc. In other words, a person becomes a terrorist or is guilt), of terrorist activity when intention, action and consequence all the three ingredients are found to exist."

15. In "**Sanjay Kumar v. State of Uttar Pradesh and Another, AIR 2021 SC 2351",** it was held by the Hon'ble Apex Court that at the stage of the consideration of framing of charge, the court has to sift through the evidence in order to find out whether there are sufficient grounds to try the suspect.

The court has to consider the broader probabilities, total effect of evidence and documents produced and basic infirmities appearing in the case and so on.

16. **Admittedly, at the stage of consideration of framing of charges, the criminal court has to rely exclusively on the case of the prosecution and the material / evidence collected during investigation. But at the same time, the court is required to sift and weigh the evidence for the limited purpose of satisfying itself as to whether, in the light of the prosecution version of the case, the ingredients of the offences levelled against the accused in the final report/charge sheet are made out. A criminal court is not supposed to act as a post office or a mouthpiece of the prosecution. The order regarding consideration of framing of charges is an important and sensitive step in a criminal trial and, as such, should never be considered as a formality.**

The power regarding further investigation vested with the investigating agency in terms of the provisions of Section 173 (8) of the Code, corresponding to Section 193 (9) of the BNSS, is aimed at ensuring a fair investigation in a criminal case. We have adopted such a criminal justice system which guarantees "fair investigation" and a "fair trial" to both the complainant/victim and the accused.

17. Although the provisions of Section 173 (8) of the Code permitting further investigation do not make it mandatory to obtain prior permission of the court, yet the Hon'ble Apex Court, in its judgments, has directed that such prior permission be obtained from the competent court with the object that such power shall not be misused.

A supplementary report/charge sheet on the basis of further investigation is justified only when there is discovery of some new evidence-direct or documentary. Further investigation can sometimes lead to the framing of charges against the accused under some new offences rather than supplementing the earlier evidence without any change in the earlier allegations.

Re-evaluation or Re-assessment of the already recorded evidence backing the initial report(s)/ charge sheet(s) for the purpose of justifying the presentation of a further report/charge sheet under some new offences is not permissible under law.

Such situations put a criminal court on guard to see whether the offences alleged in all the charge sheets appear to be made out in terms of the essential ingredients thereof.

The phraseology of Sections 227 and 228 of the Code, corresponding to Sections 250(2) and 251 of the BNSS, clearly reveals that a criminal court, at the stage of consideration of framing of charge against/discharge of an accused, has to consider the record of the prosecution case and the documents submitted therewith, with providing an opportunity of being heard to both the prosecution and the accused, with a view to find out whether there is sufficient ground for proceeding against the accused in respect of the offences levelled against him as per the charge-sheet. No doubt, at the said stage, a criminal court is required to rely on the case of the prosecution in its entirety.

18. Perusal of the scanned copy of the trial court record reveals that charges against the Accused, A-1 to A-4, were framed by the learned trial court under Sections 147, 148, 149, 336, 427, 332, 307, 435, 436, RPC and 13 of the ULA (P) Act, vide order dated 13th July, 2024.

Through the impugned order dated 8th November, 2025, the learned trial court observed that the material on record sufficiently discloses grave suspicion of the commission of offences punishable under Sections 120-B, 147, 148, 149, 224, 225, 427, 332, 336, 307, 435, 436 of the RPC and Sections 13, 16, and 18 of the ULA (P) Act, against all the accused persons. The learned trial court accordingly directed the listing of the case on 1st December, 2025, for framing of formal charges against the accused Nos. A-1 to A-4 under sections 120-B, 224, 225 RPC and 16 & 18 of the ULA (P) Act **and** against the accused A-6 to A-26 under sections 120-B, 147, 148, 149, 224, 225, 427, 332, 307, 435, 436 RPC and 13, 16 & 18 ULA(P) Act.

Before the learned trial court could frame the formal charges against the accused persons, including the petitioners, the later approached this Court with the instant petitions filed in terms of Section 528 of the BNSS, 2023, corresponding to Section 482 of the Code, for setting aside the order impugned, which directed the framing of charges against them, more particularly under Sections 16 and 18 of the ULA(P) Act.

19. The learned counsel for the petitioners, during their arguments, *inter alia* submitted that, although the petitioners are innocent and have not committed the offences alleged against them, yet they strongly resist the impugned order to the extent the same provides for framing of charges against them under Sections 16 and 18 of the ULA(P) Act.

20. It is needful to mention that instant petitions throwing challenge to the impugned order directing the framing of charges against the petitioners *inter alia* under Sections 16 and 18 of the ULA(P) Act have been heard by the Division Bench of this Court in view of an administrative order issued by Hon'ble the Chief Justice in view of the provisions of Section 21 of the ULA(P) Act.

21. **In the backdrop of the aforementioned facto-legal scenario of the case, we are of the opinion that it may meet the ends of justice if the learned trial court is directed to revisit the impugned order dated 8th November, 2025, in accordance with the law, keeping in mind the observations made in this order after affording a fresh opportunity of being heard to both the sides.**

22. Section 216 of the Code, corresponding to Section 239 of the BNSS, is an enabling provision which enables a criminal court to alter or add to any charge at any time before the judgment is pronounced.

    Section 362 of the Code, corresponding to Section 403 of the BNSS, again enables a criminal court to alter its order provided the same has not finally disposed of the case.

23. We are, however, conscious of the legal position that Section 216 of the Code does not give any right to the accused to file a fresh application seeking discharge once the charges have been framed by the court, more particularly when the accused's application seeking discharge under Section 227 has already been dismissed.

    We are also aware of the law laid down by the Hon'ble Supreme Court that the power under Section 216 of the Code is exclusive to the Court, and there is no right vested in any party, neither the *defacto* complainant/prosecution nor the accused. to seek such addition or alteration by filing an application as a matter of right.

    In the case in hand, the petitioners have invoked the extraordinary inherent jurisdiction of this court in terms of provisions of section 528 BNSS, which enables this court to pass any orders which are deemed necessary to secure the ends of justice.

24. For the foregoing discussion, we dispose of instant petitions with the direction to the learned trial court to revisit the impugned order dated 08.11.2025, in accordance with the law, while keeping in mind the observations made by this court and pass a fresh reasoned order regarding the framing of charge against/discharge of the petitioners under the relevant sections of the law. May be some of the accused persons in the charge sheets arising out of the FIR in question have not chosen to assail the impugned order but it is implied in the facts and circumstances and the applicable law that the impugned order is to be reconsidered/revisited as directed, in respect of all the accused.

25. Since the case FIR in question i.e., FIR No. 19/2019 of Police Station Rainawari stands registered on 04.04.2019 with the presentation of the main charge sheet on 21.02.2024, as such, the learned trial court is directed to proceed expeditiously in the matter.

26. **Disposed of.**

(Mohd Yousuf Wani)
Judge

(Sanjeev Kumar)
Chief Justice(A)

SRINAGAR
04.08.2026
Hilal Ahmad

Whether the Judgment is reportable? Yes
Whether the Judgment is speaking? Yes