

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

.....
CrlA(D) no. 43 of 2025

Reserved on: 17.08.2026
Pronounced on: 27.08.2026
Uploaded on: 31.08.2026

*Whether the operative part or
full judgment is pronounced: Full*

UT of J&K through Station House Officer police station Kupwara

.....Appellant(s)

Through: Mr. Mohsin Qadri. Sr.AAG with
Ms. Maha Majeed, assisting counsel

Versus

Mohd Yousuf Lone S/o Abdul Rehman Lone R/o Kralpora Kupwara

.....Respondent(s)

Through: Mr. Arshid Andrabi, Advocate
with Ms Bariqah Shahrie, Advocate

CORAM:

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

JUDGEMENT

Chief Justice (A):

CrIM no.682/2025

1. The delay in filing the appeal against order/judgement dated 3rd January 2025, passed by the court of Additional District & Sessions Judge (Designated Special Court under NIA Act) Kupwara (hereinafter referred to as the "*Trial Court*") in case titled "*State through SHO P/S Kupwara v. Mohd Yousuf Lone and another*", in connection with FIR no.279/2013 under Section 148, 336, 171-C, 171-F RPC and 13 UAPA of police

station Kupwara, whereby the respondent has been discharged from the commission of offences punishable under Section 171-C, 171-F RPC and 13 UAPA, and the case transferred to the court of Sub Judge (Judicial Magistrate 1st Class), Kupwara, for further disposal and framing of charges under Section 147, 336 RPC, is sought to be condoned on the grounds mentioned in the instant application.

2. Subsection (5) of Section 21 of the National Investigation Agency Act, 2008 [*“the Act”*] provides that an appeal against any judgement, sentence or order, which is not an interlocutory order, passed by the Special Court under the Act, shall be preferred within a period of thirty days from the date of the judgement, sentence or order appeal from. However, first proviso to Subsection (5) extends further thirty days if the High Court, upon entertaining an appeal after expiry of the thirty days, is satisfied that the appellant had sufficient cause for not preferring an appeal within the period of thirty days. Second proviso to Subsection (5) goes further to provide that no appeal shall be entertained after the expiry of period of ninety days.
3. We have considered the averments made in the application, objections filed thereagainst by respondent and the submissions made by the learned counsel for the parties.
4. Sufficient cause has been shown by applicant/appellant for condoning the delay of 57 days, after deducting 90 days as is provided under Subsection (5) of Section 21 of the Act. Resultantly, the delay of 57 days in filing the appeal is condoned. CM disposed of.

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5. As already mentioned above, this appeal is directed against the order/judgement dated 3rd January 2025, by which the respondent has been discharged from the commission of offences punishable under Section 171-C, 171-F RPC and 13 ULA(P) Act.
6. Briefly put, the facts leading to filing of the present appeal are that on 8th November 2013, a docket was received by police station Kupwara from incharge police patrolling party deputed at Bazar Kupwara, in which it was reported that while performing patrolling/law and order duty, the police party noticed that a procession was taken out by the separatist Hurriyat front-runner Syed Ali Shah Geelani along with Mohd Yousuf Lone – respondent herein, and that the participants in the procession were raising slogans against the unity and integrity of India and were inciting the public for challenging India's territorial sovereignty; due to which the procession turned into a mob and pelted stones at the security forces. On receipt of this information, FIR no.279/2013 was registered and investigation set into motion. Upon completion of investigation and after obtaining sanction from competent authority, the charge sheet was laid before the court of competent jurisdiction. It is by virtue of order/judgement impugned that respondent has been discharged of the offences punishable under Section 13 of Unlawful Activities (Prevention) Act ["UAPA"] and Sections 171-C and 171 of Ranbir Penal Code ["RPC"]. Aggrieved thereof, appellant is before us with this appeal.
7. We have heard learned counsel for parties and considered the matter. We have perused the impugned order and gone through the record.

8. The grievance of the appellant, which is stoutly pressed into service by learned Sr. AAG, is that the Trial Court has passed the order impugned in a completely mechanical manner, more particularly when there was ample evidence contained in the charge sheet, which remained unappreciated by the Trial Court, resulting in wrongful discharge of accused/respondent under Section 13 of UAPA. He also avers that the slogans raised by the mob led by accused/respondent were aimed at seceding the territory of Jammu and Kashmir from the Union of India and that the spoken words, gestures and the violence that erupted thereafter as documented in the charge sheet, clearly attracted the ingredients of an unlawful activity but the Trial Court, without making an iota of discussion or even a passing reference to this vital material, erroneously concluded that no prima facie case was made out vis-à-vis the commission of offence punishable under Section 13 of UAPA. It is also the contention of appellant that accused/ respondent was an active member of Hurriyat Conference and at the relevant time was leading the mob along with its Chairman, Syed Ali Shah Geelani. The avowed object of this banned organization has consistently been to secede the territory of Jammu and Kashmir and Ladakh from the Union of India and accede it with Pakistan, which fact was specifically argued before the trial Court, but even this important aspect remained unappreciated by the trial Court while passing order impugned. It is also stated by appellant that the slogans raised and activities carried out by accused/respondent during unlawful procession were directly aimed at challenging the unity, integrity and sovereignty of India, thereby constituting an unlawful act under Section 13 of UAPA and that the Trial Court has erred in holding

that there was insufficient material to frame the charges under Section 13 of UAPA, despite the fact that sanction under Section 45 of UAPA had been duly obtained from competent authority, which undoubtedly reviewed the whole investigation before the accord of sanction.

9. *Per contra*, learned counsel for the respondent supported the impugned order, by submitting that charge sheet/challan no.73/2023 was filed on 21st November 2022 in a criminal investigation, which spread over a period of nine years, and after a trial extending for further three years while examining statements of witnesses and material on record, the accused/respondent was found innocent and discharged by order impugned. It is also stated by learned counsel for respondent that the case was argued at charge/discharge stage and the stand was taken by accused that Financial Commissioner (Home) was not competent to grant sanction for prosecution in the matter under Section 13 of ULA (P) Act in terms of Section 45 (2) of ULA (P) Act. The Trial Court also considered existence of prima facie case in light of material produced by appellant, to form an opinion whether a prima facie case existed and after arriving at subjective satisfaction that in light of material on record there was no probability of arriving at the conclusion that charge could be framed, the order impugned came to be passed, discharging the accused/ respondent of the commission of offences punishable under Section 13 UAPA and Section 171-C, 171-F RPC.

10. At the outset, it is necessary to recapitulate the legal parameters governing discharge of an accused upon opening of the case for prosecution. Section 227 of the Code of Criminal Procedure (Cr.P.C.) in unequivocal terms provides that if, upon consideration of the record of

the case and the documents submitted with the case, and after hearing submissions of the accused and prosecution, the court considers that there is not sufficient ground to proceed against accused, the court shall discharge the accused but reasons for discharge of accused should be recorded. However, if after consideration of the case and material on record and hearing the parties, the court is of the opinion that there is ground for presuming that accused has committed the offence(s) which is triable by the court, he may frame a charge against the accused as is provided under Section 228 Cr.P.C.

11. Conjoint reading of two provisions, viz. Section 227 and 228 Cr.P.C., abundantly provides that at the beginning and at the initial stage of trial, the truth, veracity and effect of evidence which the prosecution 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 necessary for the court, 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 Sections 227 or 228 Cr.P.C. The Court, at that stage, is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for

presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused.

12. The Hon'ble Supreme Court in the case of *State of Bihar v. Ramesh Singh, (1977) 4 SCC 39*, has categorically held that at the stage of framing of charge, the Judge is not expected to conduct a mini-trial or to weigh the pros and cons of the material on record. The court is only required to consider the broad probabilities of the case, the total effect of the evidence and the documents produced, and determine whether a prima facie case is made out. If the material placed on record, if accepted at its face value, is sufficient to proceed against the accused, discharge cannot be granted.

13. In *Union of India v. Prafulla Kumar Samal and another, 1979 (3) SCC 4*, the Supreme Court summarized the following principles governing framing of charge under Section 227 Cr.P.C.:-

“10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:

(1) The Judge while considering the question of framing the charges under Section 227 of the Code 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.

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

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under Section 227 of the Code, the Judge which under the present Code is a senior and experienced court cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced

before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

14. In the case of *Sajjan Kumar v. CBI, (2010) 9 SCC 368*, the accused was alleged to have instigated and led a mob during the 1984 riots. The Hon'ble Supreme Court held that at the charge stage the court is not to weigh the material as if conducting a trial and that a strong suspicion arising from material on record, even where a fuller assessment of its truth is reserved for trial, suffices to frame a charge, and that discharge is warranted only where the material gives rise to mere suspicion, as distinguished from grave suspicion. The facts of the present case, involving an accused/respondent alleged to have led a mob and incited it, are closely analogous, and the same standard ought to have governed the Trial Court's approach.

15. The case of *Asim Shariff v. National Investigation Agency, (2019) 7 SCC 148*, being a case in which the Hon'ble Supreme Court examined a discharge application arising from a Special Court constituted under the NIA Act, involving offences under the UAPA. The Supreme Court reiterated that a Judge considering framing of charge has the power to sift and weigh evidence only for the limited purpose of ascertaining whether a prima facie case is made out, and that where the material discloses grave suspicion not properly explained by the accused, the court is justified in framing the charge and leaving the merits to be tested at trial.

16. In *M. E. Shivalingamurthy v. Central Bureau of Investigation, AIR 2020 (2) SCC 768*, again the principles were reiterated that while deciding discharge, only the material brought on record by the

prosecution, both in the form of oral statements and documents, have got to be considered. The accused is entitled to discharge only if the statements recorded under Section 161 CrPC, which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted without being challenged in cross-examination or rebutted by the defence, cannot show that the accused committed an offence, there a case of discharge can be said to be made out.

17. It is well settled, and indeed has correctly been recorded by the Trial Court as well in paragraph 04 of the order impugned that at the stage of framing of charge the court is not required to hold a mini-trial or to weigh the evidence as if adjudicating the guilt. The test is whether on the material placed on record, a strong suspicion arises that the accused has committed the offence alleged. Reliance is placed on *Prafulla Kumar Samal* (supra), and *State of Orissa v. Debendra Nath Padhi*, (2005) 1 SCC 568, for the proposition that the court is not to conduct a roving or meticulous inquiry into the evidence, and also on *Vijayan v. State of Kerala*, (2010) 2 SCC 398, for the guiding principles summarised therein including that the trial judge is not a mere post office of the prosecution, that a strong suspicion suffices to frame a charge, and that only where the material gives rise to suspicion alone, as distinguished from grave suspicion, is discharge warranted.

18. Having correctly stated this principle, the Trial Court, however, did not apply it in substance while passing the order impugned. Instead of confining itself to the limited enquiry as to whether the charge-sheet material, taken at face value, discloses the ingredients of Section 13

UAPA read with Section 2(o) thereof, the Trial Court appears to have proceeded to conclusively hold that the ingredients of unlawful activity were not made out which is a finding more appropriate to the trial stage than to the stage of charge.

19. Perusal of the record would reveal that in the present case, the prosecution case, as also recorded in the impugned order, is that on 8th November 2013, a mob headed by respondent and Late Syed Ali Shah Geelani, chairman of the banned Hurriyat Conference, came out of Jamia Masjid, Kupwara, raised antinational slogans against the Government of India, and pelted stones on police/security forces, with the separatist leaders also instigating the general public against the sovereignty and territorial integrity of the Union of India.

20. Section 2(o) of UAPA defines “unlawful activity” to include, *inter alia*, any action taken by an individual or association, whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise, which is intended, or supports any claim, to bring about the cession of a part of the territory of India from the Union, or which incites any individual or group to bring about such cession, or which questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India. The sloganeering for secession, raised by an accused leading a mob in the company of the head of a proscribed separatist organisation, and coupled with incitement of the public and violence against security forces, is capable, on a prima facie appreciation, of falling squarely within this definition.

21. The Trial Court has recorded, in a single sentence in paragraph 06 of the order impugned, that the facts “do not fulfil the ingredients of Sections

2(o) of ULA(P) Act” without setting out the reasoning by which the specific statements/conduct attributed to the respondent in the charge-sheet were tested against the statutory definition. This amounts to a bare conclusion rather than a reasoned finding. The material with charge-sheet, including the recorded slogans, the leadership role attributed to respondent, and the resultant violence, at the very least, discloses a strong suspicion sufficient to put the respondent on trial for the offence, leaving the question of whether the ingredients are ultimately proved to be examined at trial and not foreclosed at the threshold.

22. It is trite that an order of discharge must reflect application of judicial mind to the material on record, and that the findings at the charge stage, though summary, cannot be conclusory. However, it is abundantly clear from perusal of the order impugned that the same does not indicate that the specific contents of the charge-sheet, the statements of the witnesses to the procession, the site plan, and the material, alleged to link the respondent to the incitement and the resultant violence, were tested against the ingredients of Section 13 read with Section 2(o) of the UAPA before the conclusion of non-applicability was recorded. On this ground the order impugned is unsustainable and calls for interference.

23. At this stage, we do not make any definitive finding on the guilt or innocence of the respondent, nor are we expressing any opinion on the ultimate merits of the case. However, when specific material is brought on record that, on the face of it, discloses the commission of an offence and the complicity of the respondent, the Trial Court cannot act as a mute spectator and shut the doors of trial without assigning valid legal reasons.

24. In view of the above, the impugned order cannot be sustained in the eyes of law. The Criminal Appeal is, accordingly, allowed. The order dated 3rd January 2025, passed by the court of Additional District & Sessions Judge (Designated Special Court under NIA Act) Kupwara, in case titled “*State through SHO P/S Kupwara v. Mohd Yousuf Lone and another*”, in connection with FIR no.279/2013 under Section 148, 336, 171-C, 171-F RPC and 13 ULA(P) Act of police station Kupwara, is **set-aside**. As a result of which, the charge-sheet shall stand restored with a direction to the Trial Court to proceed with the framing of charge against respondent afresh after considering the material placed on record by the appellant and pass a reasoned order in accordance with law after providing an opportunity of hearing to both sides.

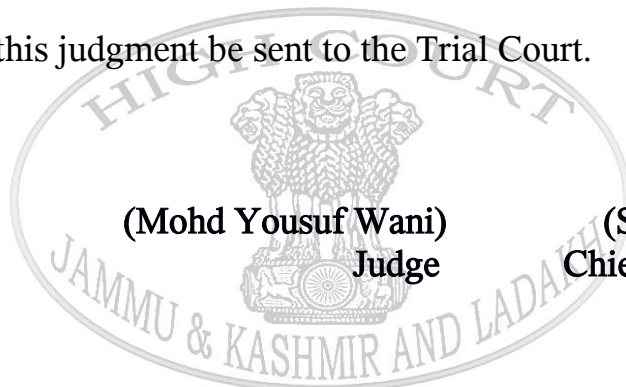
25. Disposed of.

26. Let a copy of this judgment be sent to the Trial Court.

Srinagar

27.08.2026

Ajaz Ahmad, Secy



(Mohd Yousuf Wani)
Judge

(Sanjeev Kumar)
Chief Justice (Acting)

Whether approved for reporting? Yes