

Certified copy of order dt. 05/09/26 in case
title Azhar Khan v/s Sunil Singh Jasotia & ors in
the matter of application u/s 175(3) of BNS.

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IN THE COURT OF CITY JUDGE/JMIC JAMMU

CNR NO. JKJM030133902025

File No.13383/2025

D.O.I: 24.11.2025

D.O.O: 05.09.2026

Azhar Khan, age 31 years

S/o Sh. Munshi Khan

R/o H.No.33, Behind SKODA Showroom,

Channi Himmat, Jammu.

.....Applicant

**(Through: Sr.Advocate Aseem Sawhney &
Associates)**

V/s

1. Sunil Singh Jasotia (then Sub-Divisional Police Officer, Gandhi
Nagar, Jammu, now suspended)

And his PSOs and other police personnel.

.....Proposed Accused

2. SHO Police Station Gandhi Nagar, Jammu.

IN THE MATTER OF:-

Application under section 175 (3) BNS for directing
respondent no. 2 SHO Police Station Gandhi Nagar for
directing to register FIR against respondent no. 1/
accused under Sections 119, 124(1), 125 (2),
130,131,133, 222, 136, 349(2), 354(1), BNS 2023 and
Section 3 of SC/ST Act for physically assaulting,
beating, causing hurt, abusing, wrongfully
restraining/abducting, criminally intimidating, defaming
and confining the complainant and his team member
10.11.2025 and obstructing from doing public duties
relating to bye election in Nagrota in compliance with
the celebrated judgments of the Supreme Court of India
in Lalita Kumari V/s State of UP and Priyanka
Srivastava V/s State.

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City Judge, Jammu**

CORAM:-Ch. Ghulam Murtaza UID No. JK00239

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ORDER

1. The instant application came to be filed before this Court after the same was transferred to this Court by the Ld. CJM Jammu on 24/11/2025, for disposal under law.
2. Brief facts leading to the institution of the instant application are reproduced herein below:
 - (i) The applicant/complainant is a JKAS presently posted as Block Development Officer, Nagrota and is seeking registration of FIR against respondent no. 1- Sunil Jasrotia, DySP Sub Divisional Police Officer, City South Jammu for offences committed against complainant on 10.11.2025 which are cognizable in nature and therefore under law and the SHO respondent no. 2 was required to register an FIR but has failed to do so against the accused who is a DySP and his PSOs, therefore the present complaint under 175 (3) BNSS 2023.
 - (ii) As a matter of fact complainant/ victim was appointed as the Nodal Officer for transportation vide order no. RO/Nag/BE2025-26/32-33 dated 13.10.2025 (copy enclosed) for conduct of Bye elections to 77- Nagrota Assembly Constituency which is to be held on 11.11.2025.
 - (iii) That on 10th of November at 12:10 PM, while executing his official responsibilities regarding elections in Nagrota complainant alongwith his team under the supervision of the District Election Officer, was inspecting the transport routes, near the distribution centre to ensure proper movement of polling parties in light of scheduled election on 11th of November, 2025. During this process, complainant met with a minor road accident on a nearby road. At the accident site, accused respondent no. 1 Sunil Jasrotia, (Sub Divisional Police Officer, City South Jammu) arrived.
 - (iv) That despite complainant clearly and repeatedly informing respondent no., that complainant was on election duty under written orders, accused no. 1 started shouting, misbehaving, intimidating, defaming and using abusive language in full public view along with his team/PSOs. Without any provocation or justification, respondent no. 1 brutally slapped and kicked complainant on the road, causing hurt, physical injuries and humiliation, and then forcibly took/abducted complainant in a police vehicle to the police station, where complainant was wrongfully restrained and confined was further beaten, insulted, abused, defamed and threatened with dire consequences and


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obstructed from performing his public duties regarding bye-election. Said accused brutally slapped and kicked the applicant causing hurt, physical injuries, humiliation etc in full public view. Said accused called both the complainant and his colleague Sh Abbas Ali called both applicants dirty abuses/slangs with their caste names i.e. Gujjars and forcibly took the complainant and his colleague into the Police Station where they were wrongfully restrained, confined and their phones were taken away and complainant were beaten, insulted and abused and even the applicants were obstructed from performing their public duties due to this act.

- (v) That it is pertinent to mention here that at the spot, Sh. Abbas Ali, VLW one of the team members of the Transport Team was also manhandled and brutally assaulted by the said accused SDPO and his PSOS whom the complainant does not know personally but can identify. This crime/ incident was also captured in some CCTV footages which may be kindly perused, preserved and used as evidence against accused persons.
- (vi) That the accused have obstructed the complainant who was performing his public duties for conduct of free and fair elections mandated by the Election Commission of India and have caused criminal intimidation, hurt, wrongfully restrain, wrongful confinement, defamation of the complainant which are cognizable offences and therefore the registration of the FIR is mandatory under law, but despite formal written complaint same has not been registered by the concerned SHO Gandhi Nagar/respondent no. 2 as the accused are Police officer/ officials and therefore complainant moved a formal complaint to SSP Jammu requesting to perform his statutory duties but in vain.
- (vii) That as a matter of fact bound by law and the judgment of the Apex Court in Priyanka Srivastav Vs State of UP, the complainant had filed a complaint in Police Station Gandhi Nagar, against accused persons but no FIR was registered. Copy of the Police complaint dated 10.11.2025 filed is attached as ANNEXURE I.
- (viii) That the complainant moved a complaint to the SSP Jammu submitted all these facts before him. The copy of the complaint moved before SSP Jammu dated 11.11.2025 is attached as ANNEXURE II.
- (ix) That despite submitting complaints still the Police officers have failed to perform their duties of registration the FIR in cognizable offence for extraneous considerations. Therefore the violation of the

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mandate of the Supreme Court Judgments (supra).

- (x) An affidavit in support is attached.
3. Upon presentation of the instant application, the Action Taken Report (hereinafter referred to as ATR in short) was called from SHO Police Station Gandhi Nagar, Jammu, and the same was filed on **16.12.2025**.
4. The contents of ATR so filed by SHO Police Station Gandhi Nagar, Jammu are that "on 24-11-2025 a Court order issued by Hon'ble City Judge JMJC, Jammu along with enclosures has been received at P/S Gandhi Nagar Jammu on behalf of complainant Azhar Khan S/O Sh. Munshi Khan R/O H.No. 33 Behind Skoda Showroom, Channi Himmat, Jammu. Undersigned perused the Hon'ble Court Order minutely and found that complainant Azhar Khan has approached the Hon'ble Court with the allegations that undersigned has not lodged the FIR against the above-mentioned respondents on the complaints filed by him before the undersigned. In this regard the detailed factual report on account of applications/complaints filed by the complainant Azhar Khan at Ps Gandhi Nagar is submitted as under:- (1) On 10.11.2025 a complaint was received at Police Station Gandhi Nagar lodged by Azhar Khan S/o Munshi Khan R/o Near Castro Showroom Channi Himmat, Jammu wherein allegations were levelled against DySP Sunil Singh Jasrotia, the then SDPO City South, Jammu and his police team(escort) regarding alleged physical assault, abuse, threats and unlawful detention during election duty. (2) Upon receipt of the complaint, a Preliminary Inquiry was initiated after obtaining due permission from SDPO City South, Jammu vide letter No. 25377-79 dated 11.11.2025 under Section 173(3) BNSS (SC ruling Imran Pratapghari case). During the course of inquiry, the Enquiry Officer visited the spot of occurrence, established a temporary camp at the place of incident and analysis the cctv footage, examined members of the general public, independent witnesses and other relevant persons. E/o also recorded the statement of facts knowing witnesses. (3) As per the statement of witnesses as well as analysis of cctv footage, it has been surfaced that on the date of the incident, a black coloured private car bearing Registration No. JK02CE-0007 was coming from the wrong side near District Police Lines, Jammu in a very rash and negligent manner which was being driven by a person and due to the wrong-side and negligent driving of the said car a collision took place, with a Matador/Minibus bearing Registration No. JK02BG-3776 which was coming from the opposite direction, resulting in damage to both the vehicles. (4) It further came to light that after the collision, two persons alighted from the said car and forcibly entered the Matador/Minibus, whereupon one of them started assaulting and abusing the minibus driver.

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thereby creating panic, traffic congestion and serious obstruction to the general public. In the meantime, a police vehicle happened to pass through the said road and 2-3 uniformed police officials alighted to control the situation but the unknown person who was assaulting the minibus driver used filthy and vulgar language against the police officials, and also physically pushed one of them due to which his wireless set fell down, and also extended criminal threats, uttering words to the effect that "HE WOULD REMOVE THEIR UNIFORMS AND THAT THEY DID NOT KNOW WHO HE WAS". (5) It is pertinent to mention here that at the spot of occurrence, the said person did not disclose his name, parentage, address or official status to police officials. He neither informed the police officials that he was a government servant, nor did he reveal that he was posted as Block Development Officer (BDO), Nagrota. The vehicle being used by him was a private vehicle and did not bear any official sign board, beacon or departmental marking, and he also failed to produce or show any Government identity card or authority documents despite being asked. (6) It was found that DySP Sunil Singh Jasrotia, who was travelling in his official vehicle, intervened into the matter and inquired about the incident and asked the said person to disclose his identity and explain his conduct. However, the said person behaved in an arrogant manner, refused to disclose his identity, pushed the arm of the DySP and threatened him. The situation further escalated when two unknown persons attempted to push and assault the DySP, compelling him to take preventive steps in self-defence and to prevent further breach of peace. (7) In order to maintain the public order and protecting the constitutional rights of others and clear the traffic congestion, DySP Sunil Singh Jasrotia asked the involved person to leave the spot as it causes obstruction to general public but the involved persons instead of leaving the spot started arguing with the DySP Sunil Singh Jasrotia and also provoked him by using abusing language "HE WOULD REMOVE THEIR UNIFORMS AND THAT THEY DID NOT KNOW WHO HE WAS" aur main na tera jaise bohat police officer dekha han tu janta nhi main kon hun aur tuja jaldi pata chal jaya ga main kon hun, and also started assaulting him. On this DySP Sunil Singh Jasrotia used minimal and proportionate/reasonable force against the involved persons in order to maintain the law and order and directed the involved persons to sit in the police vehicle and brought them to Police Station Gandhi Nagar for lawful preventive action. (8) Subsequently, during the course of Inquiry at Ps Gandhi Nagar the said person disclosed his identity as Azhar Khan S/o Munshi Khan R/o Channi Himmat, Jammu and further disclose that he is a JKAS officer, presently posted at Nagrota as Block Development officer (BDO). It was further revealed that although Azhar Khan is a

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government servant and posted as BDO Nagrota, he neither disclosed at the spot nor during initial stages of inquiry that he was engaged in election duty at Polytechnic College, Jammu. He also failed to explain or justify as to what official purpose brought him to the Gandhi Nagar area at the relevant time, particularly when he was not present in an official vehicle and without any visible official insignia or authorization if his duty was in Polytechnic College, Jammu. It is further submitted that in view of the above conduct and to prevent further disturbance to public peace, preventive action under Section 221 BNS was initiated against Azhar Khan, and he was accordingly produced before the Hon'ble Court of competent jurisdiction as per law. (9) During the whole inquiry his conduct remained non-cooperative, as multiple written notices were served upon him to join the inquiry, but he failed to appear and deliberately avoided attending official phone calls made by the Enquiry Officer. (10) It is also came on record that the injured driver of the minibus was sent for medical examination to Gandhi Nagar Hospital, Jammu. Thereafter, the injured driver submitted a written complaint before the SHO, PS Gandhi Nagar, on the basis of which FIR No. 245/2025 under Sections 281/126(2)/115(2)/351(2) BNS was registered and the investigation is going on. (11) From the overall facts, statements of independent witnesses and material collected during the preliminary inquiry, it is revealed that the incident originated due to the wrong-side and negligent driving of vehicle No. JK02CE-0007 by Azhar Khan, and that the subsequent disturbance, assault and obstruction were primarily the result of the aggressive and unlawful conduct of the occupants of the said car. The role of DySP Sunil Singh Jasrotia and his team was found to be in bona fide discharge of their official duties, aimed solely at maintaining law and order, clearing traffic obstruction and preventing breach of peace. Moreover, during the course of the Preliminary Inquiry and analysis of cctv footage at the scene of incident, it was also established that while DySP Sunil Singh Jasrotia was acting in discharge of his official duty and prevent escalation of violence, he used minimal and proportionate force to control the situation on the spot. However, it was further established that the use of such force resulted in simple hurt to the complainant Azhar Khan. The said act prima facie falls within the ambit of Sections 115(2) of the Bharatiya Nyaya Sanhita (BNS). Hence, offence under Sections 115(2) BNS can be substantiate against DySP Sunil Singh Jasrotia, for which a separate Istgasa shall be produced before the Hon'ble Court of competent jurisdiction for further legal proceedings as per law."

Certified to be True Copy of the original, the Ld. Senior Counsel projected his arguments at length and concluded. The application was reserved for orders on

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05.06.2026; however, the proposed accused on 01.06.2026 filed his written submissions. As such, it was deemed appropriate to provide an opportunity to the applicant to respond to the written submissions of the proposed accused. On 05.06.2026, Ld. Senior Counsel for the applicant submitted at the bar that he would not respond to the written submissions filed by the proposed accused; as such, the application be considered on his oral submissions already made.

6. In his written submissions, the proposed accused mainly submits that since the act of use of minimal force committed by him in bona fide discharge of his official duties, as such, a report has to be called from his superior officer in terms of Section 175(4)(a) BNSS and Rule 349 of the J&K Police Rules also has to be considered. The assertions made by the proposed accused/non-applicant No.1 are reproduced herein below:-

- (i) That the present complaint is not maintainable as such liable to be dismissed out rightly. The complainant has levelled baseless allegations against the answering respondent so as to seek the direction for registration of the FIR on the basis of the false and frivolous allegations. It is worthwhile to mention here that the answering respondent was serving as a SDPO City South Jammu on 10.11.2025 was posted as DySP, SDPO South Jammu and was on patrolling duty in the area of responsibility, as there was election of Nagrota Constituency, while conducting patrolling checking in the jurisdiction in view of bye election as well as the security scenario in the UT of J&K. The respondent alongwith the officials reached near police line Jammu in Govt Official Vehicle, Jeep Campus bearing registration no. JK02CE-0007 driven by unknown person while coming from wrong side hit a matador bearing registration no. JK02BG-3776 and caused accident. The driver of the Jeep campus and co-passenger sitting in the jeep came out of the vehicle and started beating the matador driver. The respondent immediately rushed one of his PSO to sort out the matter as the PSO namely SGCT Ajay Kumar, Wireless Operator, with the respondent tried to pacify the matter, both driver and co-driver of the Jeep Car pushed him aside as a result of which the official wireless set fell down. The respondent sensing the gravity of the situation intervened and tried to pacify them, but both the persons started misbehaving and pushing the respondent. The respondent asked them about their identity, the minibus driver disclosed his identity as Chaman Lal S/o Shanker Dass R/o Ward no. 4 Simbli Billawar, the Jeep occupants deliberately refused to disclose their identity despite repeated queries and finally said

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"tumko khud pata chal jayega, tum jaise bahut police officer dekhe hai" and on repeatedly asking them their identity they did not disclose their names. The complainant intentionally and deliberately parked their jeep in the middle of the road causing serious traffic congestion, the respondent and the co-occupant of the said vehicle were asked to move the vehicle aside in order to restore the traffic, however, they refused to comply. The complainant in a defiant manner by stating "Gaadi Kahi Nahi Jaayegi". Thus in view of continued obstruction and non-cooperation the respondent informed the SHO P/s Gandhi Nagar Jammu to reach on spot. In the meantime the occupant of the Jeep attempted to involve an unknown person by asking the respondent to speak on his mobile phone. However when the respondent attempted to take the keys of the vehicle solely to remove the obstruction and to remove traffic congestion, the complainant pushed the respondent aside, thereby obstructing the respondent from performing his official duty. The passengers travelling in the matador were safely shifted to another minibus, the accident hit vehicles were removed, the SHO police station Gandhi Nagar Jammu arrived on the spot, both the occupants of the jeep were shifted to police station Gandhi Nagar and the road traffic was restored. Since the driver of the matador also lodged a complaint against the complainant, consequently the SHO police Station Gandhi Nagar Jammu registered FIR no. 245/2025 for the commission of offence u/s 281, 126, 115(2), 351(2) BNS which has been investigated and the sanction is awaited from the home department for the production of chargesheet against the complainant. The complainant in order to implicate the respondent in a false and frivolous case so as to spoil his career and satisfy his ego with the intervention of the association of KAS Officers as a counter filed a complaint with the police and consequently the police has filed a complaint in terms of Section 115(2) of BNS before the learned 2nd Additional Munsiff Jammu bearing complaint no. 78/2026. It is further submitted that the respondent was obstructed by the complainant from discharging his lawful duty and consequently the respondent entered report for the commission of offence u/s 221 BNS and as such the impugned complaint is a counter to the report registered against the complainant which was culminated into filing of a complaint before

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the court of Ld Passenger Tax Magistrate Jammu.

- (ii) That the complaint is otherwise not maintainable and liable to be dismissed in view of Section 349 of the Police Rules which are statutory in nature and mandatory to be followed which envisages that whenever a Superintendent of police received a complaint against a police officer that he has committed an offence as defined in the RPC now BNS, the substance of the complaint shall be reported immediately to the District Magistrate who will decidewhether the investigation of the complaint shall be conducted by a police officer or by a Magistrate. Though the Hon'ble Court sought the report from the SHO Police Station Gandhi Nagar, but in view of the provisions of section 175 (4) a) the report should have been from the officer superior to the Public servant. Admittedly the respondent was serving as DySP, thus the report should have been summoned from Superintendent of Police.
- (iii) That the allegations levelled in the complaint are arising out of the same transaction, thus in view of the mandate of the law laid down by the Hon'ble Supreme court in Anju Choudhary Vs State of Uttar Pradesh 2013 (6) SCC 384, the expression same transaction from its very nature is incapable of exact definition. It is not intended to be interpreted in any artificial or technical sense. Common sense in the ordinary use of language must decide whether or not in the very facts of the case it can be held to be one transaction. The test which has be applied is whether they are so related to one and another in point of purpose or of cause and effect, or as principle and subsidiary so as to result in one continue action. Since the answering respondent is facing the complaint in the trial which is pending before the court of Ld 2nd Additional Munsiff Jammu for the commission of offence u/s 115(2) BNS, therefore, the separate direction cannot be issued for investigation. As such the complaint is liable to be rejected.
- (iv) That the complaint is otherwise not maintainable in view of the fact that from the bare perusal of the contents of the complaint it prima facie suggest that the complaint does not constitute an offence punishable u/s 115(2) BNS. It is submitted that the Hon'ble Supreme Court in various judgment held that the protection under section 175 (4) of BNSS is not a procedural formality but a substantive statutory safeguard intended to prevent frivolous criminalization of official. It is submitted that once the allegation arises out of official functioning the procedure contemplated u/s 175 (4) of BNSS before directing investigation or registration of FIR, this view has been taken by the Hon'ble

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Supreme Court in the judgment titled Om Parkash Ambedkar Vs State of Maharashtra & Ors in Criminal Appeal No. 352/2020. Thus in view of the law laid down the present complaint deserves to be dismissed.

7. Thereafter, in view of **XXX v. State of Kerala & Ors, 2026 LiveLaw (SC) 85**, a report containing facts and circumstances of the incident in terms of Section 175 (4) (a) of BNSS, as well as compliance with Rule 349 of the J&K Police Rules, was called from the Senior Superintendent of Police Jammu (SSP Jammu, in short), vide Order dated **06.07.2026**.

8. The SSP Jammu accordingly filed his report in compliance with the Order dated 06.07.2026, on **18.07.2026**, which is reproduced herein below:-

A. FACTS AND CIRCUMSTANCES OF THE INCIDENT [Section 175(4)(a) BNSS]

- (i) That on 10.11.2025, a complaint was received at Police Station Gandhi Nagar, Jammu, from the applicant, Azhar Khan S/o Sh. Munshi Khan, R/o Near Castro Showroom, Channi Himmat, Janimo, levelling allegations against Dy SP Sunil Singh Jasrotia, then SDPO City South, Jammu, and his police escort, of physical assault, abuse, threats and unlawful detention during election duty.
- (ii) That upon receipt of the said complaint, and after obtaining due permission from SDPO City South, Jammu vide letter No. 25377-79 dated 11.11.2025, a Preliminary Inquiry was initiated under Section 173(3) of the BNSS, in light of the ruling of the Hon'ble Supreme Court in Imran Pratapgarhi's case.
- (iii) That during the course of the said inquiry, the Enquiry Officer visited the spot of occurrence, examined members of the general public and independent witnesses, analysed available CCTV footage, and recorded statements of persons acquainted with the facts.
- (iv) That as per the statements of witnesses and analysis of the CCTV footage, it was established that on the date of the incident, black-coloured private car bearing Registration No. JK02CE-0007, being driven by the applicant Azhar Khan, was proceeding from the wrong side near District Police Lines, Jammu, in a rash and negligent manner, resulting in a collision with a Matador/Minibus bearing Registration No. JK02BG-3776 coming from the opposite direction, causing damage to both vehicles.

- (v) That it further came on record that after the said collision, the applicant and another person alighted from the car and forcibly

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entered the Matador/Minibus, following which the proposed accused No. 1, Dy.SP Sunil Singh Jasrotia, who arrived at the spot in discharge of his duties connected with the ongoing by-election in Nagrota (which was scheduled to be held on 11.11.2025), intervened to control the situation, clear the traffic obstruction, and prevent a breach of peace.

- (vi) That the applicant, despite being informed that he was on election duty under written orders, failed to cooperate, and it further transpired that the applicant refused to disclose his identity to the proposed accused No. 1 and behaved in a manner requiring preventive action; consequently, proceedings under Section 221 of the BNS were initiated against the applicant, and he was produced before the Court of competent jurisdiction as per law. Despite multiple written notices, the applicant remained non-cooperative during the course of the inquiry and avoided joining the same.
- (vii) That the injured driver of the Matador/Minibus was sent for medical examination to Gandhi Nagar Hospital, Jammu, and thereafter submitted a written complaint before the SHO, PS Gandhi Nagar, on the basis of which FIR No. 245/2025 under Sections 281/126(2)/115(2)/351(2) of the BNS was registered against the applicant, Azhar Khan. The investigation in the said FIR has since been completed, and the outcome thereof is detailed in Para 14 below.
- (viii) That from the overall facts, statements of independent witnesses and material collected during the Preliminary Inquiry, it stands established that the incident originated on account of the wrong-side and negligent driving of vehicle No. JK02CE-0007 by the applicant, and that the subsequent disturbance, obstruction and confrontation were primarily attributable to the aggressive and unlawful conduct of the occupants of the said vehicle.
- (ix) That the role of Dy.SP Sunil Singh Jasrotia and his team, in so far as their intervention at the spot is concerned, was found to be in bona fide discharge of their official duties, aimed at maintaining law and order, clearing traffic obstruction, and preventing breach of peace connected with the conduct of the by-election.
- (x) That, however, upon analysis of the CCTV footage and the material collected during the Preliminary Inquiry, it was also established that while acting in discharge of his official duty, Dy SP Sunil Singh Jasrotia used force which, though intended to control the situation and prevent escalation of violence, resulted in simple hurt being caused to the applicant Azhar Khan. The said act was

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found to constitute an offence punishable under Section 115(2) of the BNS, and appropriate legal action, as detailed in Para 13 below, has since been taken in that regard.

B. COMPLIANCE WITH RULE 349 OF THE J&K POLICE RULES, 1960

- (xi) That in compliance with Rule 349(1) of the J&K Police Rules, 1960, which mandates that whenever the Superintendent of Police receives a complaint against a police officer alleging commission of an offence under colour of his duties, the substance of the complaint shall be reported to the District Magistrate for a decision as to whether the matter is to be investigated by a police officer or by a Magistrate, or disposed of departmentally, the substance of the complaint dated 10.11.2025 filed by the applicant Azhar Khan against Dy SP Sunil Singh Jasrotia is accordingly being reported and forwarded to the District Magistrate, Jammu, for orders as contemplated under the said Rule
- (xii) That, without prejudice to and independent of the reference being made to the District Magistrate, Jammu, under Rule 349(1) ibid, and in view of the finding recorded during the Preliminary Inquiry that the use of force by Dy SP Sunil Singh Jasrotia resulted in simple hurt to the applicant attracting Section 115(2) of the BNS, a separate Istgasa in respect of the said offence has since been prepared and produced before the Hon'ble Court of 2nd Additional Munsiff, Jammu, against Dy SP Sunil Singh Jasrotia, for proceedings in accordance with law.
- (xiii) That, further, the investigation in FIR No. 245/2025 registered at Police Station Gandhi Nagar under Sections 281/126(2)/115(2)/351(2) of the BNS against the applicant, Azhar Khan, in respect of the rash and negligent driving and the incident referred to hereinabove, stands completed, and the final Challan in the said case has been produced before the Hon'ble Court of 3rd Additional Munsiff, Jammu, against the applicant, Azhar Khan, for proceedings in accordance with law.
- (xiv) That in terms of Rule 349(3) of the J&K Police Rules, 1960, an inquiry into the conduct of the police officer concerned shall be caused to be held in accordance with the departmental enquiry procedure prescribed under the Rules, and the outcome thereof, along with the orders of the District Magistrate as and when received, shall be placed before this Hon'ble Court for its information.

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(xv) It is, therefore, respectfully submitted that the facts and circumstances of the incident, as gathered during the Preliminary Inquiry/ATR, together with the steps taken in compliance with Rule 349 of the J&K Police Rules, 1960, including production of the Istgasa against Dy.SP Sunil Singh Jasrotia before the Hon'ble 2nd Additional Munsiff Court, Jammu, and the Challan against the applicant Azhar Khan before the Hon'ble 3rd Additional Munsiff Court, Jammu may kindly be taken record, and the instant application under Section 175(3) of the BNSS may be considered and disposed of in accordance with law and the guidelines laid down by the Hon'ble Supreme Court in *XXX v. State of Kerala & Ors.*, 2026 LiveLaw (SC) 85.

9. The Ld. Senior Counsel also filed his written submissions on **27.08.2026**. Since the proposed accused has already filed his written submissions on **01.06.2026**, as such, the same shall be considered in terms of Section 175 (4) (b) of the BNSS, 2023.

10. Heard and perused the material on record, including the written submissions filed by the proposed accused.

11. Ld. Senior Counsel relies on *XXX v. State of Kerala & Ors*, 2026 LiveLaw (SC) 85, *Upkar Singh v. Ved Prakash & Ors*, 2004 AIR SCW 5017, *Shakti Kumar Pathak v. Rattan Lal Sharma*, 2005 (1) JKC 595, *C. Alavi v. State of Kerala*, 2024:KER:89173, *Rizwan Ahmed Javed Shaikh & Ors v. Jammal Patel & Ors*, AIR 2001 (SC) 2198.

12. In *XXX v. State of Kerala (Supra)*, the Hon'ble Supreme Court while dealing with the provisions contained in Section 175 (4) BNSS, laid down guidelines for Judicial Magistrates as, "**46. Upon receiving a complaint under Sub-section (4) of Section 175, BNSS alleging commission of an offence by a public servant arising in course of the discharge of his official duties, the magistrate may do either of the following:**

46.1 Reading the complaint, if the judicial magistrate is prima facie satisfied that commission of the alleged act giving rise to an offence arose in course of discharge of official duties by the public servant, such magistrate may not have any option other than following the procedure prescribed under Sub-section (4) of Section 175 of calling for reports from the superior officer and the accused public servant.

46.2 Or, on a consideration of the complaint, where the judicial magistrate entertains a prima facie doubt depending upon the circumstances as to whether the offence alleged to have been committed by the public servant arose in the course of discharge of his official duties, such magistrate might err on the side of caution and proceed to follow the procedure prescribed in Sub-section (4) of Section 175.

46.3 Or, where the judicial magistrate is satisfied that the alleged act of offence was not committed in the discharge of official duties and/or it bears no

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reasonable nexus thereto, and also that the rigours of sub-section (4) of Section 175 are not attracted, the complaint may be dealt with in accordance with the general procedure prescribed under sub-section (3) of Section 175."

13. In **Upkar Singh (Supra)**, the Hon'ble Supreme Court observed thus, "A perusal of the judgment of this Court in Ram Lal Narang's case (supra) not only shows that even in cases where a prior complaint is already registered, a counter complaint is permissible but it goes further and holds that even in cases where a 1st complaint is registered and investigation initiated, it is possible to file a further complaint by the same complainant based on the material gathered during the course of investigation. Of course, this larger proposition of law laid down in Ram Lal Narang's case is not necessary to be relied on by us in the present case. Suffice it to say that the discussion in Ram Lal Narang's case is in the same line as found in the judgements in Kari Choudhary and State of Bihar vs. J.A.C. Saldanna (supra). However, it must be noticed that in T.T. Antony's case Ram Lal Narang's case was noticed but the Court did not express any opinion either way. Be that as it may, if the law laid down by this Court in T.T. Antony's case is to be accepted as holding a second complaint in regard to the same incident filed as a counter complaint is prohibited under the Code then, in our opinion, such conclusion would lead to serious consequences. This will be clear from the hypothetical example given herein below i.e. if in regard to a crime committed by the real accused he takes the first opportunity to lodge a false complaint and the same is registered by the jurisdictional police then the aggrieved victim of such crime will be precluded from lodging a complaint giving his version of the incident in question consequently he will be deprived of his legitimated right to bring the real accused to books. This cannot be the purport of the Code.

We have already noticed that in the T.T. Antony's case this Court did not consider the legal right of an aggrieved person to file counter claim, on the contrary from the observations found in the said Judgment it clearly indicates that filing a counter complaint is permissible. In the instant case, it is seen in regard to the incident which took place on 20th May, 1995, the appellant and the 1st respondent herein have lodged separate complaints giving different versions but while the complaint of respondent was registered by the concerned police, the complaint of the appellant was not so registered, hence on his prayer the learned Magistrate was justified in directing the police concerned to register a case and investigate the same and report back. In our opinion, both the learned Additional Sessions Judge and the High Court erred in coming to the conclusion that the same is hit by Section 161 or 162 of the Code which, in our considered opinion, has absolutely no bearing on the question involved. Section 161 or 162 of the Code does not refer to registration of a case, it only speaks of a statement to be recorded by the police in the course of the investigation and its evidentiary value."

14. In **Shakti Kumar Pathak (supra)**, our own Hon'ble High Court of Jammu & Kashmir and Ladakh held thus, "11. Coming to the facts of the case in hand, it is manifest that the petitioner who happens to be a Police Officer is alleged to have

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committed the acts which form the gravamen of the allegations contained in the complaint lodged by the respondent. It is stated in the complaint that complainant was taken to the Police Station, Bhawan and kept in wrongful confinement without any justification, hurled filthy abuses and given merciless beating. In such circumstance, it cannot be held that the acts complained by the respondent against the petitioner have a reasonable nexus with the official duty of the petitioner. It, therefore, follows that the petitioner is entitled to the immunity from criminal proceedings without sanction provided under Section 197, Cr.P.C. However, a similar question came for consideration before the Apex Court in case *Raj Kishor Roy v. Kamleshwar Pandey*, AIR, 2002 SC 2861 and was held as under;

"In this case, as indicated above, the complaint was that the 1st Respondent had falsely implicated the Appellant and his brother in order to teach them a lesson for not paying to him. The complaint was that the 1st Respondent had brought illegal weapon and cartridges and falsely shown them to have been recovered from Appellant and his brother. The High Court was not right in saying that even if these facts are true then also the case would come within the purview of Section 197 Cr.P.C. The question whether these acts were committed/ and/or whether 1st Respondent acted in discharge of his duties could not have been decided in this summary fashion. This is the type of case where the prosecution must be given an opportunity to establish its case by evidence and an opportunity given to the defence to establish that he had been acting in the official course of his duty. The question whether the 1st Respondent acted in the course of performance of duties and/or whether the defence is pretended or fanciful can only be examined during the course of trial. In our view, in this case the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of trial."

15. In **C. Alavi (Supra)**, the Hon'ble High Court of Kerala observed thus, "15. The Privy Council approved the view expressed by the Federal Court in *Hori Ram Singh v. The King Emperor* [1940 SCC Online FC 2 : (1940) 2 FCR 15]. In *Shreekantiah Ramayya Munipalli v. State of Bombay* [(1954) 2 SCC 992 : 1955 (1) SCR 1177], the Supreme Court explained the scope of Section 197 thus:-

"14. Now it is obvious that if Section 197 (1) of the Code of Criminal Procedure is construed too narrowly it can never be applied, for of course it is no part of an official's duty to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning. What it says is "when any public servant is accused of any offence committed by him while acting or purporting to act in the discharge of his official duty" we have therefore first to concentrate on the word

"offence".

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"15. Now an offence seldom consists of a single act. It is usually composed of several elements and, as a rule, a whole series of acts must be proved before it can be established.....

..... Therefore, whatever the intention or motive behind the act may have been, the physical part of it remained unaltered, so if it was official in the one case it was equally official in the other, and the only difference would lie in the intention with which it was done: in the one event, it would be done in the discharge of an official duty and in the other, in the purported discharge of it."

"18. The Supreme Court on the test to be adopted for finding out whether Section 197 of the Code was attracted or not observed thus:-

"17.

..... The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits. What we must find out is whether the act and the official duty are so interrelated that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation."

"20. In *Rakesh Kumar Mishra v. State of Bihar and Others* [(2006) 1 SCC 557], the Supreme Court reiterating the earlier decisions, held thus:-

"12.... The section has, thus, to be construed strictly, while determining its applicability to any act or omission in the course of service. Its operation has to be limited to those duties which are discharged in the course of duty. But once any act or omission has been found to have been committed by a public servant in the discharge of his duty then it must be given liberal and wide construction so far as its official nature is concerned...."

It is therefore, held in *C. Alavi (Supra)*, thus, "27. The facts in the present case are no way similar to the facts considered by the Supreme Court in *Sankaran Moitra v. Sadhna Das* and another (*supra*) and *Rizwan Ahmed Javed Shaikh (supra)* and the facts considered by this Court in *Mossa Vallikkadan (supra)*. It cannot be said that the acts alleged against the petitioner have a reasonable connection with his official duty. It is not that the acts alleged only exceeded what was strictly necessary for the discharge of the duty. A citizen was summoned to a Police Station on a complaint filed by a lady. He alleged that he was brutally ill-treated there by the Inspector. Can these acts be treated as acts in discharge of

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his official duty? How can we say that the act of a Police Officer physically torturing a man at the Police Station is to be treated as part of his official duty? The fundamental test appears to be that the accused can reasonably claim that what he did was by virtue of his office. The accused/revision petitioner cannot claim that what he did was by virtue of his office. It is the quality of the act that is important. The alleged acts, at any rate, would not fall within the scope and range of his official duties. Therefore, he is not entitled to the protection contemplated under Section 197 Cr.PC. I find no reason to interfere with the impugned order. The revision petition stands dismissed."

16. The proposed accused, on the other hand, heavily relies on Rule 349 of the J&K Police Rules, by mainly asserting that the acts complained of have been committed by him and his team in bona fide discharge of his official duty to maintain law and order at the spot and clear the traffic congestion. The ATR filed by SHO, Police Station Gandhi Nagar, and the report of SSP Jammu also support this contention of the proposed accused.

15. On perusal of the instant application in conjoint with the ATR, written submissions of proposed accused No.1 and the report of SSP Jammu, the following picture emerges. As per the ATR, the role of Dy. S.P. Sunil Singh Jasrotia and his team (proposed accused) were found to be in bona fide discharge of their official duties, aimed solely at maintaining law and order, clearing traffic obstruction, and preventing breach of peace. The applicant, on the other hand, contends that he was on election duty under written orders and the proposed accused arrived at the scene, started misbehaving, and brutally assaulted him without any provocation or justification, and forcibly took him to the police station, where he was further beaten and insulted. The ATR further states that the proposed accused was serving as SDPO City South Jammu at the time of the incident. He was on patrolling duty in connection with the by-election and the security scenario. The incident occurred at a public place near District Police Lines, Jammu. The proposed accused intervened to control the situation arising out of a road accident, clear traffic congestion, prevent breach of peace, and maintain law and order. These are all functions that fall within the official duties of a police officer. However, the applicant alleges that he was brutally assaulted, kicked, slapped, and beaten by the proposed accused without any provocation or justification. He also alleges that he was forcibly taken to the police station, wrongfully confined, and further beaten and insulted.

16. In this peculiar matter, unfortunately, the two units of the Executive Wings of the U.T. of Jammu and Kashmir are head-to-head. The reason as to why I am saying head-to-head is that on one hand is

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the applicant, who is a JKAS officer and comes from the Civil Administration and is backed by the same in the form of several applications and representations moved by the superior officers of the applicant with the same set of allegations to the higher authorities, including the IG Jammuseeking appropriate actions against the proposed accused under Criminal Law and Service Law. On the other hand, the proposed accused, who is a JKPS officer, backed by his own hierarchical setup, raised counter-allegations against the applicant and showed the proposed accused in discharge of his duties in bona fide.

17. Be that as it may, we have only to see as to what is the correct position of law given the allegations and counter-allegations reproduced hereinabove. Before going ahead, the following questions have been formulated for the determination and just disposal of the instant application in hand:

- i. **Whether the allegations contained in the instant application disclose any cognizable offence?**
- ii. **Whether the In-charge Police Station Gandhi Nagar, Jammu, given the allegations in the instant application, can initiate the preliminary inquiry into the allegations before registration of FIR?**
- iii. **Whether the act of the proposed accused, as mentioned in the ATR, has been committed in discharge of his official duty?**
- iv. **Whether, given the facts of the case in hand, a counter FIR can be registered out of the same transaction on a rival version?**
- v. **Whether Rule 349 of the J&K Police Rules 1960, is applicable to the instant application?**

18. Let's proceed with **question No.(i)**. Dealing with the application/complaint filed under Section 175(3) or (4) BNSS, what is required to be seen is whether any cognizable offence is disclosed in the allegations contained therein. If the answer is in the affirmative, then the In-Charge Police Station concerned has no option other than registering the FIR and initiating an investigation. If the answer comes in negative, but indicates the necessity for an inquiry, then a preliminary inquiry may be conducted only to ascertain whether a cognizable offence is disclosed or not, as laid down in the Hon'ble Supreme Court's landmark judgment of Lalita Kumari v. Govt. of U.P., AIR 2014 SC 187. The relevant paragraphs read as "**120.1**. The registration of FIR is mandatory under section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation." "**120.2**. If the information received does not disclose a

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cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not."

19. However, there is an exception to the mandatory registration of an FIR as inbuilt in Sub-Section (3) of Section 173 of the BNSS. Sub-Section (3) of Section 173 BNSS provides that on receipt of information relating to the commission of any cognizable offence, which is made punishable for 3 years or more but less than 7 years, the officer In-Charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence, proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of 14 days or proceed with investigation when there exists a prima facie case. The legal position as settled by the Hon'ble Supreme Court in *Lalita Kumari (supra)* still holds ground to date even after the coming into operation of BNSS 2023.
20. Adverting to the application in hand, on bare perusal of allegations contained therein it has been noted that offence of voluntary causing hurt (Section 115 (1) BNS), wrongful confinement (Section 127 (2) BNS), assault or criminal force otherwise than on grave and sudden provocation (Section 131 BNS), offence u/s 3 (r) & (s) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989, among others, are prima disclosed. The offence u/s 127(2) BNS and the offence u/s 3(r) & (s) of The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act, 1989 are cognizable offences. Thus, the question no. (i), is answered in the affirmative.
21. Now turn to **question no. (ii)**. The ATR called from the In-charge Police Station Gandhi Nagar, Jammu, at first instance, reveals that upon receipt of the complaint of applicant Azhar Khan on 10-11-2025, a preliminary inquiry was initiated after obtaining due permission from SDPO City South, Jammu, vide letter no. 25377-79 dated 11-11-2025 u/s 173(3) BNSS in terms of the ruling of the Hon'ble Supreme Court in the **Imran Pratapghari case**. During the course of the inquiry, the Enquiry Officer (EO for short) visited the spot of occurrence, established a temporary camp at the place of incident, and analyzed the CCTV Footage, examined members of the general public, independent witnesses, and other relevant persons. Based on the preliminary inquiry, the EO found that the incident originated due to the wrong-side and negligent driving of vehicle No. JK02CE-0007 by the applicant Azhar Khan, and subsequent disturbance, assault, and obstruction were primarily the result of the aggressive and unlawful conduct of the

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occupants of the said car. The role of the proposed accused No.1 DySP Sunil Singh Jasrotia and his team was found to be in bona fide discharge of their official duties, aimed solely at maintaining law and order, clearing traffic obstruction, and preventing breach of peace. It is also established by the EO that while the proposed accused No.1 was acting in discharge of his official duty and to prevent escalation of violence, he used minimal and proportionate force to control the situation on the spot. However, it was further established that use of such force resulted in simple hurt to the applicant herein. The said act prima facie falls within the ambit of Section 115(2) of the BNS, as such, a separate Istgasa (complaint) shall be produced before the Court of law.

22. The ATR paints a contrary picture to the allegations contained in the instant application. As per the In-charge police Station Gandhi Nagar, Jammu, the proposed accused was acting in discharge of his official duty and to prevent escalation of violence, he used minimal and proportionate force to control the situation on the spot, resulted simple hurt to the applicant which falls with the ambit of Section 115(2) of BNS, for which a separate Istagasa (Complaint) shall be produced before the Court of Competent jurisdiction. However, to the utter surprise of this Court, the said ATR filed by the In-Charge Police Station Gandhi Nagar, Jammu, is completely silent as to what action till date has been taken on the application presented to him U/s 173(1) BNSS; rather, he, by delving into preliminary inquiry, tried to test the veracity of allegations contained in the application in hand by giving a counter-narrative.

23. On this, the legal position has to be seen. The In-Charge Police Station Gandhi Nagar, Jammu, initiated a preliminary inquiry in terms of the Hon'ble Apex Court ruling in **Imran Pratapgarhi**. Before reading the said ruling, it is pertinent to notice here that admittedly the In-Charge Police Station Gandhi Nagar, Jammu, received the complaint of the applicant herein on **10-11-2025** (day of incident), and on **11-11-2025**, preliminary inquiry was initiated on the said complaint after obtaining permission from SDPO City South, Jammu, vide **letter no. 25377-79** dated **11-11-2025**. The point is that nowhere in the ATR, the In-Charge Police Station Gandhi Nagar, Jammu, made any mention as to why he felt the need to initiate a preliminary inquiry, and that too, after obtaining the permission of the SDPO City South Jammu, who at that time was none other than the proposed accused himself. The proposed accused was placed under Suspension vide **Government Order No. 541-Home of 2025 dated 13-11-2025**, as can be seen from the photocopy of the said order placed on record by the applicant herein. At this juncture, it is apt to make it clear that SDPO City South Jammu and SDPO

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Gandhi Nagar Jammu are one and the same thing. In official Jammu and Kashmir Police administrative terminology, SDPO City South Jammu is the formal name of the Sub-Division Gandhi Nagar. Meaning, thereby, on **11-11-2025**, the preliminary inquiry appears to have been initiated by the In-Charge, Police Station Gandhi Nagar, Jammu, on the dictates of the proposed accused, who at that time was in the office of SDPO City South Jammu. To put it simply, in a layman's sense, the proposed accused, though indirectly through the In-Charge, Police Station, Gandhi Nagar, Jammu, becomes the investigator by ordering a preliminary inquiry/investigation, which is a blatant violation of the principles of fair investigation. In Joy v. C.I of Police, 2018(Supreme (Online) (Ker) 51178, the Hon'ble High Court of Kerala held thus, "A police officer cannot investigate a case they are involved in as it violates the principles of fair investigation, leading to a miscarriage of justice."

24. Now, come to the dictum of the Imran Partapgarhi v. State of Gujarat and Another, 2025 LiveLaw (SC) 362, the Hon'ble Apex Court held thus, "42(ii) Under Sub-Section (3) of Section 173 of the BNSS, after holding a preliminary inquiry, if the officer comes to a conclusion that a prima facie case exists to proceed, he should immediately register an FIR and proceed to investigate. But if he is of the view that a prima facie case is not made out to proceed, he should immediately inform the first informant/complainant so that he can avail a remedy under Sub-Section(4) of Section 173." Viewing through the ruling of Imran Partapgarhi (Supra), it is noted that the In-Charge Police Station Gandhi Nagar, Jammu, in terms of Imran Partapgarhi's dictum, delved into a preliminary inquiry, but the ATR so filed by him does not specifically reflect his view that no prima facie case is made out to proceed, nor it appears from it that he immediately informed the complainant in that regard. Meaning, thereby, by following the ruling of Imran Partapgarhi (supra), he appears to have gone against it.

25. This led us to the very important question as to what the scope of Preliminary Inquiry u/s 173(3) BNSS 2023 is. The concept of preliminary inquiry did not find its place in the Code of Criminal Procedure, 1973 (repealed now). It was judicially evolved in Lalita Kumari's case (supra), where the Hon'ble Supreme Court has held as "110..... What is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory.... Other considerations such as genuineness or credibility are matters for investigation, not for registration of FIR." The Hon'ble Supreme Court further observed that preliminary enquiry may be undertaken only in exceptional categories

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like matrimonial disputes, commercial offences, or cases involving abnormal delay. In State of Haryana vs Bhajan Lal, 1992 Supp1 SCC 335, the Hon'ble Supreme Court laid down as "33. It is, therefore, manifestly clear that if any information is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information." The Hon'ble Supreme Court has further cautioned that embarking upon a roving enquiry at the pre-FIR stage would be contrary to the statutory mandate. In Pradeep Nirankarnath Sharma v. State of Gujarat, 2025 SCC Online SC 559, the Hon'ble Supreme Court reiterated as "12. The Scope of a preliminary inquiry, as clarified in *Lalita Kumari*, is limited to situations where the information received does not prima facie disclose a cognizable offence but requires verification. However, in cases where the information clearly discloses a cognizable offence, the police have no discretion to conduct a preliminary inquiry before registration of an FIR....." Then, with the coming into force of the BNSS 2023, a new provision has been introduced in Section 173(3), which provides that on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, the officer in charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence, proceed to conduct a preliminary enquiry within period of fourteen days; or proceed with investigation when there exists a prima facie case.

26. The Hon'ble High Court of Madras in R. Somasundaram V. State of Tamil Nadu, 2025 Supreme (Mad) 5193, while discussing the scope of preliminary inquiry u/s 173(3) BNSS, by relying on *Lalita Kumari's* and *Imran Pratapgarhi's* dictums held that a preliminary enquiry cannot be expanded into a mini-trial or fact-finding process to test the veracity of allegations, its purpose is only to ascertain whether the case falls within the statutory parameters for FIR registration. The relevant paragraphs are reproduced below for reference.

"11. Having considered the materials placed, this Court finds that:

- Under the CrPC, preliminary enquiry was a judicial innovation (*Lalita Kumari's* case *supra*), and not a statutory mandate.
- Under the BNSS, however, Section 173(3) specifically provides for preliminary enquiry in respect of cognizable offences punishable between 3 and 7 years, with prior approval of a Deputy Superintendent of Police, to be concluded within 14 days.

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12. In *Re Imran Pratapgadhi v. State of Gujarat*, CrI.A.No.1545 of 2025, dated 28.03.2025 : 2025 (4) Supreme 40, the Hon'ble Supreme Court has explained the scope of preliminary enquiry under the BNSS as under:

"42. Following is the summary of our conclusions:

- (i) Sub-Section (3) of Section 173 of the BNSS makes a significant departure from Section 154 of CrPC. It provides that when information relating to the commission of a cognizable offence which is made punishable for 3 years or more but less than 7 years is received by an officer-in-charge of a police station, with the prior permission of a superior officer as mentioned therein, the police officer is empowered to conduct a preliminary inquiry to ascertain whether there exists a prima facie case for proceeding in the matter. However, under Section 154 of the CrPC, as held in the case of *Lalita Kumari*, only a limited preliminary inquiry is permissible to ascertain whether the information received discloses a cognizable offence. Moreover, a preliminary inquiry can be made under the CrPC only if the information does not disclose the commission of a cognizable offence but indicates the necessity for an inquiry. Sub-Section (3) of Section 173 of the BNSS is an exception to sub-Section (1) of Section 173. In the category of cases covered by sub-section (3), a police officer is empowered to make a preliminary inquiry to ascertain whether a prima facie case is made out for proceeding in the matter even if the information received discloses commission of any cognizable offence.
- (ii) Under sub-Section (3) of Section 173 of the BNSS, after holding a preliminary inquiry, if the officer comes to a conclusion that a prima facie case exists to proceed, he should immediately register an FIR and proceed to investigate. But, if he is of the view that a prima facie case is not made out to proceed, he should immediately inform the first informant/complainant so that he can avail a remedy under sub-Section (4) of Section 173."

13. At the same time, the caution expressed in *Bhajan Lal's* case (supra) and *Lalita Kumari's* case (supra) continues to hold relevance. A preliminary enquiry cannot be expanded into a mini-trial or fact-finding process to test the veracity of allegations; its purpose is only to ascertain whether the case falls within the statutory parameters for FIR registration."

27. In the matter in hand, the In-Charge, Police Station Gandhi Nagar, Jammu, while delving into preliminary enquiry, has expanded the same into a fact-finding process to test the veracity of allegations contained in

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the instant application, which is not the object of preliminary enquiry in sub-section (3) of Section 173 BNSS. The only purpose of preliminary enquiry under Sub-section (3) of Section 173 BNSS, as explained in **R. Somasundaram (Supra)**, is to ascertain whether the case falls within the statutory parameters for FIR registration.

28. The ATR filed by the In-Charge Police Station Gandhi Nagar, Jammu, also reveals that during the so-called preliminary inquiry, several notices were issued to the applicant, but he did not join the preliminary inquiry. At this juncture, an important question arises as to whether the In-Charge, Police Station Gandhi Nagar, Jammu, being the enquiry officer in the preliminary inquiry, can issue summons/notices to the applicant herein u/s 173(3) BNSS. The answer to this question has also been given in **R. Somasundaram (supra)**. The relevant paras are reproduced herein below for reference;

"14. The next issue is whether summons/notice can be issued at the preliminary enquiry stage.

15. It is trite that issuance of summons to witnesses is governed by Section 179 BNSS (Section 160 CrPC), which is applicable only during the course of investigation. Section 179 BNSS reads as under:

"179. Police officer's power to require attendance of witnesses.— (1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required."

16. The above provision makes it clear that the summoning of witnesses can be done by the police officer only during the process of investigation and investigation, as defined under Section 2(l) BNSS, commences only after registration of an FIR.

17. In **Ashok Kumar Todi v. Kishwar Jahan**, (2011) 3 SCC 758, the Hon'ble Supreme Court has held as under:

"48. Under the scheme of the Code, investigation commences with lodgement of information relating to the commission of an offence. ... The officer-in-charge has no escape from registering it if the offence mentioned therein is a cognizable offence."

18. In **H.N. Rishbud v. State of Delhi**, AIR 1955 SC 196, the Court explained the steps of investigation as including:

"... (1) proceeding to the spot, (2) ascertainment of facts, (3) discovery and arrest of suspected offender, (4) collection of evidence by

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examining persons and reducing their statements to writing, and (5) formation of opinion and filing of chargesheet."

19. Thus, it is clear that the examination of persons and recording of their statements by the police officers is a part of investigation under the code. The process of investigation begins only after the registration of the FIR and the purpose is to collect evidence that are admissible in court, bring out the undisclosed facts and build a case which results in submission of chargesheet.

20. In fact, this Court in **Prakash Transports v. Inspector of Police, 2004 (1) CTC 130** has held that summons under Section 160 CrPC (now 179 BNSS) can be issued only when an investigation is being conducted after an FIR is registered under Section 154 CrPC and the relevant portion is extracted as under:

"2. ... it is not understandable as to how he should issue summons, since under Section 160, Cr.P.C., summons could be issued by any police officer making an investigation under that Chapter, which means that investigation is a sine qua non for issuing summons and the investigation can be conducted only in connection with the crime registered in terms of Section 154 Cr.P.C. Since there is no crime registered in terms of Section 154 Cr.P.C., no summons can be issued under Section 160, Cr.P.C., summoning a person to appear before the officer."

23. Therefore, the practice of summoning parties during the preliminary enquiry stage cannot be sustained in law. Recognising such a practice would encourage "kangaroo courts" or "katta panchayats" under the guise of enquiry.

24. Accordingly, this Court holds as under:

- (i) Summons/notice cannot be issued during preliminary enquiry.
- (ii) The scope of preliminary enquiry is confined to perusal of the complaint and supporting materials furnished by the complainant.
- (iii) If a cognizable offence is disclosed, the police shall register an FIR forthwith and proceed with investigation.
- (iv) Any enquiry under Section 173(3) BNSS must be completed within 14 days, after approval from a DSP, and the result communicated to the complainant."

29. Viewed through **R. Somasundaram (supra)**, it has been made clear that the scope of preliminary enquiry is confined to the perusal of the complaint and supporting materials furnished by the complainant. And if a cognizable offence is disclosed, the police shall register an FIR forthwith and proceed with the investigation. No summons/notice can be

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issued during preliminary enquiry, as has been done in the matter in hand by the In-Charge, Police Station Gandhi Nagar, Jammu.

30. The same view has also been taken in **Miss Linu Kato v/s State, 2026 Supreme (Gau) 581**. In Miss Linu (Supra), the Hon'ble Gauhati High Court held that "summons u/s 179 BNSS cannot be issued during preliminary enquiry without FIR registration, as power exercisable only during investigation commencing post FIR."

31. Viewed thus, the preliminary inquiry in the matter in hand appears to have been initiated in derogation of the legal position as discussed above by testing the veracity of the allegations against the proposed accused, which is not in the domain of the police, to build a counter-narrative as projected in the ATR. Be that as it may, one thing becomes crystal clear that by delving into the arena of testing the truth and falsehood of the allegations, the In-Charge Police Station Gandhi Nagar, Jammu, has gone against the mandate of law. The so-called preliminary inquiry conducted in the matter at hand cannot be said to be legally recognized in view of the above-discussed legal position. Even otherwise, the preliminary enquiry shall not be required for registration of an FIR against any person who is alleged to have committed any offence under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, in terms of Section 18A (1) (a) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. In the matter in hand, as already discussed above, that perusal of the allegations made in the instant application prima facie discloses one of the offences, as punishable u/s 3(r) & (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; as such, there was no statutory necessity for initiating preliminary inquiry into the allegations contained in the instant application. Hence, the question no. (ii) is answered in the negative.

32. **Question No. (iii) & (v)** are interlinked with each other; as such, they are taken together to be dealt with. At the outset, the scope of Rule 349 of the Police Rules 1960, under which the proposed accused is taking refuge, must be examined. Rule 349 is reproduced herein below for reference:

"Rule 349. Criminal offence by police officers and strictures by Court:

(1) Whenever a Superintendent of Police receives a complaint against a police officer that under colour of his duties he had committed an offence, as defined in the Ranbir Penal Code, the substance of the complaint shall be reported immediately to the District Magistrate who will decide whether the investigation of the complaint shall be conducted by a police Officer or

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by a Magistrate. If he decides that the investigation of a trial or an inquiry under the Criminal Procedure Code should be held by a Magistrate, he shall proceed according to the instructions laid down in the Guidance of Courts subordinate to the High Court. These instructions are quoted in Appendix XII.

(2) When the District Magistrate decides that the matter shall be disposed of departmentally, the procedure prescribed in these rules for the holding of department enquiries shall be followed.

(3) An inquiry shall be made in every case in which the conduct of a police officer is censured by a court (vide Appendix XIII). In all such cases, a copy of the judgment shall be sent to the District Magistrate who shall decide whether an inquiry is to be made departmentally or by a Magistrate. When such inquiry indicates the commission of an offence as defined in the Ranbir Penal Code, the procedure laid down in sub-rule (1) shall be followed. Where departmental inquiry is ordered, the result of the departmental inquiry shall be communicated to the District Magistrate.

(4) Under rule 1(6) of Chapter XVI of the Rules and Orders (Criminal) for the Guidance of Courts Subordinate to the High Court, Magistrates are required to exercise care in making entries of censure on police officers in their judgments, and it is desirable that they should make remarks in criminal cases censuring the action of police officers only if they are supported by evidence given in the course of trial and are material to the decision. If remarks to which exception can be taken come to notice, they should be referred in the first instance to the District Magistrate."

33. In **Mohammad Yaseen and anr v. State of J&K, CRMC No. 461/2018**, while dealing with Rule 349, our own Hon'ble High Court observed thus, "22. That takes us to the second contention raised by the petitioners, which relates to applicability of the provisions contained in Rule 349 of the J&K Police Rules and the consequences of non-adherence to the said provisions. In the first instance, it would be necessary to notice the provisions contained in Rule 349 of the J&K Police Rules. The same are reproduced as under:

Criminal offence by police officers and strictures by Court (1) Whenever a Superintendent of Police receives a complaint against a police officer that under colour of his duties he had committed an offence, as defined in the Ranbir Penal Code, the substance of the complaint shall be reported immediately to the District Magistrate who will decide whether the investigation of the complaint shall be conducted by a police Officer or by a Magistrate. If he decides that the investigation of a trial or an inquiry under the Criminal Procedure Code should be held by a Magistrate, he shall proceed according to the instructions laid down in the Guidance of

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Courts subordinate to the High Court. These instructions are quoted in Appendix XII.

(2) When the District Magistrate decides that the matter shall be disposed of departmentally, the procedure prescribed in these rules for the holding of department enquiries shall be followed.

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23. From a perusal of the aforesaid rule, it comes to the fore that where a Superintendent of Police receives a complaint against a police officer that under the colour of his duties he has committed an offence as defined in the Ranbir Penal Code, he has to submit a report to the District Magistrate, who has to decide whether the investigation of the complaint has to be conducted by a police officer or by a Magistrate. If the District Magistrate decides that investigation or trial or an inquiry should be conducted by a Magistrate in that case, the Magistrate has to proceed in accordance with the instructions laid down in the rules and orders (Criminal) for guidance of courts subordinate to the High Court which are quoted in the appendix of J&K Police Rules. The relevant portion of the appendix is reproduced as under:

"Whenever a complaint is filed against police officer that under the colour of his duties he has committed an offence as defined in the Ranbir Penal Code, the Magistrate, unless he is himself a first class Magistrate, shall record the statement of the complainant and report the case at once to the District Magistrate to whom he may be subordinate. He will direct the complainant to appear before him on a date to be fixed with due regard to the time by which he may hear from the District Magistrate. On the appearance of the complainant, the Magistrate shall inform the

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complainant of orders passed by the District Magistrate. The District Magistrate on receipt of such a report as to a complaint will either hear the case himself or transfer it to a Magistrate with first class powers who will proceed according to law.

If the Magistrate be himself a Magistrate of the first class he will report the substance of the complaint against the police officer to the District Magistrate and will proceed with the case in accordance with the law.

The Magistrate hearing the complaint shall send the copy of it to the Deputy Inspector General of Police for his information.

No case against the police officer shall be tried summarily."

24. As per the afore-quoted instructions, if the Magistrate before whom a complaint is filed against a police officer that he has committed an offence defined in Ranbir Penal Code under the colour of his duties, such Magistrate has to record statement of the complainant and report the substance of the complaint against the police officer to the District Magistrate to whom he may be subordinate and thereafter proceed with the case in accordance with law."

It is held in **Mohammad Yaseen and anr (Supra)**, thus, "33. From the foregoing analysis of legal position, it is clear that provisions contained in Rule 349 of the J&K Police Rules is mandatory in nature and unless the substance of complaint against a police officer, who is alleged to have committed an offence under Ranbir Penal Code under the colour of his duties, is reported to the District Magistrate either by the police or by the Judicial Magistrate first class before whom the complaint against such police officer is made, the action of the police or the Judicial Magistrate first class would become invalid."

34. On plain reading of Rule 349 of the J&K Police Rules, 1960, and the dictum of **Mohammad Yaseen (supra)**, it is noted that the same is applicable viz-à-vis offences punishable under the **Ranbir Penal Code** of the erstwhile State of Jammu and Kashmir (**RPC**, in short, which is now repealed) committed by the police personnel under the colour of their duties. Thereafter, the **Indian Penal Code, 1860 (IPC)** in short, after the **RPC** was repealed, was made applicable to the U.T of J&K, and the said **IPC** has also been repealed and is now replaced by the New Criminal Law, i.e., **BNS 2023**, which came into force on **01-07-2024**. The offences alleged against the proposed accused are offences under the **BNS, 2023**, and the **Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989**, but not under the **RPC**. Moreover, the facts of the case **Mohammad Yaseen (Supra)** are

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distinguished as compared to the facts in hand; as such, Rule 349 of the J&K Police Rules, 1960, is not applicable to the present case.

35. Further, it appears that the SSP Jammu, in his report filed under Section 175(4)(a) BNSS, stated that he, by resorting to Rule 349, has referred the matter to the DM Jammu, but here is a catch, as per Rule 349, when a complaint filed to him i.e., SSP Jammu, that a subordinate police officer has committed an offence under RPC, he has to forthwith send matter to the DM, but in this case the SSP did not do so until the report in terms of section 175(4)(a) BNSS was called from him. On this delay, there is no mention in his report as to why the matter was not sent to the DM Jammu promptly. Be that as it may, from the above discussion and on plain reading of Rule 349 and the dictum of **Mohammad Yaseen (supra)**, this court is of the considered opinion that if the offence committed is under **RPC** by the police officer under the colour of his duty, then Rule 349 shall come into picture and if the offence committed is under **BNS, 2023** the same will not apply. It is also pertinent to mention herein that the District Magistrate Jammu, to whom the SSP Jammu has referred the matter by resorting to Rule 349 as per his report in terms of Section 175(4)(a) BNSS, in his **letter No. DMJ/LO/25-26/3034-37, dated 10.11.2025**, addressed to the Divisional Commissioner, Jammu, as placed on record by the applicant, has acknowledged on the representation of the applicant herein related to the assault, wrongful confinement, hurling of abuses etc., by the proposed accused on the applicant herein, that **"the allegations are serious in nature, particularly as they pertain to misconduct and assault on a government officer on election duty, which, if found correct, would amount to violation of provisions of the Bharatiya Nyaya Sanhita, 2023 as well as breach of service norms."**

36. This takes us to the next question as to whether the acts committed by the proposed accused have any reasonable nexus with the discharge of their official duties. The story as projected by the proposed accused in his assertions in conjoint with the report of the In-Charge Police Station Gandhi Nagar, Jammu, and the SSP Jammu is prima facie negated by the CCTV footage placed on record by the applicant in a PEN Drive along with a certificate u/s 63 of the Bharatiya Sakshya Adhiniyam, 2023 (BSA, 2023 in short). During the course of arguments, Ld. Sr. Counsel played the CCTV footage in the open court related to the day of the incident. On seeing the said CCTV footage, it is not evident that the applicant became aggressive and pushed away any police official or the proposed accused. However, the said CCTV footage clearly shows the unprovoked assault, beating, etc., by the proposed accused on the

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applicant. And the conduct of the applicant appears to be unprovocative, unlike what is projected in the assertions of the proposed accused as well as the report of the In-Charge Police Station Gandhi Nagar, Jammu, and the SSP Jammu. It is clearly evident from the CCTV footage played in court that the proposed accused, accompanied by his PSOs, caused hurt to the applicant, who did not provoke them. Further, it is an admitted fact that the applicant was taken into custody and was brought to the Police Station Gandhi Nagar, Jammu, which prevented him from going to his place of special duty for the election on the day of the incident. These acts of the proposed accused are not part of their official duty and thus have no reasonable nexus with the official duty of the proposed accused in the light of **Shakti Kumar Pathak (supra)**. The dictum of **Shakti Kumar Pathak (supra)** is squarely applicable to the facts and circumstances of the case in hand, where our own Hon'ble High Court observed that "It is stated in the complaint that complainant was taken to the Police Station, Bhawan and kept in wrongful confinement without any justification, hurled filthy abuses and given merciless beating. In such circumstances, it cannot be held that the acts complained by the respondent against the petitioner have a reasonable nexus with the official duty of the petitioner." Further, it is also made clear in **XXX v. State of Kerala (supra)**, that where the judicial magistrate is satisfied that the alleged act of violence was not committed in the discharge of official duties and/or it bears no reasonable nexus thereto, and also that the rigours of sub-section (4) of section 175 are not attracted, the complaint may be dealt with in accordance with the general procedure prescribed under sub-section (3) of section 175. Moreover, the question of sanctions for prosecution against erring police officials is relevant at the cognizance stage, but not at the stage of FIR registration. Thus, the question Nos. (iii) & (v), are answered in negative.

37. Now, comes the **question No. (iv)**. The facts emerging from the ATR, assertions of the proposed accused, and the report of the SSP Jammu, are that the driver of the minibus submitted a written complaint before the SHO Police Station Gandhi Nagar, Jammu, on the basis of which an FIR No. 245/2025 u/s 281/126 (2)/115(2)/351(2) BNS was registered against the applicant Azhar Khan who is accused in that FIR. In addition to it, the police have filed a complaint for the offence u/s 115(2) of BNS before the Court. The simple question to be answered herein is whether a separate direction for investigation on the rival version of the applicant herein can be given. This point has been addressed by the Hon'ble Supreme Court in **Upkar Singh (supra)**, wherein it was observed that where the counter-complaint arises out of

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the same transaction, both the complaints should be registered and investigated together.

38. In the case at hand, the applicant's version is that on 10.11.2025, near District Police Lines, Jammu, he was assaulted, abused by his caste name, and confined by the proposed accused and other police officials. The counter version to this is that the applicant assaulted the minibus driver, caused obstruction, and behaved aggressively. On their combined reading, it can be easily discerned that both versions arise out of the same incident. The police registered the version of the driver of the minibus, but refused to register the version of the applicant, which appears to have been made first on the day of the incident, thereby denying him his legitimate right to bring the real accused to book in terms of the dictum of **Upkar Singh (supra)**. Thus, it becomes clear that both the above versions arise out of the same transaction. In this scenario, the law requires that both versions, i.e., the applicant's version and the counter-version of the minibus driver, be investigated together. The registration of an FIR on the application of the minibus driver does not preclude the registration of another FIR on the rival version of the applicant herein arising out of the same transaction. The police are duty-bound to investigate both versions. So far as the filing of a separate complaint u/s 115(2) BNS, before the Court of law is concerned, the same is a separate proceeding, and the registration of the FIR against the proposed accused is a separate matter. Therefore, an FIR against the proposed accused on the rival version of the applicant can be registered arising out of the same transaction. Thus, the question No. (iv) is answered in the affirmative.

39. Therefore, in view of the observations made and the law discussed hereinabove, this court is of the considered opinion that the allegations contained in the instant application prima facie disclose the commission of cognizable offences, including offence u/s 3 (r) & (s) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, for which the registration of an FIR is mandatory and no preliminary inquiry is permissible. The preliminary inquiry conducted by the In-Charge, Police Station Gandhi Nagar, Jammu, is legally unsustainable. The court is also of the considered view that the acts attributed to the proposed accused, as seen from the CCTV footage and the applicant's version, do not bear a reasonable nexus to the discharge of their official duties. Furthermore, the registration of an FIR based on the minibus driver's complaint does not preclude the registration of an FIR based on

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10 Consequently, the instant application under Section 175(3) of the BNSS is hereby allowed. Respondent No. 2, the SHO, Police Station Gandhi Nagar, Jammu, is directed to register a First Information Report (FIR in short) against the proposed accused and his PSOs, based on the complaint of the applicant, Azhar Khan, dated 10.11.2025. The investigation shall be initiated forthwith in accordance with the law, including the examination of CCTV footage. The investigation shall be conducted fairly and impartially, without being influenced by the fact that the proposed accused and his PSOs are police officers. The version of the applicant herein contained in his complaint dated 10.11.2025 and the FIR No. 245/2025, shall be investigated together.

41. The SSP Jammu shall ensure compliance of this order and shall also take appropriate action against the erring in-Charge, Police Station Gandhi Nagar, Jammu, for his failure to register the FIR despite the allegations disclosing cognizable offences, in violation of the law laid down by the Hon'ble Supreme Court in **Lalita Kumari's case (supra)**.

42. The SSP Jammu is further directed to ensure that the investigation into both FIRs, i.e., the one to be registered on the applicant's complaint and the already registered FIR No. 245/2025, is carried out together by a fair and impartial officer, not below the rank of Deputy Superintendent of Police, who is not connected with the incident.

38. Let the copy of this order be forwarded to the In-Charge Police Station, Gandhi Nagar, Jammu, and the SSP Jammu for their compliance.

39. With the observations and directions made hereinabove, the instant application is disposed of. Let the file be consigned to record after due compliance.

Announced:
05.09.2026

(Ch. Ghulam Raza) 
City Judge, Jammu

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Government of Jammu and Kashmir

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Establishment : Principal District Judge, Jammu

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Party Transaction No :

NJKJM022026122672L

Name of litigant :

Azhar Khan

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