S. No. 133

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

CRM(M) No.935/2026 CrlM No.2119/2026

ARSHIDA BANO …Petitioner/Appellant(s)

Through: Mr. Arshid Andrabi, Advocate.

Vs.

PRINCIPAL SECRETARY TO GOVT OF J&K AND OTHERS ...Respondent(s)

Through:

CORAM:

HON'BLE MR JUSTICE SHAHZAD AZEEM, JUDGE

O R D E R

04.11.2026

1. The petitioner has invoked the jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) read with Article 227 of the Constitution of India and has prayed for the following reliefs:

   i) Certiorari for quashing the Final Report/challan filed u/s 193 BNSS in Case FIR No.35/2026, P/s Kangan so far as it relates to the deceased husband of the petitioner.

   ii) Mandamus commanding the respondent 5 to disclose the circumstances in which the petitioners husband has been taken back to SDH Kangan for Autopsy /postmortem examination, when the death occurred in the jurisdiction of Police District Srinagar and there was sufficient medical evidence on record about the medical condition.

   iii) Mandamus commanding the respondents to produce the case diaries, records and statements of witnesses and material on the basis of which the petitioners deceased husband has been booked in this case.

   iv) Mandamus commanding the police to conduct further investigation in the case to define the role of the two lady passengers who stopped the car while doing photography

Isaq Hameed Bhat
I attest to the accuracy and
authenticity of this document
06.11.26

with a further direction to confiscate/seize the photography devices and date contained in them, for getting evidence.

v) Direction commanding the higher officers of police to conduct inquiry into the conduct of the Investigating Officer while not conducting investigation fairly and book the involved public officials u/ss 255, 256, 257, 259 and 260 BNS, 2023

2. The petitioner is widow of Late Sheikh Muzaffar Ahmad, who died on 30.04.2026 at SKIMS Soura, Srinagar, as a consequence of injuries sustained in a road accident occurred on 25.04.2026 near Sheikhbagh Kangan on the National Highway. FIR No.35/2026 was registered at Police Station Kangan for offences under Sections 106 and 281 of the Bharatiya Nyaya Sanhita, 2023, (BNS) and Section 122/177 of the Motor Vehicles Act.

3. On completion of the investigation, final report/challan under Section 193 of the BNS has been laid arraying (i) Car driver as an accused (ii) deceased Motorcyclist as an accused No.2, on the premise of contributory negligence.

4. The petitioner challenges the arraying of her deceased husband as an accused, manner of investigation, non-seizure of photographs, non-recovery of CCTV, contradiction in the nature, delay etc and shifting of the dead body of the deceased husband from SKIMS Soura Srinagar back to SDH Kangan for postmortem examination, despite the medical records available at SKIMS Soura and the family's requests that postmortem be conducted at SKIMS Soura.

5. Since the petitioner is the legal heir and spouse of the person who has been arrayed as an accused after his death and same is having potential civil consequences in any claim for compensation under the Motor Vehicles Act, where the finding of any negligence can defeat the claim.

6. It has to be borne in mind that, while criminal liability is personal and abates on death, the judicial record remains. The final report that arrays a dead person as an accused creates an anomalous and incorrect public record. The legal heirs have a legitimate interest in correcting

Isaq Hameed Bhat
I attest to the accuracy and
authenticity of this document
06.11.26

that record. Once the accused is no longer alive, the Court cannot continue the trial, frame the charge or record a conviction or acquittal against him. Proceedings against the deceased person abate.

7. In view of above facts and circumstances, *prima facie* it appears that there is violation of statutory safeguards and non-observance of procedure which resulted in presentation of challan against the dead person, therefore, a case for indulgence is made out.

8. Issue notice in the main petition as well as CrlM returnable within four weeks. Requisites for service within one week.

9. List on 22.12.2026, on which date Investigating Officer (IO) shall remain present before the Court.

10. Send for the scanned record of the Trial Court.

11. In the meanwhile, subject to objections from the other side and till next date of hearing before the Bench, the proceedings before the Trial Court shall remain stayed.

(SHAHZAD AZEEM)
JUDGE

SRINAGAR
04.11.2026
Ishaq

HIGH COURT
JAMMU & KASHMIR AND LADAKH

Isaq Hameed Bhat
I attest to the accuracy and
authenticity of this document
06.11.26