

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

CRR 3987 of 2024
+
CRAN 2 of 2025 + CRAN 4 of 2025 + CRAN 6 of 2026
With
CRR No. 3678 of 2024
+
CRAN 2 of 2025 + CRAN 4 of 2025 + CRAN 6 of 2026
With
CRR No. 3680 of 2024
+
CRAN 2 of 2025 + CRAN 4 of 2025 + CRAN 6 of 2026

Devendra Ahuja @ Chintu
v/s.

The State of West Bengal

For the Petitioner: Mr. Shaswat Bansal, Adv.
Mr. R. Bansal, Adv.
Mr. Y. Saxena, Adv.

For the State: Mr. Krishnendu Bhattacharya, Adv.
Ms. Samira Grewal, Adv.

Heard on: 02.07.2026

Date: 21.07.2026

SUVRA GHOSH, J. :-

- 1) In the three applications, the petitioner seeks quashing of cases registered under the Narcotic Drugs and Psychotropic Substances Act (for short the NDPS) Act, against him being NDPS Case no. 15 of 2023, NDPS Case no.

122 of 2022 and NDPS Case no. 73 of 2020. Since the issues to be adjudicated in the three petitions are similar/co-related, the matters are taken up together for consideration and are being disposed of by a common judgment.

- 2) In CRR 3678 of 2024, learned counsel for the petitioner has submitted that the petitioner was in custody in connection with FIR no. 875 of 2022 dated 12th August, 2022 at the time of registration of the present FIR. The petitioner has been implicated on the basis of statement of co-accused Suman Sardar disclosed during his police remand that the phensedyl cough syrup was supplied by the petitioner. Admittedly no contraband article was recovered from the possession of the petitioner and his implication on the basis of statement of the co-accused is inadmissible in evidence. The petitioner is the proprietor of M/s. Jai Ram Ji Ki Medical Agency at Agra from 2019 and has valid drug licence issued under the Drugs and Cosmetics Act, 1945. He is authorised to deal in wholesale medicines and has not violated any term or condition of the license granted to him.
- 3) The witnesses relied upon by the prosecution in the charge sheet can be termed as hearsay evidence and cannot be relied upon. No evidence has been collected by the prosecution to suggest that the petitioner has any nexus with the 53 bottles of phensedyl cough syrup seized from the possession of the co-accused. Nexus of the co-accused with the petitioner has also not been established. There is no money trail or CDR to prima facie establish connection between the petitioner and co-accused Suman Sardar. The conditions laid down under Section 35/54 of the NDPS Act

have not been satisfied. No fruitful result has also yielded from the police custody of the petitioner. There is, in fact, no material which can be translated into evidence at the trial stage and it would be miscarriage of justice to let the proceeding continue against the petitioner. The petitioner filed an application seeking his discharge from the case which was dismissed by the learned trial Court by an order passed on 5th August, 2024.

- 4) In CRR 3680 of 2024, the petitioner has sought quashing of the proceedings in Kaliachak Police Station Case no. 0875 dated 12th August, 2022. Learned counsel for the petitioner has submitted that upon searching the house of one Alok Kumar Mondal, 1646 bottles of codein phosphate were seized. Alok Kumar Mondal disclosed that the said drugs were purchased from Bengal Drug Agency in Kaliachak owned by one Azizur Rahman. During interrogation of Azizur Rahaman in police custody he disclosed that he purchased the medicines from one Chintu with the help of other co-accused but never met Chintu. The petitioner was arrested pursuant to such disclosure statement of the co-accused which is inadmissible in evidence. The stance of the petitioner in this case is similar to that of the earlier case being CRR 3678 of 2024. According to the petitioner, no incriminating material has transpired against him during investigation and allegation against him is solely based on the statement of co-accused without any corroboration of the same. The petitioner has no criminal antecedent.

- 5) In CRR 3987 of 2024 the petitioner has sought quashing of Kaliachak Police Station Case no. 718 of 2020 dated 20th September, 2020 on similar grounds as in the earlier applications.
- 6) Learned counsel for the petitioner has placed reliance on the following authorities in support of his contention.
1. State of Haryana & Others v/s. Bhajan Lal & Others reported in 1992 Supp(1) Supreme Court Cases 335;
 2. Mahmood Ali v/s. State of U.P. in Criminal Appeal No. 2341 of 2023;
 3. Karan Talwar v/s. The State of Tamil Nadu reported in 2024 INSC 1012;
 4. Mamta Mukund Kulkarni v/s. State of Maharashtra in 2024: BHC-AS:31007-DB;
 5. Ashok Jain v/s. Narcotics Control Bureau reported in 2019 Supreme Court Cases OnLine Cal 2072;
 6. Kunwarpal v/s. State in 2024: DHC: 1423;
 7. Mamta Sapra v/s. The State Govt. of NCT of Delhi in 2024:DHC:4852;
 8. Dipakbhai Jagdishchandra Patel v/s. State of Gujarat and Another in Criminal Appeal No. 714 of 2019 @ SLP (Criminal) No. 5415 of 2017;
 9. Noor Aga v/s. State of West Bengal and Another reported in (2008) 16 Supreme Court Cases 417 ;
 10. Vibhor Rana v/s. The Union of India in CRR 1620 of 2024; and

11. Gopal Kumar @ Gopal Singh @ Gopal v/s. The Union of India
in CRR 1621 of 2024.

- 7) Opposing the prayer of the petitioner, learned counsel for the State has canvassed his argument as follows:-
- 8) In CRR 3678 of 2024, one Suman Sardar was apprehended during the smuggling of ganja and phensedyl across the border. The petitioner's name transpired during interrogation of Suman Sardar following which the petitioner was shown as arrested in the present case following his interrogation at Malda Correctional Home where he was detained in connection with other cases. Besides the statement of the petitioner and the co-accused, other witnesses have also implicated him in the offence and have prima facie demonstrated his involvement in trafficking of narcotics.
- 9) In CRR 3680 of 2024, the police raided the house of accused Alok Kumar Mondal and apprehended him. On search, 1646 bottles of codein phosphate and chloropheniramine malate syrup "choco" were recovered. The accused was unable to produce any document in support of the same. The accused stated that he purchased the seized articles from one Md. Azizur Rahman who was a chemist and owner of a medical shop named Bengal Drug Agency situated at Kaliachak New Market. Azizur was arrested and revealed during interrogation that he purchased the said contraband articles from the petitioner who was a resident of Agra. He also stated that he never met the petitioner and only spoke to him over telephone. The petitioner was thereafter arrested. His accounts statement received from the branch manager of Axis Bank, Hing Ki Mandi branch,

Agra revealed suspicious transactions which were subject to verification. Details of immovable property of the petitioner and his family members were collected and the investigating officer assumed that he owned disproportionate assets and property in the names of his family members, his close associates and himself. The statement of two witnesses Tarikul Mia @ Mithun and Md. Kajirul Hoque @ Kaju recorded under Section 67 of the NDPS Act discloses active involvement of the petitioner in the offence. The petitioner has also threatened the drug inspector Jhansi, U.P who conducted several raids in his place. His statement has also been recorded under Section 67 of the NDPS Act. The mobile phone of the petitioner has been sent for recovery of data and data cloning.

- 10) In CRR 3987 of 2024, the petitioner was initially not implicated. After submission of charge sheet, credible information was received from the investigating officer of Kaliachak P.S. case no. 875 of 2022 for which a prayer was submitted for reopening the case. Such prayer being allowed, the case was reopened and investigation proceeded with. The statements of the petitioner and two witnesses were recorded under Section 161 of the Code of Criminal Procedure. Letters were issued to Abbott Health Care Private Limited by the investigating officer seeking information with regard to supply of phensedyl chloropheniramine malate and codein phosphate cough syrup manufactured by the said company and allegedly supplied to the petitioner. No reply was received by the investigating officer. Supplementary charge sheet was submitted against the petitioner. Learned counsel submits that sufficient incriminating material has transpired against the petitioner in course of investigation prima facie

suggesting his involvement in the offence. The petitioner has several criminal antecedents to his credit.

11) Learned counsel has placed reliance on the following authorities in support of his contention.

1. State of Haryana & Others v/s. Bhajan Lal & Others reported in AIR 1992 Supreme Court 604;
2. Amit Kapoor v/s. Ramesh Chander & Anr. reported in (2012) 9 Supreme Court Cases 460;
3. State of Tamil Nadu by Insp. of Police v/s. N Suresh Rajan & Ors. reported in (2014) 11 Supreme Court Cases 709;
4. Sonu Gupta v/s Deepak Gupta & Ors reported in (2015) 3 Supreme Court Cases 424;
5. M.E. Shivalingamurthy v/s. Central Bureau of Investigation reported in (2020) 2 Supreme Court Cases 768;
6. Supriya Jain v/s. The State of Haryana reported in (2023) 7 Supreme Court Cases 711; and
7. State of Maharashtra and Another v/s. Dr. Maroti. reported in AIR 2022 Supreme Court 5595.

12) I have considered the rival contention of the parties and material on record.

13) At the outset, the legal parameters for consideration of the applications filed by the accused/petitioner seeking quashing of the criminal proceedings against him need to be considered.

14) In the authority in the State of Haryana and Others (supra), the Hon'ble Supreme Court has given a note of caution to the effect that the power of

quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the Court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprice. The Hon'ble Supreme Court, in the authority in *Amit Kapoor (supra)* has laid down some of the principles to be considered for quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be, which are set out:-

“27.1. *Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.*

27.2. *The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.*

27.3. *The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.*

27.4. *Where the exercise of such power is absolutely essential to prevent patent miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.*

27.5. *Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.*

27.6. *The Court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.*

27.7. *The process of the Court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.*

27.8. *Where the allegations made and as they appear from the record and documents annexed therewith to predominantly give rise and constitute a 'civil wrong' with no 'element of criminality' and does not satisfy the basic ingredients of a criminal offence, the Court may be justified in quashing the charge. Even in such cases, the Court would not embark upon the critical analysis of the evidence.*

27.9. *Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the Court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.*

27.10. *It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.*

27.11. *Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.*

27.12. *In exercise of its jurisdiction under Section 228 and/or under Section 482, the Court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The Court has to consider the record and documents annexed therewith by the prosecution.*

27.13. *Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the*

records with a view to decide admissibility and reliability of the documents or records but is an opinion formed prima facie.

27.14. *Where the charge-sheet, report under Section 173(2) of the Code, suffers from fundamental legal defects, the Court may be well within its jurisdiction to frame a charge.*

27.15. *Coupled with any or all of the above, where the Court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e. to do real and substantial justice for administration of which alone, the courts exist.”*

- 15) The authorities in State of Tamil Nadu (supra), Sonu Gupta (supra) and Supriya Jain (supra) echo the said proposition of law. The authority in State of Maharashtra and Another (supra) refers to the decision in M.L. Bhatt v/s. M.K Pandita reported in AIR OnLine 2002 SC 255 and observes that while considering the question of quashing of FIR, the High Court would not be entitled to appreciate by way of sifting the material collected in course of investigation including the statements recorded under Section 161 Cr.PC.
- 16) The Hon’ble Supreme Court, in the authority in State of Haryana (supra) has laid down certain categories of cases by way of illustration wherein inherent power under Section 482 of the Code can be exercised.

“(1) *Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in*

their entirety do not prima facie constitute any offence or make out a case against the accused;

- (2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*
- (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;*
- (7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior*

motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

- 17) Allegation against the petitioner in the three complaints is under Section 20/21/23/27A/29 of the NDPS Act. No recovery has been admittedly made from the petitioner in connection with any of the complaints. The petitioner's name has transpired from the statement of co-accused. The cases primarily rest on the disclosure statement of the petitioner himself and that of the co-accused which undoubtedly cannot translate into admissible evidence against the petitioner at the time of trial. The presumption with regard to culpable mental state of the accused/petitioner as enumerated in Section 35 of the NDPS Act operates only after the initial burden existing upon the prosecution is satisfied after which the burden shifts on the accused. The standard of proof required to prove the guilt of the accused on the prosecution is “beyond all reasonable doubt” whereas it is “preponderance of probability” on the accused. To bring within its purview the requirement of Section 54 of the Act, element of possession of the contraband by the accused is essential so as to shift the burden on the accused. [Noor Aga v/s. State of West Bengal and Another reported in (2008) 16 Supreme Court Cases 417]. Herein, no contraband substance was recovered from the possession of the petitioner.
- 18) The petitioner is the proprietor of M/s. Jai Ram Ji Ki Medical Agency in Agra and has produced drug licence under the Drugs and Cosmetics Act. He is an authorized dealer in wholesale medicines. Charge sheets/supplementary charge sheets have been submitted against the

petitioner. Though monetary transactions between the petitioner's company and several other companies have transpired in course of investigation, there is nothing to prima face indicate that these transactions pertain to narcotic substance. Mere discovery of disproportionate assets of the petitioner and huge monetary transactions in his bank accounts do not ipso facto suggest that he has been dealing in contraband substance.

- 19) Statement of two witnesses Tarikul Mia @ Mithun and Md. Kazirul Hoque @ Kajju reveals that they have heard about the involvement of the petitioner in narcotics trade. Such hearsay evidence is inadmissible in evidence.
- 20) The confessional statement of the petitioner has not led to any recovery. The General Manager (HR), Abbot Health Care Private Limited Company was requested to inform whether the batch numbers of the seized phensedyl were manufactured by his company but no reply was received. The mobile phone of the petitioner has been seized. But there is no call details record suggesting communication between the petitioner and the co-accused in respect of transaction of contraband.
- 21) It is a fact that the petitioner allegedly assaulted a drug inspector and resisted inspection of his premises. A separate criminal case has been registered against him in this connection in Uttar Pradesh.
- 22) The allegation against the petitioner is based on his confessional statement and statement of the co-accused as well as other hearsay evidence. Even if the material collected in course of investigation is accepted in entirety, it will not prima facie constitute any offence, as

alleged, against the petitioner. The case falls within the third category of cases laid down in the authority in State of Haryana (supra). No nexus of the petitioner with either the co-accused or the offence alleged having been prima facie established during investigation, this Court is of the view that allowing the proceedings to continue against the petitioner shall be an abuse of the process of the Court. The petitioner should not be made to suffer the ordeal of a trial which shall not lead anywhere.

- 23) In the light of the observation made hereinabove, the revisional applications being CRR 3987 of 2024, CRR 3678 of 2024 and CRR 3680 of 2024 are allowed.
- 24) The connected applications are accordingly disposed of.
- 25) The order passed by the learned Judge Special Court, NDPS Act, Nadia at Krishnanagar on 5th August, 2024 in NDPS Case no. 15 of 2023 pertaining to CRR No. 3678 of 2024 is set aside/quashed. The application filed by the petitioner therein under Section 227 of the Code of Criminal Procedure is allowed.
- 26) Proceedings in Hogalberia Police Station Case no. 39 of 2023 dated 23rd February, 2023, Kaliachak Police Station Case no. 0875 dated 12th August, 2022 and Kaliachak Police Station Case no. 718 of 2020 dated 20th September, 2020 be quashed insofar as the petitioner is concerned.
- 27) The petitioner be set at liberty at once and discharged from his bail bond.

28) There shall however be no order as to costs.

29) Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)