2026 INSC 1274

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). OF 2026
(Arising out of SLP (Crl.)No.14167 of 2026)

KHURSHEED AHMAD CHOWHAN ...APPELLANT (S)

VERSUS

UNION TERRITORY OF J AND K & ORS. ...RESPONDENT(S)

J U D G M E N T

VIKRAM NATH, J.

1. Leave granted.

2. The present appeal assails the final order dated 25th March, 2026, passed by the High Court of Jammu and Kashmir and Ladakh at Srinagar[1] in Transfer Petition (Criminal) No. 5 of 2026, whereby the learned Single Judge declined the appellant's prayer for transfer of the criminal proceedings under Section 447 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter, "the BNSS"), from the Court of the Principal Sessions Judge, Kupwara, to a competent court at Srinagar.

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Reason:

[1] Hereinafter, referred to as "High Court".

3. The brief facts giving rise to the present appeal are as follows: -

4. The appellant was serving as a police constable. In connection with an alleged incident in or around February 2023, the appellant is stated to have been subjected to custodial torture and brutality at the hands of police personnel. As a consequence, he had to undergo surgery at the Sher-i-Kashmir Institute of Medical Sciences, Soura, Srinagar.

5. Upon learning of the incident, the appellant's wife approached the Police Station, Kupwara, seeking registration of an FIR. As no action was taken on her request, she instituted Writ Petition No. 592 of 2023 under Article 226 of the Constitution of India, seeking a direction for registration of an FIR and constitution of a Special Investigation Team (SIT), or, in the alternative, transfer of the investigation to the Central Bureau of Investigation (CBI).

6. By order dated 18th September, 2023, the High Court disposed of the writ petition, directing the Senior Superintendent of Police to conduct a detailed preliminary enquiry.

7. Aggrieved thereby, the appellant approached this Court by way of SLP (Criminal) Nos. 13751-13752 of 2023.

8. This Court *vide* judgment dated 21st July, 2025, directed transfer of the investigation to the CBI for a detailed enquiry into the allegations of custodial violence and illegal detention of the appellant.

9. Pursuant thereto, the CBI registered an FIR on 26th July, 2025, against respondent Nos. 2 to 9 and after investigation submitted chargesheet against all of them under Sections 120-B, 323, 325, 330, 331, 343 of the Indian Penal Code, 1860.

10. Subsequently, by order dated 20th November, 2025, the Chief Judicial Magistrate, Srinagar, committed the case to the Court of Sessions Judge, Kupwara.

11. The appellant thereafter instituted Transfer Petition (Criminal) No. 5 of 2026 under Section 447 of the BNSS before the High Court, seeking transfer of the criminal proceedings titled "*UT of J&K through SHO, P.S. CBI v. Aijaz Ahmad & Others*" to a competent court at Srinagar.

12. By the impugned order dated 25th March, 2026, the High Court declined the prayer for transfer. Aggrieved thereby, the appellant is before this Court.

13. We have heard learned counsel appearing on behalf of the appellant and learned senior counsel appearing on behalf of the private respondents.

14. The circumstances in which the appellant has been compelled to seek transfer of the criminal proceedings cannot be viewed in isolation. The physical and psychological trauma allegedly suffered by him on account of custodial violence is considerable. No amount of monetary compensation can adequately undo the physical suffering or the indignity associated with such an experience.

15. It is also significant that the appellant had to approach this Court for the investigation to be entrusted to an independent agency. Pursuant to the intervention of this Court, the CBI registered the FIR and undertook the investigation. The appellant has, therefore, already endured considerable hardship in seeking to secure the registration and fair investigation of his complaint.

16. In our view, the appellant ought not to be subjected to further avoidable hardship in the pursuit of justice. The prospect of travelling between Kupwara and Srinagar to attend the proceedings, coupled with the anxiety of having to face the very persons accused of having subjected him to custodial brutality, is a circumstance deserving due consideration. This concern assumes greater significance when it is borne in mind that the accused persons are presently on bail.

17. The right to a fair trial is not confined to the accused alone. The victim, too, is entitled to have his grievances addressed through a fair and accessible judicial process. The protection guaranteed under Article 21 of the Constitution of India extends to the victim as much as it does to the accused. While ensuring that the rights of the accused remain fully protected, the Court cannot remain oblivious to the physical and psychological hardship that the victim may be made to endure in the course of the proceedings.

18. A fair trial must, therefore, be understood in a manner that secures justice to all stakeholders and does not impose avoidable hardship upon the victim, particularly where such hardship can reasonably be alleviated by an appropriate order of transfer.

19. Having regard to the peculiar facts and circumstances of the present case, we find no sufficient justification in the reasoning adopted by the High Court for declining the transfer. We are satisfied that transferring the proceedings to a competent court at Srinagar would better serve the interests of justice and avoid further hardship to the appellant.

20. Accordingly, the present appeal is allowed. The criminal proceedings titled "*UT of J&K through SHO, P.S. CBI v. Aijaz Ahmad & Others*", presently pending before the Court of the

Principal Sessions Judge, Kupwara, shall stand transferred to the Court of the Principal District and Sessions Judge, Srinagar, for further proceedings in accordance with law.

21. Trial Court is directed to make an endeavor to complete the trial within two years.

22. Before parting, we clarify that none of the observations made herein shall be construed as an expression of opinion on the merits of the allegations or the guilt of any of the accused persons. The competent court at Srinagar shall adjudicate the matter uninfluenced by any observation made in this judgment.

23. Pending application(s), if any, shall stand disposed of accordingly.

.....J.
[VIKRAM NATH]

.....J.
[APARESH KUMAR SINGH]

NEW DELHI;
NOVEMBER 20, 2026