

IN THE HIGH COURT OF JUDICATURE AT BOMBAY IN ITS

APPELLATE CRIMINAL JURISDICTION CRIMINAL

CRIMINAL WRIT PETITION NO. OF 2020

District – Mumbai

*In the matter of Article 226 of the  
Constitution of India.*

*And*

*In the Matter of Violation of the Article 22  
of the Constitution of India.*

*And*

*In the matter of illegal detention of the  
Petitioner violating procedure prescribed  
u/s. 57 of the Cr. P.C.*

*And*

*In the matter of C.R. No. 16 of 2020 lodged  
with Narcotics Control Bureau, Mumbai  
Zonal Unit.*

**DIPESH UTTAM SAWANT** )

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) *...Petitioner*

**Versus**

**1) Union of India** )

(at the instance of N.C.B) )

Mumbai Zonal Unit )

**2) K. Kiran Babu** )

**Intelligence Officer** )

**NCB, MUMBAI** )

**3) Zonal Director** )

**NCB, Mumbai** )

**4) Director General** )

**NCB, New Delhi** )

5) The State of Maharashtra )  
(Through Public Prosecutor of High )  
Court Bombay ) ...Respondent

**TO**

**THE HON'BLE CHIEF JUSTICE**

**AND HON'BLE PUISINE JUDGES OF THIS**

**HON'BLE COURT AT MUMBAI**

**HUMBLE WRIT PETITION OF THE  
PETITIONER ABOVE NAMED**

**MOST RESPECTFULLY SHEWETH: -**

1. The Petitioner is a permanent resident
2. The Respondent No. 1 is Union of India represented by the intelligence officer, Narcotics Control Bureau, Mumbai Zonal Unit.
3. The Respondent No. 2 is the Intelligence Officer who detained the Petitioner, of Narcotics Control Bureau, Mumbai Zonal Unit.
4. The Respondent No. 3 is the Zonal Director of Narcotics Control Bureau, Mumbai Zonal Unit under whose supervision the Petitioner was detained at the office of Narcotics Control Bureau, Mumbai Zonal Unit. The Respondent No. 4 is the incharge and the Director General of the Respondent no.1 to 3.

5. The Respondent No. 5 is the State of Maharashtra represented through the Public Prosecutor of Bombay High Court.

6. The officers of the Respondent have shown the Petitioner arrested on 05<sup>th</sup> September, 2020 at 8:00 pm in C.R. No. 16 of 2020 but was taken in the custody on 04/09/2020 at around 10pm from his residence and produce before the Magistrate only on 06/09/2020 before the Holiday court at Esplanade.

7. The brief facts of the case of the prosecution is as under:-

a) That on 28.08.2020, a team of NCB, Mumbai and NCB Hqrs, New Delhi apprehended 2 persons named Abbas Ramzan Ali Lakhani along with 46 gram of ganja at Father Peter Perera Road. Abbas had informed he had purchased drug from person named Karn Arora thereafter NCB apprehended Karan Arora and recovered 13 grams of ganja from his possession and arrested both persons.

b) During the course of investigation other accused named Zaid Vilatra was searched and Indian currency of Rs. 9,55,750/- and foreign currency 2081 US Dollars, 180 UK Pounds and UAE 15 Dhirhams were seized and stated he had supplied ganja to named Samuel Miranda. Subsequently, Abdel Basit Parihar and Kaizan Ebrahim, Showik Chakraborty were arrested.

c) It was alleged by Accused Kaizan Ebrahim that as per instruction of accused Showik Chakraborty he was delivering the contraband to the Petitioner.

d) It is further alleged that during voluntary statement Petitioner revealed that on 17.03.2020 as per direction of

Accused Showik Chakraborty, Petitioner went with accused Samuel Miranda to receive the delivery of 5 grams cannabis at Bandra from accused Zaid Vilatra. On 17.04.2020 Rhea Chakraborty and her brother accused Showik Chakraborty ordered him to receive a delivery of 10 gram charas from one person named Accused Kaizan Ebrahim near Mount Blanc Building. Through Whatsapp chat on 01/05/2020 Showik Chakraborty asked him to receive ganja from one person named Dwyane and on 2nd May 2020 the Petitioner received 50 grams charas from Dwayne. It is also alleged that the Petitioner received 100 grams of ganja from a delivery boy of Rishikesh Pawar.

e) That as per the said disclosures the Applicant came to be arrested the Applicant came to be arrested on 05.09.2020 for violation of provisions of section 8(c) r/w 20(b)(ii)(a), 28, 29, & 30 of the NDPS Act, 1985.

**8) True and admitted facts:**

i) It is admitted fact that the Petitioner was taken in custody on 04/09/2020 at 10:00 pm from his residence at Chembur and the Petitioner was kept in custody whole night of 04/09/2020 and whole day of 05/09/2020 till 8:00pm and came to be shown arrested as per arrest memo on 05.09.2020 at 8:00 pm in evening and only informed the brother Vivek about his arrest on 06/09/2020 in the morning at 11:00 am by telephone

from the landline number 222625126 of the NCB by the Petitioner.

ii) The Petitioner submits it is also admitted by NCB that the Applicant was taken in custody on 04/09/2020 at 10:00pm and kept with the NCB till the time he was produced before Ld. Holiday Remand Court on 06/09/2020 at 1:30 pm and was remanded in NCB custody till 09/09/2020. Hereto annexed and marked as **Exhibit “B Colly”** is the Copy of the remand along with order of Ld Holiday Remand Court dated 06/09/2020.

iii) The Petitioner submits that on 05/09/2020 when the Petitioner was in custody of NCB, one co- accused Kaizan Ebrahim was produced in the morning before Ld. Metropolitan Magistrate Court and was granted bail by Hon’ble Magistrate Court on the same day when the Petitioner was still in custody of the NCB. Hereto annexed and marked as **Exhibit “C Colly”** is the Copy of Grant of Bail Order dated 05.09.2020 of Hon’ble Ld. Metropolitan Magistrate and Remand of Kaizan Ebrahim dated 05.09.2020.

iv) The Petitioner was thereafter produced before the Ld. Holiday Remand Court on 6<sup>th</sup> September, 2020 at 1:30pm for the purpose of remand i.e. after more than 36 hours violating the guidelines of the Hon’ble Apex Court and also Article 22 of the Constitution by not producing the Petitioner within 24 hours of his arrest.

v) The Petitioner submits that Application for illegal detention was filed for violation of sec 57 & 167 of Crpc and say of the Investigation officer was called for as Ld Holiday Remand Court observed that different facts reflected as per arrest memo. Also the NCB officials admitted that Dipesh was in custody since 04/09/2020 but was not produced with co-accused Kaizan Ebrahim on 05/09/2020 as they were still investigating and at around 8:00pm he was shown arrested. Hereto annexed and marked as **Exhibit "D"** is the Photo Copy of Application along with the order of the Ld. Holiday Magistrate.

vi) The Petitioner submits that the NCB alleged that the NCB only arrested the Applicant on 5/9/2020 at 8:00pm but did not inform about his arrest as per guidelines of the Hon'ble Supreme Court immediately but only allowed the Applicant to call from the Landline no. 222625126 of the NCB Office to the Brother of the Applicant Vivek Sawant on his cell 7977894416 on 6/9/2020 at 11.40 am.

vii) The Petitioner submits that the brother of petitioner emailed to Chief Justice of Bombay High Court, Home Minister of India and other Higher Authorities with respect to illegal detention of the Petitioner when they saw the news on 05/09/2020 at around 8:30pm that the Petitioner was arrested. Hereto annexed and marked as **Exhibit "E"** is the Copy of the

Email sent by the brother of the Petitioner to Chief Justice of Bombay High Court, Home Minister of India and other Higher Authorities.

iv) The Ld. Magistrate Court was informed about the illegal detention and Application was filed for violation of sec 167 Cr.P.C for which say of the Investigation Officer was called.

viii) The Ld. Magistrate was pleased to grant N.C.B. custody till 09/09/2020 even though it was mentioned the offences were bailable in nature.

ix) On 09/09/2020 the Petitioner was produced before Special Judge NDPS Court and was granted judicial custody till 23/09/2020 which was extended till 06/10/2020 even though the offences were bailable. Hereto marked and annexed as **“Exhibit F”** is the Copy of Remand Application No. 577 of 2020 along with Roznama of 09/09/2020.

ix) It is pertinent to note that the Application for violation of sec 57 & 167 of Cr.P.C till date no say has been filed by NCB and is still pending.

ix) It is pertinent to note that there is absolutely no recovery of any contraband at the instance of the Petitioner. It is further humbly submitted that there is absolutely no nexus between the Petitioner and any contraband of commercial quantity.

x) Thereafter the Petitioner was produced before the Ld. Sessions Court and submissions were advanced on



behalf of the Petitioner that the offences for which the Petitioner is charged under are bailable and therefore immediate release of the Petitioner is warranted in view of section 436 of the Cr.P.C. However, the Ld. Sessions court was pleased to subject the Petitioner to judicial custody till 23/09/2020. Also it was brought to the courts notice that Application for illegal detention was pending but same was not heard or seen by the Spl. Judge at Session.

9) Under these circumstances the Petitioner approaches this Hon'ble Court under Article 226 & 22 of the Constitution of India with a prayer to take action against first Respondent for non-compliance of directions issued by Apex Court in case of D.K. Basu vs State of West Bengal [(1997) 1 SCC 416] and to forfeit release the Petitioner who was illegally detained and kept in custody for bailable offence on the following amongst other grounds which are without prejudice to each other:-

#### **GROUND**

- I. The Petitioner is innocent and has been falsely framed in the instant matter.
- II. That there is absolutely no iota of evidence to frame charge against the Petitioner under the NDPS Act, 1985.
- III. The Petitioner has been arrested and charged for offences punishable under section 8 (c) r/w. 20 (b)(ii) A, 23, 29, 30 of the NDPS Act, 1985.
- IV. Therefore, the Petitioner is charged under section 20 (b) (ii) (A) which prescribes for punishment as under: -

*Punishment for contravention in relation to cannabis plant and cannabis. —Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, —*

*(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis, shall be punishable, —*

*(ii) where such contravention relates to sub-clause (b), —*

*(A) and involves small quantity, with rigorous imprisonment for a term which may extend to [one year], or with fine which may extend to ten thousand rupees, or with both.*

- V. Punishments prescribed for all the other sections are inter-dependent and a corollary to section 20 (b) (ii) (A).
- VI. All the offences alleged against the Petitioner are Bailable and the officers were bound to release the Petitioner on bail and hence the Petitioner is in illegally custody and deserves to be released on bail.
- VII. According to the case of the prosecution, the Petitioner was arrested on the basis of statements of co-accused Kaizan Ebrahim who was produced before Hon'ble Magistrate Court on 05/09/2020 and has been already granted bail by LD Magistrate when the Petitioner was in custody at NCB office but not produced the same day.
- VIII. Therefore there is gross violation of fundamental rights of the Petitioner by the NCB officials by not producing

the Petitioner to the nearest Magistrate within 24 hours of taking into custody.

- IX. It is further most respectfully submitted that the NDPS Act, 1985 has enacted an express bar for granting of bail under section 37 which reads as under: -

*[37. Offences to be cognizable and non-bailable. — (1) notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), —*

*(a) every offence punishable under this Act shall be cognizable;*

*(b) no person accused of an offence punishable for [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity]*

*shall be released on bail or on his own bond unless— (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail. (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.]*

- X. Hence the Petitioner is not barred under sec 37 of NDPS Act to be released on Bail and none of the above

mentioned non bailable offences are alleged on the Petitioner.

- XI. Also as per the guidelines set by the Hon'ble Apex Court in case of DK Basu vs State of West Bengal, a person arrested has the right to inform the relative or a friend of his arrest but in case of the Petitioner he was allowed to call from the landline of NCB at 11:00am to his brother, thus violating the guidelines of the apex court.
- XII. As a matter of fact no contraband has been recovered at the instance of the Petitioner.
- XIII. There is no evidence to show any nexus between the Petitioner and any contraband.
- XIV. Therefore, the order of the Ld. Sessions Court subjecting the Petitioner for Judicial Custody is illegal and the same deserves to be quashed and set aside.
- XV. Bail Application of the Petitioner is pending before this Hon'ble Court.
- XVI. The Petitioner is in custody and therefore verification may be dispensed with.
- XVII. The Petitioner craves leave to add alter amend any or all grounds of the instant Criminal Writ Petition.
- XVIII. The Affidavit and verification clause be dispensed with as the applicant is in Taloja Jail.

**THE PETITIONER THEREFORE PRAYS THAT: -**

- a) This Hon'ble Court be pleased to hold the detention of the Petitioner illegal and bad in law and direct

immediate release of the Petitioner on any terms and conditions this Hon'ble Court deems fit.

- b) This Hon'ble Court be pleased to issue direction to take action against the Respondent No 2 & 3 for non compliance with the directions issued by Hon'ble Apex Court in the case of D.K. Basu Vs. State of West Bengal [(1997) 1 SCC 416 ].
- c) This Hon'ble Court be pleased to direct the Respondent No. 4 to enquire into the matter of illegal detention and to initiate disciplinary action against the erring officers.
- d) This Hon'ble Court be pleased to direct the Respondent No. 1 to compensate the Petitioner with Rs. 10,00,000/- for illegal detention and gross violation of the Articles 21 and 22 of the Constitution of India as the directions in the case of D.K. Basu (supra) from the Articles 21 and 22.
- e) This Hon'ble Court be pleased to quash and set aside the order of both the Ld. Holiday Remand Court dated 06/09/2020 & the Hon'ble Sessions Court 09/09/2020 subjecting the Petitioner to custody.

f) Pending this Writ Petition this Hon'ble Court be pleased to direct immediate release of the Petitioner on bail in connection with C.R. No. 16 of 2020 registered with the N.C.B. Mumbai.

g) To pass any such other and further orders as this Hon'ble Court may deem fit in the interest of justice.

Date: 25-09-2020

Place: Mumbai

Advocate For Petitioner