

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 572 OF 2023

Isma Opaka Wandera

...Petitioner

V/s.

Union Of India And Anr.

...Respondents

Mr. Khushal Parmar for Petitioner.

Mrs. S.D. Shinde, A.P.P. for the Respondent-State.

**CORAM : A. S. GADKARI AND
PRAKASH D.NAIK, JJ.**

DATE : 14th FEBRUARY, 2023.

P.C.:-

1. By the present Petition, the Petitioner has prayed that, a writ in the nature of *habeas-corpus* may be issued to release the Petitioner forthwith from custody; to direct the Respondent No.1 i.e. Union of India through Air Intelligence Unit to satisfy Court that, the custody of the Petitioner is not illegal and to quash and set-aside the Order dated 17th July 2022 passed by the learned Metropolitan Magistrate for Esplanade, Mumbai remanding the Petitioner to judicial custody.

2. Heard Mr.Parmar, learned Advocate for Petitioner and Mrs.Shinde, learned A.P.P. for Respondent No.2-State. Perused record annexed to the Petition.

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3. It is the fact on record that, the Petitioner a foreign national came to India with 1101.80 gms of 'Methaqualone' concealed in his stomach in the form of capsules. He was intercepted at the Airport by the Officers of Respondent No.1 on 17th July 2022 and was arrested by following necessary legal procedure. Petitioner was thereafter produced before the learned Additional Chief Metropolitan Magistrate for Esplanade, Mumbai on 17th July 2022 itself. The learned Magistrate thereafter remanded the Petitioner to the custody of Respondent No.1 upto 19th July 2022. The custody of Petitioner was subsequently extended upto 3rd August 2022 by the concerned Magistrate having jurisdiction. In this precise background, present Petition for *habeas-corpus* is filed for aforestated reliefs.

4. A useful reference at this stage can be made to a decision of the Hon'ble Supreme Court in the case of *Manubhai Ratilal Patil Through Ushaben Vs. State of Gujrat and Others* reported in (2013) 1 SCC 314 that, a writ petition for *habeas corpus* cannot be entertained, when a person is committed to judicial custody or police custody by the competent Court by an order which prima facie does not appear to be without jurisdiction or which is passed in an absolutely mechanical manner or is wholly illegal. It is stated that, writ Court is required to scrutinize the legality or otherwise of the order of detention/remand which has been passed. Unless the writ Court is satisfied that, a person has been committed to jail custody by virtue

of an order that suffers from the vice of lack of jurisdiction or absolute illegality, a writ of habeas corpus cannot be granted. In the case of *The State of Maharashtra & Ors. Vs. Tasneem Rizwan Siddiquee*, reported in 2018 (9) SCC 745, the Hon'ble Supreme Court has held that, if a person is in police custody pursuant to remand Order passed by the jurisdictional Magistrate in connection with certain offence under investigation and the remand Order is in force, a Writ Petition for a relief of *habeas-corpus* with respect to the said person is not maintainable. In the said decision, the Hon'ble Supreme Court has relied upon the decision in the case of Manubhai R. Patel (supra).

5. After applying the aforestated principle of law to the present case and after perusing the Order passed by the learned Magistrate dated 17.07.2022, it clearly appears to this Court that, the said Order does not suffer from any illegality. The learned Magistrate was having jurisdiction to remand the Appellant or to direct his detention.

6. In view of above, we find that, present Petition is *dehors* of merits and is accordingly dismissed.

(PRAKASH D. NAIK, J.)

(A.S. GADKARI, J.)