

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

W.P.A. No. 20911 of 2025

Safik Laskar @ Safiqul Laskar @ Pintu & Ors.

-versus-

The State of West Bengal & Ors.

For the Petitioners	:	Mr. Sudipto Maitra, Sr. Adv., Mr. Vijay Verma, Mr. Subrata Saha, Mr. Rohan Naiya, Mr. Anik Bhattacharya, Mr. Dwaipayan Biswas
For the State	:	Mr. Kishore Dutta, Ld. Advocate General, Mr. Swapan Banerjee, AGP, Ms. Sumita Shaw, Mr. Soumen Chatterjee
For the Respondent No.2	:	Mr. Rajdeep Majumdar, DSGI, Ms. Arushi Rathore
Hearing Concluded On	:	19.09.2025
Judgement On	:	22.09.2025

Tirthankar Ghosh, J. :

Petitioners approached this Court with the following prayers: -

“a) A writ of and/or in the nature of Mandamus commanding the
Respondent Nos. 1 to 4 and their men, agents, subordinates,

superiors and successors in office and each one of them to forbear from giving any effect and/or further effect to the impugned order dated 25-08-2025 (Annexure "P-4" of this writ petition) and an impugned notice dated 26-08-2025 (Annexure "P-5" to this writ petition) in any manner whatsoever and to recall, rescind, withdraw and cancel the impugned order dated 25-08-2025 (Annexure "P-4" of the writ petition and the impugned notice dated 26-08-2025 (Annexure "P-5" of the writ petition) forthwith;

- b)** A writ of and/or in the nature of Certiorari directing the respondents concerned and their men, agents, subordinates, superiors and successors in office and each one of them to forthwith transmit, certify and produce all the relevant papers, documents and records including the impugned order dated 25-08-2025 (Annexure "P-4" to the writ petition) and the impugned notice dated 26-08-2025 (Annexure "P-5" to the writ petition) and do conscionable justice by quashing the same;
- c)** A writ of and/or in the nature of Prohibition forbidding the respondents concerned and their men, agents, subordinates, superiors and successors in office and each one of them not to take any steps, action, measure in pursuant to the impugned order dated 25-08-2025 02 (Annexure "P-4" of the writ petition) and the impugned notice dated 26-08-2025 (Annexure "P-5" of the writ petition) in any manner whatsoever;

- d)** A Rule NISI in terms of prayer (a), (b) and (c) above and to make the Rule absolute if no cause and/or insufficient cause is shown in reply thereto;
- e)** An interim order restraining the respondents and their men, agents, subordinates, superiors and successors in office and each of them not to take any steps, action and measure pursuant to the impugned order dated 25-08-2025 (Annexure "P-4" of the writ petition) and the impugned notice dated 26-08-2025 (Annexure P-5" of the writ petition) in any manner whatsoever and further, an interim order directing the respondents concerned to release the bank accounts, lift the freeze on the bank accounts and/or lift the hold on the bank accounts of the petitioners (Annexure "P-8" of the writ petition) forthwith and/or to pass any order/orders, direction/directions as your Lordship may deem fit and proper.”

Mr. Maitra, learned Senior Advocate appearing for the petitioners challenged the order dated 25.08.2025 passed by the Officer-in-Charge, Jibantala Police Station as also the intimation dated 26.08.2025 issued by the Competent Authority and Administrator, Kolkata. By the order dated 25.08.2025 the Officer-in-Charge freezed/seized the properties of the petitioners under Section 68-F (1) read with Section 68-E of the Narcotics Drugs & Psychotropic Substances Act, 1985 contending the same to be illegally acquired properties.

In order to fortify his argument learned Senior Advocate appearing for the petitioners submitted that the genesis of the order relates to Jibantala P.S. Case No. 147 of 2014 dated 18.03.2014 under Sections 21/29 of the NDPS Act. It was argued that the name of petitioner No. 1 appeared on the basis of statement of a co-accused, which is inadmissible evidence without any evidentiary value and the petitioner was unfortunately charge-sheeted in connection with the said case. It was further argued that the subject matter of the case related to 10 (ten) grams of heroin which is an intermediate quantity and the prescribed punishment under the said provisions do not attract any of the Sub-Sections of Section 68-A of NDPS Act, thereby calling for such coercive measures undertaken by the Officer – in – Charge.

Attention of the court was drawn to Section 21 (b) of the NDPS Act:

“(b) where the contravention involves quantity, lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;”

Further reference was made to Section 68- A (2) (cc) of NDPS Act:

“(cc) every person who has been arrested or against whom a warrant or authorisation of arrest has been issued for the commission of an offence punishable under this Act with imprisonment for a term of ten years or more, and every person who has been arrested or against whom a warrant or authorisation of arrest has been issued for the commission of a similar offence under any corresponding law of any other country.”

Emphasis was made by the petitioners in respect of the language used in Section 68- A (2) (cc) of the Act and it was argued that such a proceeding could not be initiated against a person where warrant of Arrest has been issued for commission of an offence for a term of imprisonment of 10 years or more, on the contrary the petitioner no. 1 was arraigned in an offence where the prescribed punishment states that the imprisonment may extend to a term of 10 years. Thus the minimum punishment prescribed under Section 68- A (2) (cc) of the Act do not apply to the case of the petitioner, as such the order dated 25.08.2025 passed by the Officer-in-Charge, Jibantala Police Station is without any jurisdiction and the consequential steps taken on the basis of the said order is without any authority of law being liable to be set aside.

Additionally, it was argued that in connection with Jibantala P.S. Case No. 147 of 2014, after conclusion of investigation charge-sheet was submitted, and the police authorities prayed for warrant, proclamation and attachment. However, the learned Magistrate ignored the prayer for warrant, proclamation and attachment on the date when the charge sheet was submitted and surprisingly, on a subsequent date warrant of arrest was issued against the petitioner No. 1. Finally in the year 2021 the case was filed as the warrant, proclamation and attachment (WPA) could not be executed. Petitioners therefore challenged the purported notice dated 26.08.2025 under Section 68-F (2) issued by the Competent Authority & Administrator, Kolkata.

Learned Senior Advocate submitted that the provisions of Chapter V-A of the Act deals with forfeiture of property, which must have a direct nexus with the income derived from any contravention of the provisions of the Act. Referring to the manner in which the petitioner No. 1 was implicated in connection with Jibantala P.S. Case No. 147 of 2014, it was stressed by the petitioners that on inadmissible evidence without a trial the petitioner No. 1 and his family members were subjected to such coercive measures by the Police Authorities as well as the Competent Authority and Administrator, Kolkata. Reliance was placed upon paragraphs 25-29, 33, 34, 40, 41, 53, 54, 56-60 of ***Aslam Mohammad Merchant v. Competent Authority, (2008) 14 SCC 186***, which reads as follows : -

“Issue

25. *The core question which, therefore, arises for consideration is what are the statutory requirements for initiating a valid proceeding.*

Interpretation

26. *Chapter V-A contains stringent provisions. It provides for forfeiture of property. Such property, however, as the heading of the Chapter shows, must be derived from or used in illicit traffic. Illegally acquired property in relation to any person to whom the Chapter applies would mean only such property which was acquired wholly or partly out of or by means of any income attributable to the contravention of any provision of the Act or for a consideration wholly or partly traceable to any property referred to in sub-clause (i) or the income or earning from property.*

27. *It is, therefore, evident that the property which is sought to be forfeited must be the one which has a direct nexus with the income, etc. derived by way of contravention of any of the provisions of the Act or any property acquired therefrom. What is meant by identification of such property having regard to the definition of “identifying” is that the property was derived from or used in the illicit traffic.*

28. *The property having regard to the said definition would include any of the properties described therein and deeds of instruments evidencing interest therein derived from or used in the illicit traffic.*

29. *In the aforementioned context, the word “person” “(sic tracing)” also assumes importance which leads to determining the nature, source, disposition, movement, title or ownership of the property. Direction to forfeiture of a property is in two parts. Firstly, it has to be identified in terms of Section 68-E of the Act. For the said purpose, a satisfaction must be arrived at by the authority specified therein to the effect that the person concerned had been holding any illegally acquired property. Secondly, on the basis of such information, he is entitled to take steps for tracing and identifying the property. The authority is also entitled to seize or freeze such a property.*

33. *The competent authority has a vast power as is provided under Section 68-R of the Act. He is not bound by any finding of any officer or authority under any other law as the same would not be conclusive for the purpose of any proceeding under the said Chapter.*

34. *Analysis of the aforementioned provisions clearly establish that a link must be found between the property sought to be forfeited and the income or assets or properties which were illegally acquired by the person concerned.*

40. *Both the statutory elements, namely, “reason to believe” and “recording of reasons” must be premised on the materials produced before him. Such materials must have been gathered during the investigation carried out in terms of Section 68-E or otherwise. Indisputably, therefore, he must have some materials before him. If no such material had been placed before him, he cannot initiate a proceeding. He cannot issue a show-cause notice on his own ipse dixit. A roving enquiry is not contemplated under the said Act as properties sought to be forfeited must have a direct nexus with the properties illegally acquired.*

41. *It is now a trite law that whenever a statute provides for “reason to believe”, either the reasons should appear on the face of the notice or they must be available on the materials which had been placed before him.*

Non-application of mind

53. *Applying these tests, it is evident that the statutory requirements have not been fulfilled in the present case.*

54. *Non-application of mind on the part of the competent officer would also be evident from the fact that a property named “Rose Villa” which was the subject-matter of the decision of this Court in *Fatima Amin* [(2003) 7 SCC 436 : 2003 SCC (Cri) 1661] was also included herein. Once the show-cause notice is found to be illegal, the same would vitiate all subsequent proceedings.*

Recording of reasons

56. *Submission of Mr Singh that the appellants have not been able to discharge the burden of proof which was on them from the impugned orders, it would appear that they have utterly failed to prove their own independent income; they being close relatives of*

the detenu, as in terms of the statutory requirements, it was for them to show that they had sufficient income from those properties.

57. *Had the show-cause notice been valid, Mr B.B. Singh might have been right, but if the proceedings themselves were not initiated validly, the competent authority did not derive any jurisdiction to enter into the merit of the matter.*

58. *The legality and/or validity of the notice had been questioned at several stages of the proceedings. Despite their asking, no reason was disclosed by the authority to the appellants. They had asked for additional reasons, if any, which were not reflected in the show-cause notices. None was disclosed.*

59. *It is also relevant to notice that the High Court opined that there had been a proper application of mind on the part of the competent authority and the Appellate Tribunal as they had released some items of properties. Application of mind on the part of the competent authority and the Appellate Tribunal at the subsequent stage was not in question; what was in question was non-application of mind on the part of the authority prior to issuance of the notice.*

Conclusion

60. *We are not unmindful of the purport and object of the Act. Dealing in narcotics is a social evil that must be curtailed or prohibited at any cost. Chapter V-A seeks to achieve a salutary purpose. But, it must also be borne in mind that right to hold property, although no longer a fundamental right, is still a constitutional right. It is a human right.”*

Petitioners relied upon ***Najmunisha & Abdul Hamid Chandmiya Alias Ladoo Bapu v. State of Gujarat Narcotics Control Bureau, 2024 SCC OnLine SC 520***, to emphasise that on an inadmissible evidence

Petitioner No. 1 was implicated in connection with Jibantala P.S. Case No. 147 of 2014, and as such referred to paragraph 53 of the aforesaid judgment which reads as follows:

“53. By virtue of the decision in Tofan Singh (supra), the benefit is to be granted to the appellants herein in regard to the inadmissibility of their statements under Section 67 of the NDPS Act 1985”.

Reiterating the earlier contention that the statement of a co-accused cannot be the foundational basis of any charge, attention was drawn to **Sanjeev Chandra Agarwal v. Union of India, (2021) 20 SCC 57.** Reliance was placed on paragraph 3 which reads as follows:

“3. The factual position is that no narcotic drugs or psychotropic substances were recovered from the premises of the two appellants. As per the prosecution, 4 kg of Acetic Anhydride (Controlled Substance) was allegedly found from the premises of the appellants located at Gyan Scientific Agency, Varanasi. The High Court was not correct in relying on the statements made by other accused under Section 67 of the NDPS Act, in light of the judgment of this Court in Tofan Singh v. State of T.N. [Tofan Singh v. State of T.N., (2021) 4 SCC 1 : (2021) 2 SCC (Cri) 246] It is pointed out that the charges under Sections 9-A and 25 of the NDPS Act have been framed and to this extent there is no challenge and dispute.”

In respect of the seizure and freezing of the properties which is the subject matter of challenge, petitioners relied upon ***Fatima Mohd. Amin v. Union of India, (2003) 7 SCC 436***. Attention was drawn to paragraphs 7 and 8 which reads as follows:

“7. We have heard the learned counsel for the parties and gone through the reasons recorded by the competent authority along with the show-cause notice. We do not find any averments to the effect that the property acquired by the appellant is a benami property of her son or the same was illegally acquired from her son.

8. The contents of the said notices, even if taken at their face value do not disclose any reason warranting action against the appellant. No allegation whatsoever has been made to this effect that there exists any link or nexus between the property sought to be forfeited and the illegally acquired money of the detenu(s).”

Petitioners also relied upon ***P.P. Abdulla v. Competent Authority, (2007) 2 SCC 510***, emphasis was made on paragraphs 8 and 9 which reads as follows:

“8. It must be stated that an order of confiscation is a very stringent order and hence a provision for confiscation has to be construed strictly, and the statute must be strictly complied with, otherwise the order becomes illegal.

9. In our opinion, the facts of the case are covered by the decision of this Court in Fatima Mohd. Amin v. Union of India [(2003) 7 SCC 436 : 2003 SCC (Cri) 1661] . In the present case the contents of the notice, even if taken on face value, do not disclose any sufficient reason warranting the impugned action against the appellant as, in

our opinion, the condition precedent for exercising the power under the Act did not exist. Hence, the impugned orders cannot be sustained.”

Mr. Kishore Datta, Learned Advocate General appearing on behalf of the State submitted that Section 68-A (2) (cc) postulates that the provisions can be invoked in case of a person against whom a warrant or authorization of arrest has been issued for the commission of an offence punishable under the Act with imprisonment for a term of 10 years or more. Emphasis was made on the phrase “term of 10 years ”. Drawing analogy from Section 21 (b) of the NDPS Act, Learned Advocate General submitted that the said provision prescribes rigorous imprisonment for a term which may “extend to 10 years”.

Thus, the term 10 years which has been provided under Section 21 (b) of the NDPS Act would mean that a person can be punished or sentenced for or up to 10 years. Additionally, it was submitted that if in a statute the legislature in its wisdom has used different terms and expressions, then in that case it would have a distinct and different meaning, considering the part of the statute in which the same term has been used. To that effect, Learned Advocate General relied upon ***Kerala State Beverages Manufacturing and Marketing Corporation Limited v. Assistant Commissioner of Income Tax, Circle (1), (2022) 4 SCC 240***. Attention of the Court was drawn to paragraph 40 which states as follows:

“40. It is settled principle of interpretation that where the same statute, uses different terms and expressions, then it is clear that legislature is referring to distinct and different things. To support the said view

ready reference can be made to judgments of this Court in DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana [DLF Qutab Enclave Complex Educational Charitable Trust v. State of Haryana, (2003) 5 SCC 622] ; Kailash Nath Agarwal v. Pradeshiya Industrial & Investment Corpn. of U.P. Ltd. [Kailash Nath Agarwal v. Pradeshiya Industrial & Investment Corpn. of U.P. Ltd., (2003) 4 SCC 305] ; and Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd. [Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd., (2001) 3 SCC 609 : 2001 SCC (Cri) 582]”

So far as the order passed by the Officer-in-Charge of Jibantala Police Station dated 25.08.2025, it was emphasized that though no reasons were required to be recorded in writing yet substantial reasons have been assigned by the Officer-in-Charge.

Learned Advocate General drew the attention of the Court to the following paragraph in the order dated 25.08.2025 which reads as:

“On interrogation the detainee confessed that he purchased the said heroin since long from Safik Laskar Safiqul Laskar Pintu S/O Late Chand Laskar of Dakhin Makaltala PO Banara PS-Jibantala South 24 Parganas and the said Rs. 28,000/- (Twenty Eight thousands) earned after selling the same at locality”.

Further it was referred in the said order as follows:

“The case is presently under trial before the Ld. Additional District and Session Judge, 4th Court, Alipore, Dist.-South 24

Parganas. The offence is punishable with imprisonment for ten years or more”.

Thereafter, Learned Advocate General drew the attention of the court to a specific heading which read as “Reason to believe” and it was emphasized that the following paragraphs do substantiate the reasons for seizing/freezing of the properties belonging to the petitioner No. 1 and his family members, even though such reasons for recording were not at all required. The specific part of the order under the caption “Reason to believe” reads as follows:

“WHEREAS, such large increase in tangible assets is in contradiction to their declared source of income.

WHEREAS, such huge expenditure and deposited money in their Bank Account ipso facto contradict their declared source of income.

WHEREAS, the ITR statement of relatives of Safik Laskar @ Safikul Laskar @ Pintu S/O Late Chand Laskar of Dakhin Makaltala PO Bansra PS-Jibantala South 24 Parganas namely 1) Rosid Laskar @ Rasid S/O-Safik Laskar of Dakshin Makhaltala, PO Bansra, PS Jibantala, South 24 Parganas., 2) Ashik Laskar S/O-Safik Laskar of Dakshin Makhaltala, PO- Bansra, PS-Jibantala, South 24 Parganas, 3) Rosida Laskar @ Rasida W/O-Safik Laskar of Dakshin Makhaltala, PO- Bansra, PS- Jibantala, South 24 Parganas, were commensurate with the bank balance and money spent to purchase the tangible properties hence it pave way to doubt their source of income.

WHEREAS, the Income Tax Returns of 1) Rosid Laskar @ Rasid S/O-Safik Laskar of Dakshin Makhaltala, PO- Bansra, PS- Jibantala, South 24 Parganas, 2) Ashik Laskar S/O-Safik Laskar of Dakshin Makhaltala, PO- Bansra, PS- Jibantala, South 24 Parganas, 3) Rosida Laskar @ Rasida W/O-Safik Laskar of Dakshin Makhaltala, PO- Bansra, PS- Jibantala, South 24 Parganas have been collected by the EO and their declared source of income could not justify their purchasing ability to buy such properties.

WHEREAS, Section 68B (g)(ii) provides "illegally acquired property" in relation to any person to whom this Chapter applies, means, that any property acquired by such person, whether before or after the commencement of the Narcotic Drug and Psychotropic Substances (Amendment) Act, 2014, wholly or partly out of or by means of any income, earnings or assets the source of which cannot be proved or the equivalent value of such property.

Now therefore, considering the above facts there are reasons to believe that these properties have been illegally acquired from the income earned through drug trafficking. Presumption with common prudence leads to the probabilities that these properties may be transferred or dealt with in any other manner which may frustrate proceedings relating to their forfeiture under Chapter VA of the NDPS Act, 1985."

Referring to Section 68-F and Section 68-H of the NDPS Act, it was emphasized by the Learned Advocate General that, in Section 68-E the phrase used is "reason to believe" on the other hand in Section 68-H the term "reason to believe" is qualified by the legislature as "(the reasons for such believe to be recorded in writing)". Thus according to the State, no

satisfaction was required to be recorded in writing by the officer concerned and his reasons for belief being justified were enough, for exercising his powers under Section 68-E and Section 68-F (1) of the NDPS Act.

Another issue which is canvassed by the Learned Advocate General is related to the intimation which has been sent under Section 68-F of the NDPS Act. It was submitted that at the end of the intimation, the signatory was an officer who signed for and on behalf of the Competent Authority and Administrator, Kolkata. The same according to the State is an intimation and not a notice which has been issued by the Competent Authority. It was further stated that in respect of intimation or notices, usually a subordinate authority on behalf of the authority concerned signs the notices and for that no delegation of power is required. So far as the authority is concerned, before whom the petitioner is supposed to appear has been expressly provided in the contents of the intimation, Petitioner is able to understand but has challenged the authority of the Inspecting Officer who has signed the notice and through whom such intimation was sent to the petitioner. Such contention is diluted by the fact that the said intimation is not a notice under Section 68-H of the NDPS Act.

Learned DSGI appearing for the Competent Authority and Administrator, Kolkata submits that the main thrust of contention on behalf of the petitioner is in respect of the prescribed punishment. According to the petitioner, the contention which was advanced before this Court is in respect of the prescribed punishment and the warrant of arrest so issued. So far as the issue relating to the prescribed punishment is

concerned, Learned DSGI, relied upon the judgment of **Rajiv Chaudhary v. State (NCT of Delhi), (2001) 5 SCC 34**. Reliance was placed on paragraphs 3 and 6 of the said judgment which holds as follows:

“3. The appellant was arrested in connection with an offence punishable under Sections 386, 506 and 120-B IPC. He was produced before the Metropolitan Magistrate, Delhi on 31-10-1998 and was released on bail by order dated 2-1-1999 by the Metropolitan Magistrate on the ground that charge-sheet was not submitted within 60 days as provided under Section 167(2) of the Criminal Procedure Code, 1973. That order was challenged before the Sessions Judge, New Delhi by filing Criminal Revision No. 22 of 1999. By judgment and order dated 18-8-1999, the Additional Sessions Judge, New Delhi allowed the said revision application. The learned Additional Sessions Judge held that for an offence under Section 386 IPC, period of sentence could be up to 10 years’ RI. Hence, clause (i) of proviso (a) to Section 167(2) would be applicable. He, therefore, set aside the order passed by the Metropolitan Magistrate releasing the accused on bail. That order was challenged before the High Court by the accused. The High Court referred to its earlier decisions and held that the expression “an offence punishable with imprisonment for a term of not less than 10 years” in clause (i) of proviso (a) to Section 167 would mean an offence punishable with imprisonment for a specified period which period would not be less than 10 years or in other words would be at least ten years. The words “not less than” qualify the period. These words put emphasis on the period of ten years and mean that the period must be clear ten years. It was further held that on a plain reading of clause (i) of proviso (a) to sub-section (2) of Section 167 CrPC, there seemed to be no doubt that offences punishable with death, imprisonment for life or imprisonment for a term of ten years or more would fall under clause (i) and offences which are punishable with imprisonment for

less than ten years would fall under clause (ii). Hence, the High Court confirmed the order passed by the Additional Sessions Judge. That order is challenged in this appeal.

6. *From the relevant part of the aforesaid sections, it is apparent that pending investigation relating to an offence punishable with imprisonment for a term “not less than 10 years”, the Magistrate is empowered to authorise the detention of the accused in custody for not more than 90 days. For rest of the offences, the period prescribed is 60 days. Hence in cases where offence is punishable with imprisonment for 10 years or more, the accused could be detained up to a period of 90 days. In this context, the expression “not less than” would mean imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more. Under Section 386 punishment provided is imprisonment of either description for a term which may extend to 10 years and also fine. That means, imprisonment can be for a clear period of 10 years or less. Hence, it could not be said that minimum sentence would be 10 years or more. Further, in context also if we consider clause (i) of proviso (a) to Section 167(2), it would be applicable in case where investigation relates to an offence punishable (1) with death; (2) imprisonment for life; and (3) imprisonment for a term of not less than ten years. It would not cover the offence for which punishment could be imprisonment for less than 10 years. Under Section 386 IPC, imprisonment can vary from minimum to maximum of 10 years and it cannot be said that imprisonment prescribed is not less than 10 years.”*

It was emphasized that, it has been interpreted and settled by the Hon’ble Apex Court that punishments prescribed as “for a term which may extend to 10 years’ would mean “10 years or less”. It was submitted that the issue raised by the petitioner has no legs to stand upon so far as the provisions under which the petitioner was implicated under the NDPS Act in connection with Jibantala P.S. Case No.147 of 2014 and the warrant of

arrest which is pending in connection with the said case for a considerable period of time. It was reiterated that the provisions of Section 68-A (2) (cc) is squarely applicable in the facts of the present case and there is no merits in respect of the contention advanced by the petitioner.

It was also pointed out by the Learned DSGI that majority of the judgments which have been relied upon by the petitioner was after the forfeiture order was passed and none of the judgments are applicable so far as the present stage of the proceedings are concerned, as the petitioner has approached the High Court at a prematured stage.

Learned DSGI submitted that judicial review has got a limited scope and at each and every stage one cannot invoke the said provisions, to that effect, attention of the Court was drawn to ***Municipal Corporation of Greater Mumbai and Ors. v. Vivek V. Gawde, (2024) SCC Online SC 3722***. Reference was made to paragraphs 19 and 20 which is set out as follows:

“19. We now proceed to consider the second relief claimed in the writ petition of the respondents, i.e., the challenge laid to the order passed by the Inquiry Officer. It is well settled that decisions rendered by administrative authorities can be interfered with by high courts in exercise of Article 226 powers, however, sparingly. Recently, this Court in W.B. Central School Service Commission v. Abdul Halim⁷ while considering the scope of interference under Article 226 in an administrative action held that:

“31. In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an

apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in *Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale* [*Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale*, AIR 1960 SC 137]. If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ court by issuance of writ of certiorari.

32. The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.

33. However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest

injustice. The writ court does not interfere, because a decision is not perfect.'

(emphasis supplied)

20. The decision was approved by a further decision of this Court in Municipal Council, *Neemuch v. Mahadeo Real Estate*, wherein it was held that:

"14. It could thus be seen that the scope of judicial review of an administrative action is very limited. Unless the Court comes to a conclusion that the decision-maker has not understood the law correctly that regulates his decision-making power or when it is found that the decision of the decision-maker is vitiated by irrationality and that too on the principle of 'Wednesbury unreasonableness' or unless it is found that there has been a procedural impropriety in the decision-making process, it would not be permissible for the High Court to interfere in the decision-making process. It is also equally well settled that it is not permissible for the Court to examine the validity of the decision but this Court can examine only the correctness of the decision-making process.

16. It could thus be seen that an interference by the High Court would be warranted only when the decision impugned is vitiated by an apparent error of law i.e. when the error is apparent on the face of the record and is self-evident. The High Court would be empowered to exercise the powers when it finds that the decision impugned is so arbitrary and capricious that no reasonable person would have ever arrived at. It has been reiterated that the test is not what the Court considers reasonable or unreasonable

but a decision which the Court thinks that no reasonable person could have taken. Not only this but such a decision must have led to manifest injustice.””

Learned DSGI further submitted that the present petitioner did not participate in the criminal proceedings. As such, the warrant, proclamation and attachment till date has not been executed or could not be executed, he is an absconder who is evading the process of law and has approached this Court after the properties which were illegally acquired by him could be traced by the authorities. The issue relating to admissibility of evidence in a criminal proceeding is not applicable in respect of financial investigations being carried out under the same statute, particularly the stage at which the petitioner has approached this Court, which will be evident from the judgment of the Hon'ble Supreme Court in *Municipal Corporation of Greater Mumbai & Ors. (supra)*.

I have taken into account the submissions advanced by Mr. Maitra learned Senior Advocate for the petitioners, Learned Advocate General appearing on behalf of the State and the Learned DSGI appearing on behalf of the Competent Authority and the Administrator, Kolkata. While the submissions on behalf of the petitioners were on the aspect of the prescribed punishment under Section 21(b) of the NDPS Act and its ramifications so far as financial investigation is concerned in relation to 68-A (2) (cc), I am of the opinion that, the term 10 years as interpreted by the petitioners is not acceptable to this Court as the same has been settled by

the Hon'ble Supreme Court in the judgment of Rajiv Chaudhary (*supra*). As such the warrant of arrest so issued in connection with Jibantala P.S. Case No. 147 of 2014 do attract the provisions of Section 68-A (2) (cc), so far as the petitioners are concerned. As such there is justification for the financial investigation to be carried out under Chapter V - A of the NDPS Act.

So far as the judgments which have been relied upon on behalf of the petitioners i.e., *Aslam Mohammad Merchant (supra)*, *Najmunisha & Abdul Hamid Chandmiya Alias Ladoo Bapu (supra)*, *Sanjeev Chandra Agarwal (supra)*, *Fatima Mohd. Amin (supra)*, *P.P Abdulla (supra)*, are not applicable to the facts and the stage of the present case as each of the cases were decided after the proceedings were adjudicated by the Authority concerned.

In the present case, the order has been passed under Section 68-E/ 68- F (1) by the Officer-in-Charge of Jibantala Police Station which requires to be confirmed under 68-F (2) within a period of 30 days, as such the intimation which has been issued by the Competent Authority and Administrator, Kolkata is under Section 68- F of the NDPS Act 1985. Such an intimation of personal hearing under Section 68-F of the NDPS Act is completely different from notice of forfeiture under Section 68-H of the NDPS Act. The terms "seizing", "freezing" and "forfeiture" are distinctively and differently used under the Act and the purposes are completely different.

Petitioner has approached this Court at a prematured stage under the impression that the hearing for which the petitioner has been called are for forfeiture of the property. The same is a subsequent procedure for which the petitioners are entitled to a notice under Section 68-H.

It would not be out of place to state that learned DSGI appearing for the Competent Authority and Administrator, Kolkata has taken the stand that although no intimation for personal hearing is required under Section 68-F (2) of the Act, but such an opportunity has been granted by the authorities concerned and it is only after this stage is over, notices for forfeiture of the property would be issued against the petitioners, if so called for.

In fact, the provisions of Section 68-G, Section 68-H, Section 68-I, Section 68-J calls for different procedural formality to be complied with and the same cannot be clubbed with Section 68-F (2).

In light of the observations made above, I am of the opinion that the prayer of the petitioners so far as challenging the order dated 25.08.2025 passed by the Officer-in-Charge of Jibantala Police Station under Section 68-F (1) read with Section 68-E as also the intimation of personal hearing under Section 68-F (2) issued for and on behalf of the Competent Authority and Administrator, Kolkata dated 26.08.2025 do not call for any interference by this Court.

Consequently, WPA No. 20911 is dismissed.

Pending connected application(s), if any, are also disposed of.

All concerned parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of the judgement, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)

Later:

Learned Advocate appearing on behalf of the petitioners prays for stay of the operation of the order. However, in view of the reasons so assigned in the Writ Petition the same is refused.

(Tirthankar Ghosh, J.)