

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Writ Petition No.2684 of 2025

Sanjay Pralhad Fulkar

... Petitioner

V/s.

The State of Maharashtra and others

... Respondents.

Mr. Vipul D. Patil a/w. Mr. Pandurang Sonune for the Petitioner.

Ms. M.M. Deshmukh, APP for the State.

**CORAM : SARANG V. KOTWAL
& S.M. MODAK, JJ.**

DATE : 6th May 2025.

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JUDGMENT (PER SARANG V. KOTWAL, J.):

This is a petition for issuance of writ in the nature of habeas corpus and for setting aside the arrest memo in respect of the present Petitioner and the consequent relief is for his release on bail.

2. The main contention raised by the Petitioner in this petition is that, he was not produced before the nearest Magistrate within 24 hours from his arrest and, therefore, his arrest and subsequent remands are illegal. He is seeking relief in the nature of writ of

habeas corpus in these circumstances.

3. The Petitioner is arrested in connection with C.R. No.201/2025 registered at, Nerul Police Station under Sections 8 (c),20(b)(ii),29,21(A),23(A),27(A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'NDPS Act') and under Sections 338, 336(3),340(2),255, 3(5) of Bhartiya Nyay Sanhita, 2023 (for short 'BNS').

4. The contentious issue is whether the Petitioner was arrested at 5.00 a.m. on 27th April 2025 or was arrested at 9.00 p.m. on 27th April 2025. He was granted remand by the learned Magistrate at around 11.00 a.m. on 28th April 2025. It is mentioned in the petition that the Petitioner was at home at around 5.00 a.m. on 27th April 2025. About 6 police officers came to his residence and according to the Petitioner he was apprehended at around 5.22 a.m. on 27th April 2025. He was taken to Anti Narcotic Cell, Crime Branch, Navi Mumbai for interrogation. At about 12..00 a.m. in the midnight between 27th April 2025 and 28th April 2025 he was taken to the learned Magistrate who was assigned the job of holiday Magistrate

but by the time the police reached the JMFC Court, Belapur, it was 12.08 a.m. and the learned Magistrate was not available. Thereafter, he was taken to concerned police station where he was detained and thereafter he was produced before the JMFC Belapur on 28th April 2025. According to learned Counsel for the Petitioner this is gross violation of Article 22 as he was not produced before the nearest Magistrate within 24 hours. The learned Magistrate did not entertain the prayer for remand on 27th April 2025. The Petitioner's custody, therefore, becomes illegal.

5. In support of his case the learned Counsel relied on the observations of a Division Bench judgment of the High Court of Telangana in the case of *Smt. T. Ramadevi v/s. The State of Telangana*¹ and the judgment of a Single Bench of this Court in the case of *Ashak Hussain Allah Detha @ Siddique and another vs. The Assistant Collector of Customs (P) Bombay and another*² to contend that since the Petitioner was put under restraint at 5.00 a.m. on 27th April 2025, that is the time which should be treated as the time of arrest. He contended that the Single Judge bench of this Court has held

1 WP No.21912/2024 dt.26.9.24

2 1990 SCC OnLine Bom 3

that arrest is the restraint on a man's personal liberty by the power or colour of lawful authority. Arrest means restraint on or deprivation of one's personal liberty.

6. On the other hand, learned APP relied on the affidavit filed by the Senior Police Inspector attached to Anti Narcotic Cell, Crime Branch, Navi Mumbai to present the facts before the Court. Her main contention is that the Petitioner was called for enquiry on 27th April 2025 at around 6.00 a.m. and only after being satisfied about his involvement, he was put under arrest at 9.00 p.m. on 27th April 2025. He was produced before the Magistrate and was granted remand within 24 hours from that time and, therefore, the custody is not illegal.

7. We have considered these submissions. The facts mentioned in the affidavit-in-reply filed by the Senior Police Inspector Shri Nigade are as follows. It is necessary to give a brief background of the entire case-

. The Anti Narcotics Cell officers received a confidential information on 14th April 2025. Pursuant to that information they

conducted raid on the terrace of a building in Sector 15, Nerul, Navi Mumbai. Two accused namely Ashish Gaware and Ahmed Olgi were apprehended. One Akash Maurya was successful in absconding from the scene. The body search of the two accused was carried out, the raiding party also seized two sets of ganja (intermediate quantity) from the terrace. One set of ganja was having weight of 1 kg and 15 grams and second set of ganja was of “hydroponic weed” (imported) having weight of 17.19 grams. The FSL team confirmed the presence of this narcotic drug. After following the prescribed procedure the two arrested accused were taken to Nerul police station and the offence vide C.R. No.201/2025 was registered.

8. During investigation it was revealed that both of these arrested accused used to sell the contraband. They used to purchase it from one Sahil Shabbir Lambe and one Sujeet Raghunath Bangra. Therefore, house search of Sahil Lambe was conducted and further quantity of ganja was seized from his house. The investigation revealed that Sujeet Bangra was the mastermind for providing the contraband substance to various persons. Therefore, Sahil Lambe and Sujeet Bangra were also arrested. Sujeet disclosed that he

imported the said hydroponic ganja from Thailand and America and one Mr. Kamal Jaikisan Chandwani used to assist them for making custom clearance. Therefore, house search of Kamal Chandwani was conducted on 21st April 2025. Some cash was seized. From his car 85.29 grams of hydroponic ganja was found. Kamal Chandwani was arrested on 21st April 2025 from his residence.

9. The next stage of investigation concerns the present Petitioner. The interrogation of Chandwani revealed that in order to remove his name and those of his associates Sujeet Bangra and Jai Koli (the absconding accused) he met Mr. Sachin Bhalerao – Police Hawaldar attached to Kharghar Police Station, Navi Mumbai. Sachin Bhalerao in turn made a phone call to the present Petitioner who was a Police Naik Buckle No.2643 attached to Anti Narcotic Cell, Navi Mumbai. The Petitioner allegedly assured Bhalerao that he would ensure that Kamal Chandwani, Sujeet Bangera and Jai Koli's names would not be impleaded as accused. The accused agreed to pay an amount of Rs.10 lacs to the Petitioner. On 15th April 2025 they handed over cash of Rs. 10 lacs to Sachin Bhalerao and Bhalerao

went to the house of Petitioner at Khandeshwar and handed over Rs.10 lacs to him. This was the information received by the investigating officer. The telephone locations of all the accused persons were verified. Sachin Bhalerao was arrested on 27th April 2025 at 9.15 a.m. The details of phone calls from his mobile phone revealed that there was reference to demand of money from Kamal Chandwani and also a reference to the Petitioner's name.

10. The affidavit further mentions that the police went to the residence of the Petitioner at Khanda Colony and asked him to come with them for enquiry to the office of Anti Narcotic Cell, Navi Mumbai and brought him to office at 6.00 a.m. on 27th April 2025. After making enquiry with him, his involvement was revealed and, therefore, he was arrested on 27th April 2025 at 9.00 p.m. The affidavit contains the station diary of Anti Narcotic Cell office dated 27th April 2025. All the procedure required under the Bhartiya Nyay Sanhita was followed. The Petitioner's wife was informed. Shri Sandeep Nigade took the Petitioner to the learned Judicial Magistrate, Belapur, Navi Mumbai on 28th April 2025 at 12.10 a.m. for the first remand within 24 hours from the arrest of the Petitioner

with the remand report and requested for producing the accused for remand. Upon this the learned JMFC through the Court's staff informed Shri Nigade that the learned Magistrate was on leave and he would be available in the morning at 11.00 a.m. and instructed him to produce the Petitioner at 11.00 a.m. After that Nigade returned back to Anti Narcotic Cell, Belapur and made a station diary entry. The Petitioner was produced before the learned JMFC, Belapur on 28th April 2025 at 11.00 a.m..

11. According to the affidavit he was produced within 24 hours from 27th April 2025 at 9.00 p.m. The Learned Magistrate granted police custody till 1st May 2025. The learned Magistrate also observed that there was no illegal detention as far as the Petitioner is concerned. The Petitioner's contention in that behalf was rejected.

. These are the facts mentioned in the affidavit-in-reply.

12. In this background we have considered the submissions of both the learned Counsel. The station diary entries of Anti Narcotic Cell, Navi Mumbai mention that at 6.00 a.m. the Petitioner was brought to that office. Significantly, the Petitioner was working with

the same office. The station diary entries after that mention that at about 8.20 a.m. accused Kamal Chandwani was brought to the office. At 9.05 a.m. Sachin Bhalerao was brought to the office from Nashik. At 9.15 a.m. on 27th April 2025 Sachin Bhalerao was put under arrest. Further station diary entries on that day mention the investigation carried out in connection with this offence. Particularly, in respect of accused Sachin Bhalerao's involvement, his house was searched. He was taken for remand. All this took some time and finally at 9.00 p.m. the present Petitioner was arrested. The entry at 9.00 p.m. mentions that since the Petitioner's involvement in the crime was revealed, he was arrested after following the due procedure. Thus, the entries show that though the Petitioner was brought to the Anti Narcotic Cell office at around 6.00 a.m. on 27th April 2025, he was not immediately put under arrest. Significantly, he was working with the same office, therefore, the police officers were right in their approach in first satisfying themselves about the involvement of the Petitioner before arresting him. The station diary entries show that first the accused Bhalerao was put under arrest. He was thoroughly interrogated, his house was searched, he was

produced for remand and only after all this investigation was carried out, the police officers were convinced about the Petitioner's involvement in the crime and then he was arrested at 9.00 p.m. on 27th April 2025.

13. Thus, we do not see any fault with the procedure. It cannot be said that since the Petitioner was taken to the Anti Narcotic Cell office at 6.00 a.m. that means he was arrested then and there. It is important to note that there is a special provision under Section 67 of the NDPS Act which reads thus:

“67. Power to call for information, etc. - Any officer referred to in section 42 who is authorised in this behalf by the Central Government or a State Government may, during the course of any enquiry in connection with the contravention of any provision of this Act, -

(a) call for information from any person for the purpose of satisfying himself whether there has been any contravention of the provisions of this Act or any rule or other made thereunder;

(b) require any person to produce or deliver any document or thing useful or relevant to the enquiry;

(c) examine any person acquainted with the facts and circumstances of the case.”

Thus, the investigating officers were well within their right to examine any person which in this case would be the present Petitioner who was acquainted with the facts and circumstances of the case. They were also well within their rights to call for information from any person including the Petitioner in this case for the purpose of satisfying themselves that there has been contravention of provisions of NDPS Act. Thus, the enquiry made by the Anti Narcotic Cell officers throughout the day as is reflected in the station diary entry of 27th April 2025 was in the nature of this enquiry, therefore, it cannot be said that the Petitioner was under arrest right from 5.00 a.m. on 27th April 2025.

14. The reliance of the learned Counsel for the Petitioner on the aforesaid two judgments, therefore, does not assist his arguments regarding the illegal detention of the Petitioner as we have observed that the Petitioner was rightly put under arrest at 9.00 p.m. on 27th April 2025 only after being satisfied about his involvement in the crime. From that time he was produced before the Magistrate within 24 hours and first remand was granted. Everything was done in

accordance with law and procedure. There is no violation of any statutory or constitutional provisions. In this view of the matter, we do not find that any relief can be granted in this petition.

15. The Writ Petition is dismissed and disposed of accordingly.

16. All these observations are made for consideration of illegality of detention of the Petitioner. The Petitioner would be at liberty to adopt appropriate proceedings for his release on bail on merits in accordance with law.

(S.M. MODAK, J.)

(SARANG V. KOTWAL, J.)