

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

CRIMINAL WRIT PETITION NO. 3770 OF 2025

Mohan Babulal Jain

..Petitioner

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. Rafique Dada a/w. Prasannan Namboodiri, Pratibha Namboodiri, Rishabh Sinha, Pallavi Dabak and Nakshatra Mahadik for Petitioner.

Ms. Sharmila S. Kaushik, APP for State/Respondent.

Mr. Jitendra B. Mishra a/w. Sangeeta Yadav, Ashutosh Mishra and Rupesh Dubey for the Respondent No.2.

**CORAM : SARANG V. KOTWAL &
SHYAM C. CHANDAK, JJ.**

**RESERVED ON : 24 SEPTEMBER 2025
PRONOUNCED ON : 07 OCTOBER 2025**

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

1. This is a petition for issuance of writ of *habeas corpus* directing forthwith release of the Petitioner in connection with the case file F. No. CUS/SIIB/INT/70/2025-SIIB(X) ACC, registered for commission of the offences punishable under Sections 21(c), 22(c), 23(c), 25, 26, 28, 29, 30 and 54 of the Narcotic Drugs and

Psychotropic Substances Act, 1985 (hereinafter referred to as 'NDPS Act') r/w. Section 8(c) and 79 of the NDPS Act, along with Rules 53, 58 and 66 of the NDPS Rules, 1985, r/w. Section 50(3) (c) of the Customs Act, 1962, r/w. Foreign Trade (Development and Regulation) Act, 1992 and DGFT Notification No.67(RE-2007)/2004-2009 dated 27.12.2007. The other prayer is for setting aside the remand orders passed from time to time in this connection from 31.01.2025.

2. Heard Mr. Rafique Dada, learned Senior counsel for the Petitioner, Ms. Sharmila Kaushik, learned APP for State/Respondent No.1 and Mr. Jitendra Mishra, learned counsel for the Respondent No.2.

3. The Petitioner is a Director of Naprod Life Sciences Pvt. Ltd. (hereinafter referred to as 'the company'). It is a private limited company having its registered office at Andheri (E). The company is engaged in manufacture and sale of generic and branded formulations for Oncology and other therapeutic applications. According to the Petitioner, the company has more

than 600 employees. It is registered under the GST provisions in the State of Maharashtra. It is registered with the Central Bureau of Narcotics (CBN).

4. In this case, the Affidavit in Reply is filed by the Respondent No.2. The allegations against the Petitioner are reflected in the said Affidavit in reply, as follows:

On the basis of specific intelligence, one export consignment covered under the Shipping Bill No.7559671 dated 24.01.2025 of the said company with declared description as Ketamine Injection BP 500mg/10ml was put on hold on 28.01.2025. The subject goods were examined by the officers of SIIB(X), Air Cargo Complex, Sahar, Mumbai in presence of two witnesses which resulted in the seizure of Ketamine Injection BP 500mg/10ml of the quantity 5000 vials. The samples were drawn and were forwarded to DYCC, NCH lab for testing. The test report dated 05.02.2025 was received mentioning that the sample vials answered positive for Ketamine hydrochloride. According to the Respondent No.2, Ketamine is a notified psychotropic substance

under the NDPS Act and is mentioned at Sr.No.110A of the Schedule of list of psychotropic substances under the NDPS Act. The export of Ketamine is allowed subject to obtaining No Objection Certificate from the Narcotics Commissioner. According to the Respondent No.2, the mandatory NOC/Export authorisation from the Central Bureau of Narcotics was not available with the Petitioner at the time of export.

5. It is the case of the Petitioner that, against the purchase order dated 09.05.2024 from Cospharm t/a M Plus Distributors, Namibia with instruction to ship to Cospharm Inv t/a M Plus Pharmaceuticals, a Pre-shipment Export Invoice dated 21.10.2024 was issued by the company for export of 5000 vials of Ketamine Injection BP 500mg/10ml (hereinafter referred to as 'the consignment'). It was manufactured at the company's factory premises at Boisar, Palghar. It was to be exported to the long standing customer Cospharm Investments (Pty) Ltd. On 27.01.2025, the company's employee handling the exports had sent an e-mail to Macro Customs Consultants LLP, Cospharm Inv (Pty) Ltd. and Freight Forwarder requesting to cancel the booking

due to some technical reason. According to the Petitioner, the process to bring the consignment back from Customs area was initiated by Macro Customs Consultants LLP by obtaining NOC from Shipping Line. But the officers of the Respondent No.2 intervened and the consignment was put on hold. It was seized. At that time, the Petitioner was in Dubai. He was informed about the investigation. He returned to India on 29.01.2025.

6. On 29.01.2025, the officers of the Respondent No.2 conducted a search at the head office and the factory premises of the company. A summons dated 29.01.2025 was issued to the Petitioner U/s.108 of the Customs Act, 1962. Pursuant to which, the Petitioner presented himself before the office of SIIB(X), Air Cargo Complex, Sahar, Mumbai on 30.01.2025 in the afternoon hours.

The dispute regarding his arrest starts from this point onwards.

7. According to the Petitioner, on 30.01.2025 itself he was arrested and taken in custody by the officers of the Respondent

No.2. He was not allowed to leave the office, but no formal arrest memo was served. According to the Petitioner, his health deteriorated and he was examined by the doctor attached to Mumbai International Airport Ltd. (MIAL) in the office of the Respondent No.2 who suggested hospitalization. According to the Petitioner, he was taken in custody by the officers of the Respondent No.2 to Lilavati Hospital and Research Centre, where he was admitted in the early hours of 31.01.2025. He continued taking treatment there. The Respondent No.2 submitted a remand application on 31.01.2025 before the Additional Chief Judicial Magistrate, Mumbai, seeking 'medical custody' of the Petitioner. But the Petitioner was not produced before the learned Magistrate either physically or by virtual mode. The learned Magistrate did not grant remand by observing that the accused was not under arrest.

8. On 02.02.2025, the Petitioner was discharged from the Lilavati Hospital with the advice to avoid exertion, stress and monitoring blood pressure. It is the case of the Petitioner that, the officers of the Respondent No.2 without serving any further

summons, brought the Petitioner from Lilavati Hospital to the office of the Respondent No.2 ignoring the medical advice. Again his health deteriorated and at about 3:04p.m. a doctor from MIAL examined the Petitioner and suggested to take an opinion from the Cardiologist. The Petitioner was then taken by the officers of the Respondent No.2 to S. R. Mehta & Sir K. P. Cardiac Institute for examination. After collecting the report from S. R. Mehta & Sir K. P. Cardiac Institute, the officers of the Respondent No.2 brought the Petitioner to Sir JJ Group of Hospitals for further examination. After the examination in Sir JJ Group of Hospitals, the Petitioner was taken to Sir J. J. Marg police station at about 12:30a.m. on 03.02.2025. He was interrogated at Sir J. J. Marg police station. It was not an office of the Customs. His interrogation continued till 6:00a.m. on 03.02.2025. He was shown formally arrested at 09:02a.m. on 03.02.2025. He was produced before the Additional Chief Judicial Magistrate, Mumbai at 12:30p.m. on 03.02.2025. He was remanded to the Judicial custody till 13.02.2025. Thereafter, the judicial custody was extended by the learned Special Judge (NDPS) Greater Mumbai, vide further orders dated 13.02.2025,

27.02.2025 and 13.03.2025.

9. Before filing of the present petition, the Petitioner had preferred certain proceedings for his release. He had preferred Bail Application No.369 of 2025 before the learned Special Judge (NDPS), Greater Mumbai. It was rejected vide the order dated 27.02.2025. He had filed a Contempt Petition (C) No.135 of 2025 against the arresting officer, before the Hon'ble Supreme Court. It was disposed of vide the order dated 04.04.2025 by permitting the Petitioner to apply for bail or to file the proceedings for challenging the arrest. Thereafter, the Petitioner had filed Criminal Application No.433 of 2025 before a Single Judge Bench of this Court. It was allowed to be withdrawn. The Petitioner then preferred Bail Application No.1936 of 2025 before a Single Judge Bench of this Court. It was heard on 08.05.2025 and was adjourned to 15.06.2025 with direction to the Respondent No.2 to file reply. During the pendency of that application, the company received Export Authorisation from the CBN. Therefore, in the changed circumstance, the Petitioner wanted to approach the learned Special Judge (NDPS), Mumbai with a fresh bail

application. According to the Petitioner, for this reason, he sought permission to withdraw the bail application and was permitted to withdraw the Bail Application No.1936 of 2025 by a Single Judge Bench of this Court, vide the order dated 29.05.2025. The Petitioner then preferred Bail Application No.522 of 2025 before the learned Special Judge (NDPS), Greater Mumbai. It was rejected vide the order dated 08.07.2025.

In this background, after all these applications, the present petition is filed for writ of *habeas corpus*.

SUBMISSIONS OF MR. RAFIQUE DADA, LEARNED SENIOR COUNSEL FOR THE PETITIONER:

The Petitioner was always in custody of the Respondent No.2 from 30.01.2025 in the afternoon hours. It was mandatory for the Respondent No.2 to have produced him before the nearest Magistrate within 24 hours i.e. before the afternoon hours on 31.01.2025. But, he was produced for the first time before the learned Magistrate on 03.02.2025 at 12:30p.m.. This is clear violation of the mandate of Article 22(2) of the Constitution of India and of Section 58 of the Bhartiya Nagarik Suraksha Sanhita,

2023 (for short 'BNSS').

10. Mr. Dada invited our attention to the letter issued by the Respondent No.2 addressed to the Chief Medical Officer of Lilavati Hospital and Research Centre on 31.01.2025. Therein it was mentioned that, intimation of discharge of the Petitioner must be conveyed to the officers of the Respondent No.2 stationed at Lilavati Hospital, at least three hours prior to the discharge. Mr. Dada, therefore, submitted that the Customs Officers stationed at Lilavati Hospital monitoring his discharge shows that the Petitioner was in their custody. Mr. Dada relied on the letter dated 01.02.2025 sent by the Petitioner's son addressed to the Chief Medical Officer of the Lilavati Hospital which mentions that the Customs Officials who were stationed outside the ICU attempted to interrogate the Petitioner by trying to get entry into the ICU, and they in fact entered the ICU by violating the restrictions on the entry in the ICU. Mr. Dada invited our attention to the progress notes maintained by the Lilavati Hospital. A note dated 01.02.2025 at 2:45p.m mentions that, as requested by the family, the patient was allowed to stay for one more night in the ICU. It was further

mentioned in the note that the decision was jointly taken along with the patient's family, the cardiology team and the Customs Department Officers who were on duty inside the hospital premises since admission of the patient. Mr. Dada further submitted that, considering his delicate health condition, it was simply impossible to believe that, after getting admitted in S. R. Mehta & Sir K. P. Cardiac Institute, he would himself go to Sir JJ Group of Hospitals, and then after discharge from Sir JJ Group of Hospitals, in the midnight at 12:30a.m. on 03.02.2025 he would go to Sir J. J. Marg police station to complete his statement U/s.67 of the NDPS Act. This would clearly mean the only possibility that the Petitioner was in the custody of the officers of the Respondent No.2 and, therefore, he was taken to the said police station for further interrogation. Therefore, though he was shown as arrested at 09:02a.m. on 03.02.2025, he was always in custody of the officers of the Respondent No.2 since 30.01.2025 from the afternoon hours. Therefore, he is obviously produced before the learned Magistrate beyond the mandatory limited period of 24 hours.

SUBMISSIONS OF MR. MISHRA, LEARNED COUNSEL FOR THE RESPONDENT NO.2:

11. Mr. Mishra relied on the averments made in the Affidavit in reply filed on behalf of the Respondent No.2. According to the Respondent No.2, the Petitioner was never detained or arrested prior to 03.02.2025. He was arrested on that date at 09:02a.m and was produced before the learned Additional Chief Judicial Magistrate, Mumbai, at 12:30p.m. on 03.02.2025. That period is within 24 hours from his arrest. According to the Respondent No.2, the Petitioner had voluntarily appeared before the Respondent No.2 on 30.01.2025 in response to the summons dated 29.01.2025. During the course of recording his voluntary statement, he experienced uneasiness around 11:45p.m. on 30.01.2025. The medical team of MIAL was promptly requested for assistance. They noticed a spike in blood pressure and advised hospitalization. The Petitioner opted for hospitalization at Lilavati hospital where he himself got admitted on 31.01.2025 at 3:45a.m. He was accompanied by his colleague Mr. Ajit Mehta. Mr. Mishra emphasized that the Petitioner was neither in custody nor was detained by the Respondent No.2. He was under medical care at

Lilavati Hospital from 31.01.2025 till 02.02.2025. A request for 'medical custody' of the Petitioner was rejected by the Additional Chief Judicial Magistrate on 31.01.2025. The Respondent No.2 denied exerting any pressure to get the Petitioner discharged from the hospital. According to the Respondent No.2, the officers were stationed at Lilavati hospital only for monitoring purpose and not to restrict the liberty of the Petitioner in any way. Mr. Mishra invited our attention to Exhibit-G of his Affidavit in reply which is a letter signed by Dr. Gautam of Lilavati hospital mentioning that the Petitioner was admitted to the Lilavati Hospital on 31.01.2025 at 3:45a.m. under him and he was discharged on 02.02.2025. The patient was medically fit for discharge.

12. According to the Respondent No.2, since the Petitioner was fit for discharge, he was requested by the officers present at Lilavati hospital to continue giving his voluntary statement. The Petitioner presented himself for that purpose at ACC, Sahar at 1:00p.m. on 02.02.2025. He was accompanied by his wife and a friend Mr. Yogesh Gupta. The Petitioner was advised to have his

lunch and to take sufficient rest before resumption of his statement. It is further stated in the Affidavit in reply that on resumption of his statement, he again complained of chest pain. The medical team of MIAL was immediately called at 2:30p.m. on 02.02.2025. The Petitioner refused to loading dose and medical attention from MIAL medical team. The doctor at MIAL advised for urgent cardiologist opinion. The doctor at MIAL explained the relatives about the condition of the patient. The patient opted for hospitalization at S. R. Mehta & Sir K. P. Cardiac Institute. A cardiac ambulance was hired by the relative/friend of the Petitioner. He was examined by the doctors of that hospital and was discharged at 7:30p.m. on 02.02.2025, due to absence of any cardiac issue. He was referred to a General Physician. The Petitioner went from that hospital to Sir JJ Group of Hospitals in the ambulance hired by his family. It is further the case of the Respondent No.2 that the Petitioner was thoroughly examined by the doctors at Sir JJ Group of Hospitals. The tests were found in normal parameters. He was discharged from Sir JJ Group of Hospitals at 1:30a.m. on 03.02.2025. His medical reports were

normal. The Petitioner was requested to give his voluntary statement. According to the Respondent No.2, the Petitioner presented himself at Sir J. J. Marg police station on 03.02.2025 at 3:10a.m. for conclusion of his voluntary statement. Based on the voluntary statement, he was arrested on 03.02.2025 at 09:02a.m. All the necessary requirements of the procedure were complied with. After his arrest, he was again taken for medical examination at Sir JJ Group of Hospitals and then he was produced before the Additional Chief Judicial Magistrate, Esplanade, Mumbai.

13. Mr. Mishra submitted that, since the Petitioner was produced before the Additional Chief Judicial Magistrate, Mumbai shortly after his arrest at 09:02a.m. on 03.02.2025, it was well within the stipulated period of 24 hours. Therefore, the Petitioner cannot be granted any relief in this petition.

REASONS AND CONCLUSION

14. We have considered these submissions. The core issue in this petition is, whether the Petitioner was produced by the officers of the Respondent No.2 within or beyond 24 hours of his arrest

before the nearest Magistrate. The mandate under Article 22(2) of the Constitution of India and Section 58 of the BNSS read thus:

“22. Protection against arrest and detention in certain cases -

(1) xxxx

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.”

(3) xxxx

(4) xxxx

(5) xxxx

(6) xxxx

(7) xxxx

Section 58 of the BNSS:

“58. Person arrested not to be detained more than twenty-four hours.— No police officer shall detain in custody a person arrested without warrant for a

longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 187, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court, whether having jurisdiction or not."

Thus, there is no doubt that it was the duty of the officers of the Respondent No.2 to have produced the Petitioner before the nearest Magistrate within 24 hours from his arrest. The question is, whether he was arrested on 30.01.2025 in the afternoon hours or he was arrested on 03.02.2025 at 09:02a.m.

15. As far as, the merits of the matter are concerned, prima facie, the offence was disclosed. The Petitioner was a Director of the company and according to the Respondent No.2, he was in control of those transactions. We are considering the legality of detention of the Petitioner. Only to that extent we have examined the allegations and material against the Petitioner. From the record, it appears that the offence was disclosed and the Petitioner's role was also specified by the investigating agency. However, we are not

making any comments on the merits of the matter, beyond this consideration. The Petitioner is at liberty to pursue his remedy of seeking bail in this case. If he prefers any Bail Application, it can be decided on its own merits and in accordance with law. In the present petition, we have discussed the merits only for a limited purpose to decide whether his arrest in the first place was justified. To that extent, we do not find any fault with the investigating agency in seeking his custody. Considerations for bail are altogether different. For that purpose, the Petitioner has other remedies.

16. The question is, whether the Petitioner was in custody from 30.01.2025. The Petitioner was issued summons to appear before the officers of the Respondent No.2. The summons was issued on 29.01.2025. In response to that summons, he appeared before the officers. Recording of his statement was in progress. During that time, he felt uneasiness. By that time, if he was in custody of the officers, it would have been their choice of hospital and the doctors as per the rules where they could have admitted the Petitioner for the treatment. From the record, it clearly appears that the Petitioner himself was desirous of getting admitted for

treatment in Lilavati Hospital and accordingly he was admitted in Lilavati hospital. The Petitioner was, thus, free to take his decision to go to a particular hospital of his choice. This means, there was no restriction on his movements when he himself got admitted in Lilavati Hospital.

17. Mr. Dada, learned Senior counsel laid emphasis on the fact that the officers were stationed at Lilavati Hospital as is reflected in the letter issued by the officers of the Respondent No.2 addressed to the C.M.O. of Lilavati Hospital on 31.01.2025; referred to herein above. Mr. Dada, therefore, submitted that the Petitioner was not a free man to go anywhere and that indicates that he was in custody of the officers of the Respondent No.2.

We are unable to agree with this submission. As rightly submitted by Mr. Mishra, learned counsel for the Respondent No.2, the officers of the Respondent No.2 were well within their rights to monitor the movements of the Petitioner, because in a serious offence of this nature, the availability of the accused was of paramount importance. If the accused would have absconded

taking advantage of this situation, then the investigation would have been hampered and, therefore, there was nothing wrong with the officers keeping watch on the movements of the Petitioner in this case.

18. The letter dated 31.01.2025 shows that a request was made by the officers to intimate them regarding the discharge of the Petitioner at least three hours prior to his discharge, so that, they could have taken further course of action. Further request was made in the same letter that the officers be informed whether the Petitioner was stable to record his statement in his capacity as a Director of the company. We do not see any force exerted by the officers of the Respondent No.2 by sending this letter to the C.M.O. of Lilavati Hospital.

19. In fact, the letter dated 01.02.2025 sent by the Petitioner's son to the C.M.O. of Lilavati Hospital mentions in the last paragraph that the Petitioner's son had requested the C.M.O. to thwart any attempt to discharge the Petitioner without completion of his essential treatment. The order dated 31.01.2025

passed by the Additional Chief Judicial Magistrate, 19th Court, Esplanade, Mumbai, in R.A.No.85 of 2025 specifically refers to this issue in paragraph-6, as follows:

“6. It is prayed that, the accused Shri. Mohan Babulal Jain may be remanded for medical custody. The I.O. and Ld. Special PP submits that accused is not feeling well and taking treatment with Lilavati Hospital and he is not yet arrested. The Ld. Advocate for the accused submitted that he is in ICU. Be that as it may be the accused is not yet under arrest and hence no medical custody as prayed cannot be allowed.....”

Paragraph-8 of the said order reads thus:

“8. The Application seeking for medical custody of accused no.3 Mohan Babulal Jain is hereby rejected.”

20. Thus, when this order was passed on 31.01.2025, even the learned ACJM, 19th Court, Esplanade, Mumbai, had observed that the Petitioner was not arrested on that date. Learned counsel for the Petitioner had submitted before the Court that he was in ICU. Even then, it was not the case of the Petitioner that he was in custody or was arrested.

21. The first remand order dated 03.02.2025 passed by the learned ACJM, 19th Court, Esplanade, Mumbai again reiterates the same fact in paragraph-6, wherein, it was mentioned that, “As accused was not under arrest when he was under treatment in hospital hence the application seeking medical custody of accused was rejected by this court. It appears that, statement of accused is recorded by respondent under Section 67 of NDPS Act on 03.02.2025.” The learned Magistrate had further observed that the Petitioner was arrested on that date i.e. on 03.02.2025 and was produced before the Court and it cannot be said that the arrest was illegal. At that time, the learned counsel for the Petitioner was also heard.

22. After the Petitioner was discharged from Lilavati Hospital, he went to the office of the Respondent No.2 to continue with his statement U/s.67 of the NDPS Act. Again he complained of uneasiness. Again the doctors of MIAL were called. The advise dated 02.02.2025 at 15:04hrs. mentions thus:

“Patient’s relatives have been explained about the condition of the patient and have refused the loading does which the patient has to take. They are

going in their own private vehicle to the choice of their own hospital.”

23. Even at that stage, the Petitioner was free to go to a private hospital of his choice. Accordingly, he went to S. R. Mehta & Sir K. P. Cardiac Institute. This hospital was not of the choice of the officers of the Respondent No.2. The decision was entirely of the Petitioner, his family and friends. Even at that point of time, the officers of the Respondent No2 had not put any restrictions on his movements, and he was allowed to go to that particular hospital. Thus, even at that stage, he was a free man and was not in custody.

24. After being discharged from that hospital at about 7:30p.m., at that point, the officers of the Respondent No.2 took him to Sir JJ Group of Hospitals. Here we are unable to agree with Mr. Mishra that, even then, at that point of time, the Petitioner was a free man. First of all, after his discharge from S. R. Mehta & Sir K. P. Cardiac Institute, at 7:30p.m. on 02.02.2025, there was no reason for the officers of the Respondent No.2 to take him to Sir JJ Group of Hospitals. It was not the Petitioner's or his family's

decision that he be taken to that hospital. It was, obviously, the decision taken by the officers of the Respondent No.2. Therefore, it can be said that, from that point onwards, the Petitioner was in custody of the Respondent No.2. This is emphasized by the subsequent developments. He was discharged from Sir JJ Group of Hospitals on 03.02.2025 in the midnight, therefore, by no stretch of imagination it can be said that at odd hours the Petitioner would go to Sir JJ Marg police station to complete his statement. It is obvious that, he was taken to that police station to complete the recording of his statement. Then he was formally shown as arrested at 09:02a.m. on 03.02.2025 and was produced before the learned Magistrate at 12:30p.m. on 03.02.2025. Thus, the Petitioner was in custody from the point he was discharged from S. R. Mehta & Sir K. P. Cardiac Institute; which would be at 7:30p.m. on 02.02.2025. Therefore, it was necessary for the officers to have produced him before the nearest Magistrate within 24 hours from that time. The record shows that, he was produced before the nearest Magistrate at 12:30p.m. on 03.02.2025 which is well within the stipulated period of 24 hours from his arrest.

25. As discussed above, we have reached a conclusion that the Petitioner was produced within 24 hours from his arrest. We do not find any illegality in the remand order dated 03.02.2025 passed by the learned Additional Chief Judicial Magistrate, 19th Court, Esplanade, Mumbai. Consequently, the subsequent remand orders passed by the learned Special Judge (NDPS), Greater Mumbai, cannot be set aside.

26. In this view of the matter, no relief can be granted in this petition and is accordingly dismissed. However, the Authorities are directed to provide all the necessary medical facilities to the Petitioner as his health condition requires.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)