



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO. 243 OF 2026

Niyaz Shabbir Khan,
Aged about 39 years,
R/o Room No. 963, SRA, Omkar Building,
Tower No. 3, B-1, 9th Floor, Jacob Circle,
Mumbai, MH 400 011
(Presently lodged at Nagpur Central Prison,
Nagpur, Maharashtra)

...Petitioner

// VERSUS //

1. The State of Maharashtra (Through the Commissioner of Police, Brihanmumbai, Crawford Market, Mumbai, Maharashtra).
2. Mr. Anup Kumar Singh,
The Principal Secretary (Special) and Detaining Authority, Government of Maharashtra, Home Department, 2nd Floor, Madam Cama Road, Mantralaya, Mumbai, MH-400 032
3. The Superintendent of Nagpur Central Prison, Wardha Road, Ajni Chowk, Dhantoli, Nagpur, Maharashtra 440 020
4. The Union of India, through Ministry of Home Affairs, North Block, Rajpath Area, Central Secretariat, New Delhi, Delhi 110 001

... Respondents

Shri Ayaz Khan, Advocate a/w Shri Shyam Dewani, Advocate a/w Ms. Zehra Charonia, Advocate for the petitioner.

Shri S.S.Hulke, APP for the respondent nos. 1 and 4/State.

Shri Amol Kadam, API A.N.C. Worli Unit, Mumbai in person present.

Shri Manik Sarve, Head Constable, Nagpur Central Prison in person present.

CORAM : URMILA JOSHI PHALKE &
NIVEDITA P. MEHTA, JJ.

DATE : 7th MAY, 2026

ORAL JUDGMENT : (PER : URMILA JOSHI PHALKE J.)

Rule. Rule made returnable forthwith. Heard finally by consent of the parties.

2. Being aggrieved by the issuance of detention order dated 19.01.2026 passed by the respondent no.2 along with grounds of detentions to the petitioner, the petitioner is constrained to file this writ petition.

3. As per the contention of the petitioner that Officer of Anti Narcotic Cell, Worli, Mumbai in compliance with the directions of the superior officer when they were on patrolling duty, apprehended the petitioner on 01.09.2025, and recovered 42 grams of Mephedrone of contraband substance. Contraband substance was seized along with his mobile phone. On 02.09.2025, First Information Report was lodged against the petitioner in connection with Crime No. 70 of 2025, registered with Anti Narcotic Cell, Worli, Mumbai under Section 8(c) read with Section 22(b) of the Narcotic Drugs and Psychotropic Substance Act, 1985 (In short hereinafter referred as “NDPS Act, 1985”). After completion of the investigation, charge-sheet came to be filed in the said crime against the petitioner before the trial Court bearing NDPS Special Case No. 2141 of 2025. The bail application of the present petitioner was rejected. Thereafter, the detention order was passed on 19.01.2026 by the Detaining Authority and Principal Secretary (Special) Government of Maharashtra, Home Department, Mumbai against the petitioner under Section 3(1) of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act (in short hereinafter referred as “PITNDPS Act, 1988”).

4. Learned counsel for the petitioner submitted that in view of the detention order, the present petitioner was permitted to make a representation to the Detaining Authority against the order of detention. He was also permitted to make a representation to the State Government against the order of detention. Accordingly, he has filed the representation through his counsel by forwarding the copies of the representation to the Jail Superintendent, Nagpur Central Prison, Nagpur. However, the said representation was not forwarded to the Government and without forwarding the said representation, the confirmation order was passed by the State Government. It is submitted by the learned counsel for the petitioner that it is contrary to the decision of the Hon'ble Apex Court in the case of *Sunil Kumar Gupta @ Sunil Chain Vs. Union of India and others in Criminal Appeal No. 2189 of 2026 in SLP (Criminal) 3869 of 2026.*

5. Learned counsel for the petitioner has also invited our attention towards the reply i.e. affidavit filed by the Additional Superintendent of Nagpur Central Prison, wherein it is specifically stated that the detinue has submitted his request application with representation to the office of Superintendent of Nagpur Central Prison on 01.02.2026, with request to forward the same to the concerned authority. The office of the Superintendent of Nagpur Central Prison has forwarded the representation to the Chairman of Advisory Board (Home), State of Maharashtra, Mumbai, vide letter dated 01.02.2026 by speed post and e-mail also. Learned counsel for the petitioner further submitted that it is contended in the said reply that only one copy of the representation is received by the Superintendent of Central Prison, Nagpur. The communication which is made by the petitioner

through his counsel and the copy of the same is placed on record at Annexure G. Three copies were already forwarded to the Jail Superintendent and also forwarded the same to the Principal Secretary (Special), Mumbai, the Additional Chief Secretary (Home) and the Chairman-Advisory Board. Thus, learned counsel for the petitioner submitted that in view of the observations made by the Hon'ble Apex Court in the case of *Sunil Kumar Gupta @ Sunil Chain Vs. Union of India and others*, the same are applicable in the case of the petitioner. As the Hon'ble Apex Court has specifically observed that a duty is imposed on the concerned Government to consider the representation of the detenu at the earliest point of time, here the copy of representation itself is not forwarded to the Government and the Government has passed the confirmation order without giving an opportunity to the petitioner to present his representation and therefore the order of his confirmation of detention is bad in law and hence required to be quashed and set aside.

6. Learned Additional Public Prosecutor strongly opposed the said contention and submitted that as only one copy of the representation was received from the petitioner and it was already forwarded to the Chairman of Advisory Board therefore, an opportunity was granted to the petitioner to prefer a representation. Hence, the petition is baseless and liable to be dismissed.

7. After hearing both the sides and on perusal of the entire record it reveals that the present accused was arrested in connection with Crime No. 70 of 2025 which was registered under Section 8(c) read with Section 22(b) of the NDPS

Act, 1985. Subsequently, the detention order was passed by the detaining authority against the present petitioner on 19.01.2026. On perusal of the said detention order, it is specifically mentioned in paragraphs 12 and 13 which are reproduced herein as under:

“12. I further inform you that you have a right to make a representation to the Detaining Authority against the Order of Detention. If you wish to make such a representation, you should address it to the Principal Secretary (Special) and Detaining Authority Government of Maharashtra, Home Department, 2nd Floor, Madam Cama Road, Mantralaya, Mumbai 400 032 through the Superintendent of the Jail, where you are detained.

13. I further inform you that you have a right to make representation to the State Government against the Order of Detention. If you wish to make such a representation you should address it to the Additional Chief Secretary (Home) to the Government of Maharashtra, Home Department, 2nd Floor, Madam Cama Road, Mantralaya, Mumbai 400 032 through the Superintendent of the Jail, where you are detained.”

8. In view of these directions, the learned counsel for the petitioner has forwarded the representation along with forwarding letter dated 29.01.2026 with an endorsement on the said forwarding letter of Superintendent of Nagpur Central Prison, Nagpur is of dated on 31.01.2026, which shows that the said representations are received by the Superintendent of Central Prison, Nagpur. Therefore, the contention of the learned Additional Public Prosecutor that only one representation is received is not sustainable in law as the forwarding letters specifically mention that 12 copies of the representations are addressed to the Principal Secretary (Special) and the Detaining Authority, Government of Maharashtra, the Additional Chief Secretary (Home), Government of Maharashtra and the Chairman, Advisory Board constituted under PITNDPS Act, 1988.

9. This aspect has to be considered in the light of the observations made by the Hon'ble Apex Court in the judgment of *Sunil Kumar Gupta @ Sunil Chain Vs. Union of India and others in Criminal Appeal No. 2189 of 2026 in SLP (Criminal) 3869 of 2026* passed on 27.04.2026. The observations of the Hon'ble Apex Court in the said judgment are reproduced as under:

“On 12.07.2025, the State Government approved the detention order dated 02.07.2025 forwarded to it by the detaining authority. On 23.07.2025, a communication has been sent by the State Government to the District Magistrate asking it to inform the detenu on the rejection of his representation to the State Government.

The facts referred to above would clearly show that the detenu's representation was not sent to the State Government immediately, and that it was rejected belatedly.

A duty is imposed on the concerned Government to consider the representation of the detenu at the earliest point of time. In the present case, the detaining authority did not forward the representation to the State Government immediately, though it had actually been sent to the detaining authority by the prison authority at the earliest point of time.

The State Government on its part has approved the detention order and only thereafter, considered the detenu's representation. The representation of the detenu made to the State Government has nothing to do with either the detaining authority or even the Advisory Board. Unfortunately, the aforesaid action of considering the representation was not forthcoming at the earliest point of time. This would vitiate both the detention order and its subsequent approval.”

10. In light of the above observations of the Hon'ble Apex Court, the facts of the present case are taken into consideration. As per the directions in the detention order, the petitioner through his counsel has already forwarded his representation not only to the Chairman, Advisory Board, but also to the Principal Secretary (Special) and Detaining Authority, Government of Maharashtra, the

Additional Chief Secretary (Home), Government of Maharashtra. However, the Jail Superintendent has only forwarded the same to the Chairman, Advisory Board. Thus, the representation of the present petitioner was not forwarded to the Government and without giving an opportunity to present the representation, confirmation order was passed by the Government and therefore in view of the observations made by the Hon'ble Apex Court in the case of **Sunil Kumar Gupta @ Sunil Chain Vs. Union of India and others**, it would vitiate the detention order and the subsequent confirmation order.

11. In view of the above said observations, the detention order and the subsequent confirmation order shall stand quashed and set aside.

12. Accordingly, the petitioner shall set free forthwith, if not required in any other case.

13. Rule is made absolute in the aforesaid terms. The writ petition is disposed of accordingly.

[NIVEDITA P. MEHTA, J.]

[URMILA JOSHI PHALKE, J.]