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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4886 OF 2025

Afreen Abubakar Tayal

(next of kin – sister of Arif Abubakar Tayal)

.... Petitioner

V/s.

The State of Maharashtra and Ors.

.... Respondents

Mr. Manas Gawankar a/w. Mr. Shreyas Gawankar for the Petitioner.

Ms. Sangeeta D. Shinde, APP for the Respondent – State.

CORAM : SARANG V. KOTWAL AND
SHYAM C. CHANDAK, JJ.

DATED : 17th SEPTEMBER, 2025

PC. :-

- 1) Rule. With consent of the parties, Rule is made returnable forthwith.
- 2) This is a Petition for the Writ of Habeas Corpus for releasing the detainee – Arif Abubakar Tayal who is detained at Taloja Central Prison. The Petition is filed by the sister of the detainee.
- 3) The Petitioner's case is that on 27/07/2025, at about 06:25 a.m., the Assistant Police Inspector, Mumbra Police Station along with four other Officers, one Irfan Multani came to the detainee's house. The Police Officers were in civil uniform. They illegally detained him and took him to Mumbra Police Station. They showed him arrested at 10:38 a.m. on 28/07/2025 in connection with C.R.No.1276/2025 registered with Mumbra

Police Station, Thane for offences punishable under Sections 8(c), 20(b), 22(a) and 29 of The Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985. The FIR is dated 28/07/2025.

4) The detainee was produced before the learned JMFC, Thane on 28/07/2025 at 03:10 p.m. The learned Magistrate remanded the detainee to police custody till 01/08/2025. After that, he was produced before the learned Special Judge under the NDPS Act, Thane on 01/08/2025. The learned Special Judge remanded him to further police custody till 07/08/2025. On that day i.e., on 07/08/2025, the detainee was remanded to judicial custody till 21/08/2025. The Petition specifically mentions that from 22/08/2025 onwards, there is no further Order of any Competent Court extending the judicial custody of the detainee. He was never produced before any Court after 22/08/2025 and till today, he is in Taloja Central Prison in illegal detention.

5) In the meantime, the Investigating Agency concluded the investigation and filed the charge-sheet on 02/09/2025 only against Irfan Multani. On 11/09/2025, the NDPS Special Case No.529/2025 resulting from that investigation, was on the board of the learned Special Judge under NDPS Act, Thane. The Respondent No.2 - the Investigating Officer sought to produce a Report under Section 189 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. The Petition mentions that the learned Special Judge read the Report but did not take it on record. The Petition

mentions that the learned Judge opined that, since the detainee was not an accused anymore, there was no question of filing a Report under Section 189 of BNSS, 2023.

6) The learned Counsel for the detainee tried to submit that the detainee was in illegal detention but the learned Judge did not pass any Order as, according to the learned Judge, the detainee could always pursue a remedy available in law. In these circumstances, the Petitioner has approached this Court for release of the detainee from the illegal detention.

7) We have heard Mr. Manas Gawankar, learned Counsel for the Petitioner and Ms. Sangeeta Shinde, learned APP for the Respondent – State.

8) The learned APP produced a copy of the charge-sheet filed against the accused – Irfan Multani for our perusal. We have perused that charge-sheet. Very briefly, the allegations are that, on 27/07/2025, at about 09:00 p.m., the Officers of Mumbra Police Station received a secret information that a person was to come at Khardi Road to sell Ganja. The requirement of the NDPS Act was followed and an arrangement was made to conduct the raid in presence of Panchas. The raiding party went to the spot mentioned in the secret information. At about 01:10 a.m. in the night, one person came to the spot. The raiding party apprehended him. He was Irfan Gulam Rasool Multani. After following the due procedure, search of his person was conducted. He was found carrying a sack containing one kg

Ganja. The samples were drawn and the contraband was seized. It is mentioned in the FIR that, the arrested accused named the detainee as the person from whom he had taken this Ganja for sale. It appears that pursuant to this information, the detainee – Arif Tayal was arrested. The Remand Reports show that the detainee – Arif Tayal was arrested at 10:38 a.m. on 28/07/2025. The charge-sheet contains statements of the other members of the police staff who were present at the time of the raid.

9) The learned APP produced a copy of the Report dated 28/08/2025 addressed to the learned Special Judge, Thane. A copy of the said Report is taken on record and marked as 'X' for identification. The Report mentions the result of the investigation and the steps taken by the Investigating Agency. After giving details about the steps taken by the Investigating Agency, in paragraph 8 of the Order, the Investigating Officer has mentioned that the arrested accused – Irfan Multani had deliberately and falsely implicated the detainee – Arif Tayal and one more person by the name Adil. The investigation did not reveal sufficient evidence against the detainee – Arif Tayal and the said Adil. It is specifically mentioned in the Report that the arrested accused – Irfan Multani was deliberately furnishing false information and had misled the Investigating Officer. The concluding paragraph of the Report mentions that the detainee – Arif Tayal be discharged from the offence under Section 189 of BNSS, 2023 and appropriate Order be passed.

10) The learned Counsel for the Petitioner submitted that this particular Report was not taken on record by the learned Judge and no Order was passed. But, from the Report it is clear that, the Police Officer had tried to submit that Report before the learned Judge. Today, learned APP states that the Investigating Agency stands by his Report and no evidence is found against the detainee – Arif Tayal. Therefore, the provisions of Section 189 of the BNSS Act, 2023 are applicable.

11) Learned APP could not explain as to how the Superintendent of Jail could keep the detainee – Arif Tayal in Taloja Central Prison without any order of Judicial Remand authorizing him to detain the detainee – Arif Tayal beyond 22/08/2025.

12) It is a sorry state of affairs because inspite of there being no evidence against the detainee and without any Order of Remand, the detainee is in custody, illegally. Section 189 of the BNSS, 2023 reads thus :-

“ 189. Release of accused when evidence deficient.

If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond or bail bond, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial. ”

13) From the above discussion, it is clear that, there was no sufficient material against the detenue justifying forwarding of the detenue to a Magistrate and in this case, to the learned Special Judge. It was incumbent on the Officer to release the detenue on his executing a bail bond as such Officer would direct him to appear if and when required before a Magistrate empowered to take cognizance of the Police Report and to try the accused or commit him for trial. In this case, no steps whatsoever were taken by the Investigating Officer to see to it that the detenue was released immediately once the Investigating Officer reached a conclusion that there was no evidence against the detenue – Arif Tayal. To make the matter worse, this Report was not even taken on record by the learned Special Judge. Thus, the detenue continued to be in detention. From this discussion, it is more than clear that the detenue is in illegal detention and is required to be released forthwith. The Investigating Officer has not fulfilled his obligation and duty under Section 189 of the BNSS, 2023. It was his duty to follow the mandate of Section 189 of the BNSS, 2023 to ensure that the detenue was released as he was in custody without any evidence. The Investigating Officer has failed in his duty. Even the learned Special Judge ought to have stepped in and ensured that the detenue was released forthwith. There was no Order of Remand after 22/08/2025 and therefore, even the Jail Superintendent had no authority to detain him in the prison. Thus, there is failure to perform duty at every stage resulting in

the detenue's continued illegal detention in Taloja Central Prison.

14) Learned APP submitted that the Investigating Officer was tendering unconditional apology. We intended to impose some cost on the concerned Investigating Officer and the Jail Superintendent but the learned Counsel for the Petitioner did not press for any cost. He submitted that the Court may accept the apology tendered by the Investigating Officer.

15) In this view of the matter, we are accepting the apology tendered by the Investigating Officer. At the same time, we are passing Order of immediate release of the detenue, if he is not required in any other case. Hence, the following Order :-

(a) The Petition is allowed.

(b) The detenue – Arif Abubakar Tayal shall be released forthwith, if not required in any other case. It is made clear that we have passed this Order with reference to C.R.No.1276/2025 registered with Mumbra Police Station, Thane.

(c) The Rule is made absolute in the aforesaid terms.

16) Petition stands disposed of.

(SHYAM C. CHANDAK, J.)

(SARANG V. KOTWAL, J.)

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JAYANI

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