



Order Reserved On:-22.07.2026.
Order Delivered On:-23.07.2026.

HIGH COURT OF JUDICATURE AT ALLAHABAD
HABEAS CORPUS WRIT PETITION No. - 739 of 2026

Shivam Dwivedi And Another

.....Petitioner(s)

Versus

State Of Uttar Pradesh And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Amarnath Tripathi
Counsel for Respondent(s)	:	G.A.

Court No. - 43

HON'BLE SIDDHARTH, J.

HON'BLE VINAI KUMAR DWIVEDI, J.

(Per Siddharth, J.)

1. Heard Shri Amarnath Tripathi, learned counsel for the petitioners, learned A.G.A. for the State-respondents and perused the record.

2. This petition has been filed praying for following reliefs;-

"A. Issue a writ order or direction in the nature of Habeas Corpus directing the respondents herein to produce and release the corpus/petitioner no.1 from their illegal custody, while declaring the arrest, detention and remand of the petitioner as illegal, null and void;

B. Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 21.04.2026 passed by the court of learned Special Judge Prevention of Corruption Act, Mirzapur in F.I.R. No. 376 of 2025 dated 03.12.2025 Under Sections- 61(2), 208B, 340(1), 336(3), 338 and 318(4) B.N.S. and 29/26 (d) /8(c)/21(c) N.D.P.S. Act, 1985, Police Station- Adalhat, District- Mirzapur;

C. Issue a writ, order or direction in the nature of mandamus to initiate departmental enquiry upon the actions of errant police officials of respondent no. 1;

D. Issue any other writ, order or direction, which this Hon'ble Court deems

fit and proper in the facts and circumstances of the present case."

3. Learned counsel for the petitioners submits that the petitioner has been illegally arrested without providing him the "ground of arrest" at the time of his arrest or prior to his production before the Remand Magistrate. He is languishing in jail since 24.12.2025. He applied for default bail before the Special Court which was rejected by the order dated 21.04.2026. Thereafter, he has preferred the above noted Habeas Corpus Petition on 25.05.2026. He has submitted that the detention of the petitioner beyond the period of 90 days provided for filing charge-sheet is illegal and hence the petition may be allowed and the petitioner may be directed to release on bail forthwith.

4. Learned counsel for the petitioner has relied upon the following judgments of Apex Court:-

(i) Sanjay Dutt Vs. The State, through C.B.I., Bombay Respondent 1994 AIR SCW 3857,

(ii) Uday Mohanlal Acharya Vs. State of Maharashtra AIR 2001 SC 1910,

(iii) Rakesh Kumar Paul Vs. State of Assam AIR 2017 SC 3948,

(iv) S. Kasi v. State through Inspector of Police, Samayanallur Police Station and District- Madurai AIR 2020 SC 2921 and

(v). M. Ravindra Vs. Intelligence Officer, Directorate of Revenue Intelligence AIR 2020 SC 5245.

5. Learned AGA has filed counter-affidavit bringing on record the DCRB report of the petitioner, arrest memo of the petitioner dated 24.12.2025 and the charge-sheet dated 16.06.2026 before the court. He has submitted that in the case under N.D.P.S. Act, the period of submission of charge-sheet is 180 days.

6. After hearing the rival submissions, this court finds that in the arrest memo of the petitioner brought on record as Annexure- CA-2 to the counter-affidavit. There is signature of the petitioner and two witnesses. In the column of friend/relative/nominated persons there is signature of Upma Dwivedi, therefore it cannot be said that the "grounds of arrest" were not communicated to the petitioner in writing before his arrest. The charge-sheet has been brought on record, but there is no order of cognizance thereon nor

any averment has been made in this regard in the counter-affidavit.

7. The Apex Court in the case of Sanjay Dutt(supra) held that the indefeasible right of the accused to be released on bail in accordance with law under section 167(2) Cr.P.C., in default of completion of investigation and filing of challan within time allowed is a right enforceable by accused only from the time of default and till the filing of challan. It does not survives or remains enforceable on the challan being filed.

8. The case of S Kasi(supra) was regarding a case where the charge-sheet was not submitted within prescribed period because of lock down. The Apex Court held that due to lock down the period provided under section 167(2) Cr.P.C., cannot be extended.

9. In the case of M. Ravindra(supra) Apex Court held that if the accused prefers bail application exercising his right within time asserting his right to default bail, subsequent filing of charge-sheet will not affect his right.

10. In the case of Rakesh Kumar Paul(supra) and judgment of Udai Mohanlal Acharaya (supra) are to the same effect.

11. This Court finds that the petitioner exercised his rights to obtain default bail within time prescribed unsuccessfully before the Special Court and he also preferred the habeas corpus petition before this Court on 25.05.2026 when the charge-sheet was filed on 16.06.2026.

12. It appears from the rejection order of the bail that Court has held that under the provisions of Narcotic Drugs and Psychotropic Substance Act, the period of remand under section 36A(4) is 180 days where the accused has committed offence under section 19, 24, 27 A of NDPS Act and the contrabands recovered in above commercial quantity.

13. This Court finds that the implication of the petitioner is only under section 29/26(d)/8(c)/21(c) of NDPS Act.

14. Learned counsel for the petitioner has brought on record the judgment of Coordinate Bench of this Court in the case of ***Vibhor Rana Vs. Union of India and Another reported in 2022 (01) ILR A 15*** wherein it was held that New Phensedya Cough Syrup-100 ml is not a narcotic drug as defined under NDPS Act.

15. Reliance has also been placed on the judgment of learned Single Judge of Hon'ble Patna High Court, in the case of of *Sanjai Vs. State of Bihar passed in Criminal Misc. Petition No. 205715 of 2026* wherein the Hon'ble Patna High Court held that the aforesaid cough syrup containing codine is only schedule 'H' drug and the implication under NDPS Act is unjustified.

16. In view of the legal position the learned AGA is granted three weeks' further time to file supplementary counter-affidavit and clarify whether the implication of the petitioner under the provisions of NDPS Act is justified or not.

17. Prima facie, it appears that the implication of the petitioner under NDPS Act is not justified and therefore the 90 days period provided under section 167(2) Cr.P.C. for submitting the charge-sheet will apply to this case and not 180 days period is applicable as held by bail rejection court.

18. As interim measure it is hereby directed that **the petitioners shall be released on interim bail** on furnishing personal bond of Rs. 50,000/- and two sureties each of the like amount during pendency of this petition.

19. List this case again on **07.09.2026**.

July 23, 2026
Abhishek

(Vinai Kumar Dwivedi,J.) (Siddharth,J.)