



2025:CGHC:19555-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPCR No. 252 of 2025

Shatrughan Chandra S/o Mitthu @ Firatu Chandra Aged About 30 Years
(Wrongly Mentioned as Shatruhan Chandra), R/o Jaijaipur, Police
Station - Jaijaipur, District - Sakti (C.G.)

... Petitioner

versus

1 - State of Chhattisgarh Through - The Secretary, Home Department,
Mantralaya, Mahanadi Bhawan, Nawa Raipur, District - Raipur (C.G.)

2 - The Commissioner- Cum Detaining Authority Under The Prevention
Of Illicit Traffic In Narcotic Drugs And Psychotropic Substances 1988,
Bilaspur Division, Bilaspur (C.G.)

3 - Superintendent of Police District - Sakti (C.G.)

4 - Station House Officer Police Station - Jaijaipur, District - Sakti (C.G.)

... Respondents

For Petitioner : Mr. T.K. Jha and Mr. Tapan Chandra, Advocates

For Respondents : Mr. Sangharsh Pandey, Government Advocate
/State

Hon'ble Shri Ramesh Sinha, Chief Justice
Hon'ble Shri Arvind Kumar Verma, Judge

Order on Board

Per Ramesh Sinha, Chief Justice

30.04.2025

1. Heard Mr. T. K. Jha, learned counsel for the petitioner as well as
Mr. Sangharsh Pandey, learned Government Advocate, appearing
for the State/respondents.

2. The present writ petition has been filed by the petitioner under Article 226 of the Constitution of India seeking following reliefs :

“10.1 That, this Hon'ble Court may kindly be pleased to call for the entire records pertaining to the case of the petitioner for kind perusal of this Hon'ble Court.

10.2 That, this Hon'ble Court may kindly be pleased to allow the petition by setting aside the impugned order dated 20.03.2025 passed by the learned Commissioner-cum-Detaining Authority, Bilaspur Division, Bilaspur in Case No. 202409990100106/B-121/2024, Jaijaipur, District Sakti (C.G.)

10.3 That, this Hon'ble Court may kindly be pleased to pass an order to release the petitioner forthwith from the jail as he has been sent behind the bar by the impugned order dated 20.03.2025.

10.4 That, this Hon'ble Court may kindly be pleased to pass an order whereby the police authorities / State may kindly be directed to pay the petitioner a sum of Rs. 1,00,000/- as compensation for mental harassment and illegal detention from 20.03.2025.

10.5 That, any other writs and direction which this Hon'ble Court deems fit and just in the facts and circumstances of the case be granted to the petitioner.

10.6 That the cost of the petition may kindly be awarded in favour of the petitioner.”

3. Brief facts of the case, in a nutshell, are that in the year 2018, the petitioner has been prosecuted for an offence under the provisions of Narcotics Drugs and Psychotropic Substances Act, 1988 (for short, 'NDPS Act') and after trial, he has been acquitted

by the learned trial Court, thereafter, till date, no any criminal case have been registered against the petitioner in any Police Station.

4. On 10.09.2024, the respondent No.4 had moved an application before the respondent No.3 for taking action against the petitioner under The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 hereinafter referred as the Act, 1988 on the ground that the petitioner was earlier involved in the offences which is punishable under 20(B) of NDPS Act and he is still involved in those activities. Subsequently on 12.09.2024, the Sub-Divisional Officer (Police) forwarded the letter before respondent No.3 for taking the above-mentioned action against the petitioner and thereafter on 17.09.2024, the respondent No.2 forwarded the said letter before the respondent No.2. Later on, on 23.09.2024, the respondent No.2 initiated the Istagasa proceeding under Section 3(1) and Section 10 of the Act, 1988 which was registered as Istagasa Case No. 202409990100106/B-121/2024, Jaijaipur, District Sakti (C.G) and issued the notice to the petitioner. The petitioner accepted the notice and continuously appeared before the learned Court for attending and co-operating in the proceeding which is clear from the order sheets of the proceedings. The petitioner filed his reply before the learned Court on 13.02.2025 wherein he has clearly stated that the petitioner has already been acquitted from the charges levelled against him for the offence punishable under section 20(B) of NDPS Act in Special Criminal Case (NDPS Act) No.03/2018

passed on 16.01.2019 and he further stated that he is not involved in any activity whether NDPS or any other criminal activity which creates negative impression upon the society. But, the respondent No.2 without considering the submissions made by the petitioner passed the impugned order on 20.03.2025 and detained the petitioner in confinement for a period of three months. Hence, this petition.

5. Learned counsel for the petitioner submits that the respondent authorities without finding any material against the petitioner, only on the basis of surmises and conjuncture presumed that he is a habitual offender, though except one case which is already decided and the petitioner has been acquitted and except that no other criminal case or any kind of criminal complaint against the petitioner is pending before any Court of law or before any Police Station, thus it is clear that the petitioner is not involved in any kind of offences under the Act, 1988, therefore, the entire proceeding under Case No. 202409990100106/B-121/2024 before the learned Commissioner-cum-Detaining Authority, Bilaspur Division, Bilaspur is not only bad, illegal, arbitrary but there is violation of Article 14 and 21 of the Constitution of India. He further submitted that the order impugned is passed only on the basis of Istagasa prepared by Superintendent of Police which is based on false and fabricated statement by him that the petitioner again involved in selling Ganja and report has been lodged by the Station House Officer but no proceeding or arrest or

any kind of seizure was made by the Station House Officer, thus it is clear that only on the basis of earlier offence, the petitioner has been implicated, therefore, the order impugned is liable to be set-aside.

6. On the other hand, learned State counsel opposes the submissions on behalf of the learned counsel for the petitioner and supported the impugned order.
7. We have heard learned counsel appearing for the parties and perused the documents annexed with the writ petition.
8. A worst case of violation of human rights took place during arrest made by the Police, the Hon'ble Apex Court in ***D.K. Basu vs. State of West Bengal***, reported in ***(1997) 1 SCC 416*** observed as under:

"20. In Joginder Kamar vs. State of U.P., [(1994) 4 SCC 260: 1994 SCC (Cri) 1172] considered the dynamics of misuse of police power of arrest and opined:

"No arrest can be made because it is lawful for the police officer to do so. The existence of the power to arrest is one thing. The justification for the exercise of it is quite another..... No arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter."

21. ***** *A realistic approach should be made in this direction. The law of arrest is one of balancing individual rights, liberties and privileges on the one hand, and individual duties, obligations and responsibilities on the other; of weighing and balancing the rights, liberties and privileges of the single individual and those of individuals collectively; of simply deciding what is wanted and where to put the weight and the emphasis; of deciding which comes first – the criminal or society, the law violator or the law abider.....”*

9. The Hon'ble Apex Court in the matter of ***D.K. Basu*** (supra), after referring to the authorities in ***Joginder Kumar vs. State of U.P.***, reported in ***(1994) 4 SCC 260***. ***Nilabati Behera (Smt.) Alias Lalita Behera Vs. State of Orissa & Others***, reported in ***(1993) 2 SCC 746*** and ***State of M.P. vs. Shyamsunder Trivedi***, reported in ***(1995) 4 SCC 262***; the Hon'ble Apex Court laid down certain guidelines to be followed in cases of arrest and detention till legal provisions are made in that behalf as preventive measures. The said guidelines reads as follows:

"(1) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be a member of the family of the arrestee or a respectable person of

the locality from where the arrest is made. It shall also be countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(4) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined at the time of his arrest and major and minor injuries, if any, present on his/her body,

must be recorded at that time. The "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 18 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, referred above, should be sent to the Illaqa Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) A police control room should be provided at all district and State headquarters, where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous noticeboard."

10. Applying the aforesaid principles in the case at hand, it is reflected that earlier, the petitioner has been made accused for the offence punishable under the provisions of NDPS Act, in which he has already been acquitted by the learned trial Court vide its judgment dated 16.01.2019. It is further reflected that though a show cause notice has been issued to the petitioner, to which he has filed his

reply, but without considering the same and observing that the same is found to be unsatisfactory, respondent No.2 vide order dated 20.03.2025, directed to detain the petitioner for a period of three months.

11. Considering the overall facts and circumstances of the case, particularly the fact that petitioner has already been acquitted by the learned trial Court vide its judgment dated 16.01.2019 and for the very same offence under the provisions of NDPS Act, he cannot be detained in the police custody for a period of three months as ordered by respondent No.2, we deem it appropriate to exercise our discretionary jurisdiction under Article 226 of the Constitution of India and allow the petition filed by the petitioner.
12. Accordingly, the impugned order dated 20.03.2025 (Annexure P-1) passed by the respondent No.2 is hereby set-aside. The petitioner be released forthwith, if not required in any other case. However, the petitioner shall not be entitled for any compensation.
13. In the result, the present writ petition is allowed to the extent indicated hereinabove.

Sd/-
(Arvind Kumar Verma)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice