ITEM NO.47 COURT NO.6 SECTION X

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

WRIT PETITION(CRIMINAL) Diary No.69549/2026

SANJAY GUPTA **Petitioner(s)**

VERSUS

UNION OF INDIA & ORS. **Respondent(s)**

(FOR ADMISSION)
(IA No. 343903/2026 - EXEMPTION FROM CUSTODY CERTIFICATE, IA No. 343902/2026 - EXEMPTION FROM FILING O.T. & IA No. 343901/2026 - INTERIM BAIL)

Date : 06-11-2026 This matter was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE J.B. PARDIWALA
HON'BLE MR. JUSTICE MANMOHAN

For Petitioner(s) :
Mr. Shyam Divan, Sr. Adv.
Mr. P.B Suresh, Sr. Adv.
Mr. Yashvardhan Singh, Adv.
Ms. Puspita Basak, Adv.
Ms. Mani Munjal, Adv.
Mr. Parth Yadav- 4035, AOR
For Respondent(s) :

UPON hearing the counsel the Court made the following
O R D E R

1. The petitioner before us came to be arrested by the Respondent No.3 under Section 104 of the Customs Act, 1962, (for short, 'the Act 1962').

2. The Respondent No.2 before us is the DRI, and the Respondent No. 3 before us is the Officer of its Indore Zonal Unit.

3. It is the Respondent No.3 who arrested the petitioner and is conducting the investigation.

Signature Not Verified
Digitally signed by VISHAL ANAND
Date: 06.11.06 16:29:43 IST
Reason:

4. The petitioner has invoked the writ jurisdiction of this Court under Article 32 of the Constitution and has prayed for the

following reliefs:

> *"a. issue a writ order or direction in the nature of mandamus directing the respondents to release the petitioner in C. Case No. 91 of 2026 pending before the Ld. Additional Chief Judicial Magistrate, Bongaon, North 24 Parganas, arising out of F. No. DRI/IZU/96-2026/CI/INT-70/ENQ-26 of the Directorate of Revenue Intelligence, concerning the alleged offences under Sections 132, 135(1)(a) and 135(1)(b) of the Customs Act, 1962, punishable under Section 135(1)(i)(A) and (B) of the said Act, on such terms and conditions as this Hon'ble Court may deem fit and proper;*
>
> *b. declare that the arrest of the Petitioner on 06.10.2026 under Section 104 of the Customs Act, 1962 and his continued detention are in violation Section 187(3) BNSS and Articles 14, 21 and 22 of the Constitution of India and the law laid down by this Hon'ble Court in the case of Radhika Agarwal V. Union of India, (2025) 6 SCC 545;*
>
> *c. direct the Respondent Nos. 2 and 3 to place on record before this Hon'ble Court the "reasons to believe" recorded under Section 104(1) of the Customs Act, 1962 at the time of the Petitioner's arrest, and the material on which they were founded;*
>
> *d. pass such other or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."*

5. According to the petitioner, the following questions of law fall for the consideration of this Court:-

> *"A. Whether the arrest of the Petitioner under Section 104(1) of the Customs Act, 1962, solely on the basis of the statement of a co-accused under Section 108 and after a search that yielded nothing, satisfies the requirement of "reasons to believe" founded on material as laid down in Radhika Agarwal v. Union of India, (2025) 6 SCC 545?*
>
> *B. Whether the Respondents were bound to record and furnish to the Petitioner, and place before the remanding Magistrate, the written "reasons to believe" under Section 104(1), and whether failure to do so vitiates the arrest and the consequent remand?*
>
> *C. Whether the denial of access to counsel during interrogation and DRI custody violates Article 22(1) of the Constitution and Section 38 of the BNSS, and vitiates the continued custody of the Petitioner?*
>
> *D. Whether keeping the Petitioner in the control of DRI officers for about 23 hours, through the night, before formally recording his arrest violates Articles 21 and 22 of the Constitution?*
>
> *E. Whether remand orders passed without recording satisfaction as to the lawfulness of the arrest and the existence of adequate grounds under Section 187(3) of the BNSS are without jurisdiction?*

F. Whether the statement of a co-accused, which is not substantive evidence, can by itself justify the continued detention of an accused?

G. Whether the continued detention of the Petitioner, when every other co-accused including the alleged "mastermind" and the maker of the statement implicating him has been released, violates Articles 14 and 21 of the Constitution?

6. We heard Mr. Shyam Divan and Mr. P.B. Suresh, the learned Senior Counsel appearing for the petitioner.

7. We enquired with Mr. Divan as to why the petitioner has thought fit to invoke the writ jurisdiction of this Court under Article 32 of the Constitution, more particularly when the very same reliefs could have been looked into by the High Court in exercise of its writ jurisdiction under Article 226 of the Constitution.

8. Be that as it may, we take notice of the fact that the petitioner prayed for bail before the Chief Judicial Magistrate.

9. The Chief Judicial Magistrate, vide Order dated 27th October, 2026, rejected the bail application.

10. We are informed that thereafter the petitioner went before the Sessions Court and prayed for bail.

11. However, since the Respondents prayed for time to file counter, and a long date was given by the Sessions Court, the petitioner thought fit not to press the bail application and withdrew the same.

12. We believe that the first step at the end of the petitioner should have been to get himself released on bail.

13. In such circumstances, we permit the petitioner to go before the High Court of Calcutta and pray for bail at the earliest.

14. Insofar as the other reliefs are concerned, the petitioner shall prefer a Writ Petition under Article 226 of the Constitution.

15. If any bail application is preferred, the High Court shall look into the same expeditiously in accordance with law.

16. With the aforesaid, this petition stands disposed of.

17. Pending applications, if any, also stand disposed of.

(VISHAL ANAND)
DEPUTY REGISTRAR

(POOJA SHARMA)
COURT MASTER (NSH)