

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4593 OF 2016**

Salvador Furtado ...Petitioner
vs.
Omprakash Gupta & Anr. ...Respondents

**WITH
WRIT PETITION NO.2633 OF 2018**

Javed A. Merchant ...Petitioner
vs.
The State of Maharashtra & Anr. ...Respondents

**WITH
WRIT PETITION NO.4604 OF 2016**

Bradley D'Lima ...Petitioner
vs.
The State of Maharashtra & Anr.Respondents

Dr. Abhinav Chandrachud with Amit Ghag with Mr. Sandeep Goyal i/b Mulla & Mulla & C.B.C. for the Petitioner in WP/4593/2016 & 4604/2016.
Dr. Abhinav Chandrachud with Aditya Talpade and Pratik Karande for the Petitioner in WP/2633/2018.
Ms. P. P. Bhosale APP for the Respondent-State.
Ms. Megha Bajoria Special P. P. for Union of India.

CORAM : SHYAM C. CHANDAK, J.

DATED : 9th SEPTEMBER, 2024

P. C. :

. Present Petitions impugning three separate Orders thereby rejecting the independent discharge Applications filed by the Petitioners, in NDPS Special Case No.64 of 2015, pending before the Special Judge,

under NDPS Act, Greater Mumbai. Petitioner in Writ Petition No.2633 of 2018 is accused No.4, Petitioner in Writ Petition No.4604 of 2016 is accused No.5 and Petitioner in Writ Petition No.4593 of 2016 is accused No.6.

2) Heard learned Advocate Dr.Chandrachud for the Petitioners, learned A.P.P. Ms.Bhosale for the Respondent-State and learned Special P.P. Ms. Bajoria for the Respondent-Union of India.

3) The allegations against the Petitioners are that, the Petitioners along with Accused Nos.1 to 3 conspired to export certain narcotics substance to South Africa. On completion of investigation, the Petitioners along with Accused Nos.1 to 3 have been charge-sheeted before the Special Court for the offences punishable under Sections 9A and 25A of the NDPS Act.

4) Learned Counsel Dr.Chandrachud for the Petitioners submitted that, in all two consignments were transported to South Africa through the Custom Agency of the Petitioner in Writ Petition Nos.2633 of 2018, however, the said Petitioner was involved in the process only for stamping and marking said packages, which were containing validly transportable goods. The Petitioner in Writ Petition Nos.4592 of 2016 and 4604 of 2016, are the employees of Kenya Airways. However, they were not involved in the screening process of said packages. Therefore, the Petitioners cannot be made accused in the present case. However, without

considering the said fact and other material, their Applications for discharge have been erroneously rejected.

5) As against this, learned A.P.P. for the Respondent submitted that, despite the Petitioner in Writ Petition No.4593 of 2016 had knowledge about the first consignment containing contraband, he allowed the second consignment to be exported to the destination. As such, there is sufficient material against all Petitioners.

6) At present it is not pointed out that the Petitioners were responsible for screening of the packages containing the alleged contraband. No other person involved in the screening process of said packages has been made accused. It is not the case that, the contraband articles were *prima facie* evident during screening process. Having regard to these peculiar facts, **Rule.**

7) Learned A.P.P. and learned Special P.P. waives notice on behalf of respective Respondents.

8) By consent, list the matter for final hearing on **16th October, 2024.**

9) In the meanwhile, there shall be stay to the trial Court proceedings to the extent of these Petitioners, till the next date.

[SHYAM C. CHANDAK, J.]