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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL BAIL APPLICATION NO. OF 2020

DISTRICT : MUMBAI

IN THE MATTER OF AN APPLICATION FOR
BAIL UNDER SECTION 439 OF THE CODE
OF CRIMINAL PROCEDURE, 1973;

AND

IN THE MATTER OF C.R. NO. 16 OF 2020
REGISTERED WITH THE NARCOTICS
CONTROL BUREAU, MUMBAI, FOR

OFFENCES PUNISHABLE UNDER
 SECTIONS 8(C) READ WITH 20 (b) (ii), 22,
 27A, 28 29 AND 30 OF THE NARCOTICS
 DRUGS AND PSYCHOTROPIC SUBSTANCES
 ACT, 1985

Rhea Chakraborty

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)...Applicant/Accused

Versus

1. Union of India

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(Through the Intelligence Officer,

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Narcotics Control Bureau, Mumbai)

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2. State of Maharashtra

)...Respondents

TO

THE HON'BLE CHIEF JUSTICE AND

THE OTHER HON'BLE PUISNE

JUDGES OF THIS HON'BLE HIGH COURT

OF JUDICATURE AT BOMBAY

THE HUMBLE APPLICATION OF

THE APPLICANT ABOVENAMED

MOST RESPECTFULLY SHEWETH:

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- 3
1. The Applicant is an Indian Citizen residing at the above-mentioned address along with her family. The Applicant is an actor/model by profession. The Applicant has been a video-jockey on MTV India and thereafter appeared in Bollywood films such as Mere Dad Ki Maruti, Sonali Cable, Half Girlfriend and Jalebi. The Applicant is a well-respected member of society.
 2. The Applicant has been arraigned as an Accused in NCB/MZU/CR-16/2020 for an offence punishable under sections 8(c) read with 20 (b) (ii), 22, 27A, 28 29 and 30 of the Narcotics Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the “NDPS Act”).
 3. That the Applicant and the late actor, Sushant Singh Rajput (hereinafter referred to as “Sushant”) were known to each other over the past several years as they were both working in the Indian Film Industry. They had maintained a cordial friendship and would occasionally communicate with each other. On 13th April 2019, Sushant and the Applicant had attended a party hosted by Rohini Iyer and subsequently the next day he asked the Applicant and Rohini to come along with him to his Pawna farmhouse. His sister Priyanka and brother in law Siddharth along with his entourage also accompanied them. After spending a day in Pawna, the Applicant came back the next day for a movie screening of Kalank. Sushant convinced the Applicant to come back to Pawna the next day. Shortly thereafter, the Applicant and Sushant began dating each other.
 4. That the Applicant learnt that at that time, Sushant resided at Capri Heights, Bandra in a duplex apartment with his friends Aayush Sharma, Siddharth Pithani, Sam, Himanshu as well as his sister Priyanka and her husband Siddharth. The Applicant learnt that Sushant liked the concept of having an entourage as he was inspired by the American television show ‘Entourage’ and liked living with his friends. Since Sushant was so distant from his own family, he liked living with his friends, who were like a family to him. Sushant liked helping out his friends from

small towns, who wanted to make a name for themselves in Mumbai and who shared similar interests as well, such as astronomy, global welfare and Artificial Intelligence. Prior to living at Capri Heights, Bandra, Sushant resided at a building called Little Heights in Mumbai, with a different set of friends, one of them being Vikas Gupta's brother. His friends were always very inspired by Sushant as he would come up with various interesting ideas for setting up NGOs or come up with brilliant ideas with respect to Artificial Intelligence and Sushant would involve them in these projects, making these ideas come to life and thereby providing them with a livelihood as well. There were other friends as well, who did not reside in the house but visited from time to time. This sort of arrangement never interfered in the Applicant's relationship with Sushant as they lived on one floor of the duplex apartment, while his friends lived on the other. The Applicant in fact enjoyed the company of his friends and was in awe of the brilliant topics Sushant and his friends discovered.

5. That Sushant's friend Siddharth Pithani is a graduate from National Institute of Design, originally from Hyderabad, and Sushant wanted him to document his (Sushant's) life. On many occasions, Siddharth Pithani had taken various videos of Sushant and the Applicant for their social media content. Sushant wanted to document his daily life as he desired to change people's perception of him. Siddharth Pithani was also musically inclined and would participate with Sushant in his daily prayers by playing an instrument.
6. That on the night of 21st April 2019, Sushant's sister Priyanka and the Applicant went out with a few friends to a party as Priyanka wanted to experience the party life in Mumbai. She consumed copious amounts of alcohol that night and started dancing weirdly with men and women. After seeing this, the Applicant insisted that they go back to Sushant's house at Capri Heights. When they reached Sushant's house, Sushant and Priyanka continued drinking whereas the Applicant

called it a night as she had to leave for Chennai the next day (22nd April 2019) for her Tamil film's muharat pooja. The Applicant was asleep at Sushant's house when she suddenly awoke to find that Sushant's sister Priyanka had got into bed with her and was groping her. The Applicant was extremely shocked and demanded that Priyanka leave the room immediately. Subsequently, the Applicant left the house and informed Sushant as to what had transpired. Sushant got into an argument with his sister regarding the same. Due to this incident, the relationship between Sushant's family members and the Applicant had been strained since inception. Sushant also forwarded the Applicant his messages to his sister Priyanka and brother in law. These messages were about Priyanka harassing him for standing up for the Applicant. 5

7. That subsequently, in June 2019, Sushant informed the Applicant that his other sister Neetu had called and threatened him that she would file a false criminal case against him regarding his altercation with his sister Priyanka. Sushant was extremely disturbed by this incident as his sister Neetu's husband is an IPS Officer and he was concerned that they would misuse his connections to coerce and threaten him. In order to resolve the situation and assist Sushant, the Applicant reached out to O. P. Singh, who is an IPS officer and the husband of Sushant's sister Neetu. The Applicant informed him that if they file any false allegations against Sushant, she would go to the police regarding the molestation incident. This seemed to scare Sushant's relatives who went on to ignore Sushant and the Applicant for the next several months.
8. That as time went on, the relationship continued to grow and Sushant became well-acquainted with the Applicant's family members. Sushant had informed the Applicant that his father had left their family when they were very young and gotten remarried. Sushant explained that as a result, he had an extremely strained relationship with his father and often did not interact with him for prolonged

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6
durations. Sushant had also revealed to the Applicant that his mother had suffered from depression which attributed to her early death and that he suspected that his father suffered from bipolar disorder as well. Sushant had also revealed that his sister Priyanka suffered from certain mental illnesses for which she took regular medication. It was extremely obvious to the Applicant that Sushant had a tumultuous relationship with his family.

9. That during the course of their relationship, the Applicant also observed that Sushant appeared to be in the regular habit of smoking cigarettes containing ganja which he sourced and procured for himself using his household staff. The Applicant was concerned about this habit and when she asked Sushant about it, he informed her that he had developed a deep liking for it during the shooting of his film "Kedarnath" at Kedarnath sometime in the year 2015-2016. The Applicant routinely tried to dissuade Sushant from smoking such cigarettes and consistently endeavored to wean him off this drug habit.
10. That in July 2019, the Applicant was shooting for Chehre (a movie) directed by Romy Jaffrey. Sushant would often drop the Applicant and pick her up from the set and soon got friendly with Romy Jaffrey as they were from the same theatre group, led by Nadira Babbar. During that time, Sushant came up with an idea that Romy Jaffrey and Annu Kapoor should direct the play "Laila Majnu" with Sushant and the Applicant as leads. Thereafter this idea turned into a script for a movie as a play would take a while.
11. That in August 2019, Sushant had asked Shruti Mody and the Applicant to start looking for other accommodations as he believed that Capri Heights was haunted. In the interim, the Applicant and Sushant were staying in Waterstones hotel as Sushant didn't want to spend more time at Capri Heights. In September 2019, Sushant's film "Chhichhore" was to release and on 5th September 2019, the Applicant and Sushant organized a small screening for him at PVR Juhu.

Thereafter the Applicant and Sushant spent a lot of time at Waterstones club playing tennis and badminton during their stay.

12. That in October 2019, the Applicant was to travel to Paris for promotions relating to a brand called 'Shein'. The brand had paid for the Applicant's airline tickets and accommodation. However, Sushant suggested that they use this opportunity to go on a month-long European tour together and proceeded to cancel all her bookings so that they could travel and stay together. During this trip, the Applicants brother also joined them for a few days at Sushant's insistence and they all had a really great time together. Towards the end of the holiday, when Sushant and the Applicant were in Florence, Italy and were staying in a gothic hotel, Sushant began to behave erratically and informed the Applicant that he was feeling extremely anxious and disturbed. At this time, Sushant informed the Applicant that he had experienced a similar incident in the year 2013 for which he had been treated by one Dr. Harish Shetty. Despite the passage of a few days, Sushant's condition did not improve and hence the Applicant and Sushant decided to return to India earlier.

13. That upon returning to India, Sushant informed the Applicant's father who is a General Surgeon that he wanted to seek psychiatric help. Thus, arrangements were made for Sushant to visit Dr. Nikita Shah. On 6th November 2019, Dr. Nikita Shah on examining Sushant, felt that he was most likely suffering from Bipolar Disorder and suggested that he start therapy. Accordingly, arrangements were made for Sushant to meet Dr. Susan Walker, who is a renowned therapist in the city of Mumbai. On 7th November 2019, Dr. Walker confirmed her first appointment with Sushant for therapy. On 11th November 2019, Dr. Susan Walker was of the opinion that Sushant required additional medication and referred him to Dr. Parveen Dadachandji. On the very next day 12th November 2019, Sushant began his treatments with Dr. Parveen Dadachandji who also

diagnosed Sushant with Bipolar Disorder. Throughout this period, Sushant had been routinely contacting his family to inform them about his bouts of depression and other issues but Sushant's family members did not seem overly concerned regarding the same. Ultimately in third week of November 2019, his three sisters came to Mumbai and informed him that they would be taking him to Chandigarh for further treatment. The Applicant did not interfere with their decision and was in fact relieved to see his family members finally take some interest in his wellbeing and health. However, on 26th November 2019, Sushant called the Applicant and informed him that he would not be travelling to Chandigarh with his sisters as he doubted their motives and felt that they were merely after his money. That very same night, all three sisters left Sushant alone at the peak of his depression at Waterstones club.

14. That subsequently, Sushant reached out to the Applicant informing her that he was not doing too well and needed company. Since Sushant shared a cordial relationship with the Applicant's family, he suggested that he come and live in her parents' home till he felt better. The Applicant's parents agreed and for three weeks he resided with them at their residence. During this time, Sushant mentioned to the Applicant that he was desirous of being admitted to a hospital so that he could receive proper treatment and make a swift recovery. Since Dr Parveen Dadachandji was out of town, Sushant recommended that they find another psychiatrist and through research they found Dr Kersi Chavda. Accordingly, Sushant on his own accord got admitted to Hinduja Hospital for four days under Dr. Kersi Chavda. At the end of the fourth day, Sushant felt that he had made significant progress and checked himself out of hospital. At this time Sushant even explored Ayurvedic options for treatment as he seemed determined to get better.

Blanc, Bandra together. Subsequently, Sushant seemed to be doing well in his new apartment, by undergoing therapy and taking the necessary medication. Although he still had a few bad days, the medicines seemed to be working and he seemed to be doing better.

16. That in January 2020, Siddharth Pithani came back to Mumbai to live with Sushant on his request and was joined by another of his friends, Deepesh Sawant. On 9th January 2020, Sushant abruptly asked the Applicant to leave and go home as he was planning to move to Pawa. He even called Romy Jaffrey to inform him about this move and was apologetic about not being able to do the film as he wanted to have a career change and considered farming in Pawa. On 10th January 2020, Sushant called the Applicant back home and she returned. Sushant informed the Applicant that he had watched Jim Carrey's journey about depression and was feeling inspired to fight his own battle.

17. That on 20th January 2020, Sushant on the spur of the moment decided to drive to Chandigarh to visit his family. He decided to drive down along with his sister Meethu, Siddharth Pitani and Sahil (bodyguard). Between 10th January and 20th January 2020, he had a few good days and extremely low days. On 20th January he asked the Applicant to leave before his sister Meethu arrives. He felt that leaving Mumbai for a while might help his state of mind. The Applicant was highly encouraging towards this move as long as she knew his sister was with him. It was his birthday on 21st January 2020 and he was driving down to Chandigarh on the same day. He ended up returning nearly 48 hours' later. On returning Sushant informed the Applicant that he was absolutely fine and would no longer be taking any medication. Both Dr. Chavda and the Applicant were extremely concerned by this decision, but their hands were tied. Sushant seemed better and wanted to get back to physical fitness but this time not with Sameer Ahmed (his trainer) and

without any performance enhancers. Meanwhile he also wanted to do some (10) transcendental meditation, so the Applicant found a teacher named Sanjay Cheulkar who would come and teach the same. His sister Meethu along with her daughter came and stayed with Sushant for a week. During this period, the Applicant used to go back home to stay the night and spend the whole day with Meethu and Sushant. The three of them even did the transcendental meditation course together for a week. One morning Sushant called the Applicant sounding very disturbed and asked her to come see him immediately as his sister Meethu had left without informing him. He felt very sad about this. Thereafter the Applicant continued to stay with him. During this period he was better and was keen on making their movie project come to life and met with Vashu Bhagnani, who was to be the producer of this film and discussed financials regarding the movie. Sushant was extremely happy as he was offered Rs. 14 Crores for the movie. Meanwhile his sister Neetu and her husband O.P Singh informed him that they were coming to Mumbai. He expected them to stay with him. Upon arrival, they did not contact him until the next day and instead stayed at a hotel. This made him feel highly disappointed. Despite this, he went to meet them a couple of times and was subsequently even photographed in public with them as well. A few days later Sushant informed the Applicant that Q.P Singh and his family were up to something to smear his image. He was highly upset by this and called his father and O.P Singh requesting them to not harass him.

18. That in March 2020, Sushant and the Applicant started training with Harrison James and they were prepping for their movie. However, India was hit with the COVID-19 pandemic and the entire country went into lockdown. In the initial days of the lockdown, Sushant appeared stable, however with each passing day his mental health appeared to deteriorate. The death of actors Rishi Kapoor and

Irfan Khan also had a tremendous impact on Sushant who seemed to spiral into depression. However, Sushant refused any treatment and/or medication. (17)

19. That throughout this time, Sushant insisted on continuing with his drug habit, to the dismay of his doctors and the Applicant. The Applicant infact discussed the downfalls of Sushant mixing prescribed medication with his drug habit with his Doctor Kersi Chavda, who warned Sushant that he must stop his drug habit so as not to interfere with his treatment.
20. That on 30th May 2020, a blind item/article was published in Mumbai Mirror, Times of India about Sushant, calling him a difficult person to work with and that people had several issues with his attitude. The Applicant was at her parents' house on that day and Sushant sent her a picture of the said article, asking her to come see him immediately. When the Applicant reached his house, Sushant informed her that he wanted to leave Mumbai and settle elsewhere and asked for her help. Sushant had gone off his medication since January 2020 and due to the stressful times due to the Covid-19 pandemic, his depression had worsened. He started considering places like Bir, Himachal Pradesh and contacted his friend Aayush Sharma, who was already living there to find him houses there. Thereafter, Sushant felt that living in South India would be better for him as he would be less recognizable and considered Coorg, Karnataka. He asked Siddharth Pithani to help him find houses down there. Siddharth in turn asked a friend for the same and even received pictures of some houses in Coorg. In June 2020, Sushant informed the Applicant that he could hear his late mother's voice when no one was around. The Applicant was extremely worried by this revelation but fortunately, Sushant agreed to get help. On 3rd June 2020, Sushant spoke to Dr. Kersi Chavda himself on the phone and a new medical prescription was provided to him by the psychiatrist.

Priyanka Khimani for seeking her advice for getting out of his lease agreement in regard to his Bandra residence as well as other legal procedures required to be fulfilled for him to move to Coorg. In the meanwhile, Sushant kept calling his family, informing them of his decision to move out of Mumbai and requesting them to come meet him.

22. That on the morning of 8th June 2020, Sushant had been on his phone incessantly and when the Applicant enquired what he was doing, he showed her the messages he was exchanging with his sister Priyanka Singh between 10:14 a.m. and 10:18 a.m. The Applicant was shocked upon reading the said messages as his sister Priyanka had sent him a list of medications to take. The Applicant explained to Sushant that given the seriousness of his condition, and the fact that he already had medications prescribed by doctors who had examined and treated him over several months, he ought not to take any other medication, least of all medication being prescribed by his sister who has no medical qualifications. The Applicant also warned him about the ill-effects of mixing a cocktail of such unlawfully prescribed medication with his on-going drug habit of smoking cigarettes containing ganja and the serious implications it could have on his mental wellbeing. Sushant and the Applicant disagreed on this aspect and he insisted that he would only take the medicine his sister was prescribing him. He then proceeded to ask the Applicant to leave the house with her bag and baggage and other belongings as his other sister Meethu Singh was coming to live with him and would take care of him.

23. Throughout this time, the Applicant also suffered from her own anxiety issues and often endured panic attacks. The conduct of Sushant also aggravated these conditions. Even though the Applicant was desirous of seeing her family, she was not at all comfortable with leaving Sushant alone. The very same day the

Applicant had infact arranged to have a therapy session for her own self with Dr. Susan Walker and requested Sushant if she could leave after the session. Sushant however told her to leave immediately before his sister Meethu arrived. Thus, the Applicant reluctantly left and informed Sushant to contact her or her brother in case he needed to talk. It was thus that the Applicant came to leave Sushant's residence at Mount Blanc, Bandra, and this was also the last time that she saw Sushant alive.

24. That upon returning home, the Applicant's condition worsened and for the first time Sushant didn't call her or message her to check if she had reached home safe (as he did not drop her like he normally did). The Applicant was deeply hurt by this behaviour as she felt that in her times of anxiety he wanted her to be gone.
25. That on 9th June 2020, the Applicant received a text from Sushant to which she didn't respond as she was extremely anxious and unclear about his behaviour. The Applicant was upset as any girlfriend would be and went ahead and blocked his phone number on the same day. On 10th June 2020, Sushant even called the Applicant's brother to enquire about the Applicant's well-being on phone as well as send a text message. This made it clear to the Applicant that he did not want her to come back to his house as normally whenever he asked her to leave he would always ask her to come back.
26. That on 14th June 2020, the Applicant was devastated to learn of the Sushant's demise through common friends. The Applicant and her brother tried enquiring with Sushant's staff about the funeral details as she was deeply desirous of seeing him. The staff made it clear to the Applicant that Sushant's family did not want her to visit his home or attend his funeral and had not included her name in the funeral list which was limited to only 20 persons due to Covid restrictions. This caused the Applicant deep anguish as given the on-going pandemic, the Applicant would not be allowed to attend the funeral if her name was not on the restricted

list of 20 persons. The Applicant was completely devastated and was grateful to two of her friends who arranged for the Applicant to pay her last respects to Sushant once all procedures were completed at the hospital where his body was kept and while it was being transported to the ambulance to be taken for the funeral.

27. That subsequent to Sushant's death, the Bandra Police Station initiated an enquiry as per Section 174 of the Code of Criminal Procedure, 1973. In respect of the said enquiry, the Applicant appeared at the Bandra police station on 18th June 2020 and 17th July 2020 and extended her full cooperation in respect of the said enquiry.

28. That despite a lapse of several weeks, as there was no clarity in respect of the circumstances leading to Sushant's death, the Applicant addressed a message on social media to Amit Shah, Minister of Home Affairs, Government of India, on 16th July 2020, requesting and pleading with him to transfer the case and investigation to the Central Bureau of Investigation, India, so that they could carry out a thorough investigation into the death.

29. That subsequently, the Applicant was shocked to discover that Sushant's father had registered a First Information Report No. 241 of 2020 dated 25th July 2020 at Rajiv Nagar police station, Patna, Bihar against the Applicant and her family members for abetting Sushant's suicide, criminal misappropriation of Rs. 17 Crores and other offences. It was preposterous that such false allegations were being made over 40 days after his demise.

30. That given that all the allegations made in the aforesaid FIR came within the jurisdiction of the Mumbai police, who were already enquiring into Sushant's death, the Applicant preferred Transfer Petition No. 225 of 2020 before the Hon'ble Supreme Court of India. During the pendency of the said petition, the Government of Bihar requested the Central Government to refer the said FIR to

the Central Bureau of Investigation (CBI) and accordingly Crime No. WWW.LIVELAW.IN (15) RC2242020S0001 of 2020 was registered with the CBI. Based on information available in the public domain, it appears that Sushant's family in their statement before the CBI has alleged that Sushant was murdered. The Applicant and her family members have remained present before the CBI on several occasions and have extended their full cooperation to the said investigation. By an Order dated 19th August 2020, the Hon'ble Supreme Court transferred all present and future cases in relation to Sushant's death to the CBI.

31. That while the aforesaid Transfer Petition was pending before the Hon'ble Supreme Court, the Enforcement Directorate also registered ECIR/MB20-1/31/20 against the Applicant and her family members. In respect to this investigation as well, the Applicant and her family members have been duly cooperating with the investigation. During the course of this investigation, the Applicant and her family had handed over their mobile phones to the Enforcement Directorate, who proceeded to take a full data download of the said phones.

32. That pertinently, despite the Applicant being subjected to multiple investigations and having various heinous allegations leveled against her and her family, no evidence whatsoever has been forthcoming against her in relation thereto despite the lapse of several months.

33. That in the first week of September 2020, certain WhatsApp messages exchanged between Sushant and his sister Priyanka Singh on 8th June 2020 came to light which were extremely disturbing and disclosed the commission of various offences. In the said messages, Priyanka Singh had advised Sushant to take various medications. It seems that based on the Applicant's discussions with Sushant at that time, he had informed his sister that he would not be able to obtain the said medication without a prescription. Shockingly, it came to light by

virtue of these messages that his sister Priyanka had subsequently on the same day sent him a prescription by one Dr. Tarun Kumar, an Associate Professor of Cardiology from Dr. Ram Manohar Lohia Hospital, New Delhi. Prime facie the said document appeared forged and fabricated. In addition, the said Dr. Tarun Kumar appears to have prescribed medication to Sushant without any consultation as mandated by Law. In fact, the drugs prescribed by Dr. Kumar were prohibited from being prescribed electronically under the Telemedicine Practice Guidelines issued on 25th March 2020, which constitutes Appendix 5 of the Indian Medical Council (Professional Conduct, Etiquette and Ethics Regulation, 2002). In the prescription dated 8th June 2020, Dr. Kumar has prescribed Nexito 5 mg, Librium 10 mg and Lonazep MD 0.5mg to Sushant for anxiety

34. That in view of these revelations, the Applicant filed a Complaint with the Bandra police station dated 6th September 2020, after which FIR No. 576 of 2020 came to be registered against Priyanka Singh, Dr. Tarun Kumar, Meetu Singh and other known and unknown persons for an offence under Sections 420, 464, 465, 466, 474, 468, 306 and 34 read with 120(B) of the Indian Penal Code, 1860, and Sections 8(c), 21, 22(A) and 29 of the Narcotics Drugs and Psychotropic Substances Act, 1985.
35. That thereafter, it appears that based on certain messages that came to light from the aforesaid data download by the Enforcement Directorate, the Narcotics Control Bureau also registered Case No. 16 of 2020 against various Accused including the Applicant and started investigations covering the drug angle in Sushant's death.
36. The Applicant was summoned by the Respondents on 6th, 7th and 8th of September 2020, at which time she duly remained present and cooperated with the investigation. Subsequently, on 8th September 2020, the Applicant came to be

arrested in connection with the aforesaid crime. The Applicant was produced before the Ld. Magistrate on the very same day via video conferencing, at which time the Ld. Magistrate was pleased to remand the Applicant to judicial custody as the Respondents in their Remand Application specifically sought judicial custody till 22nd September 2020. Hereto annexed and marked as **Exhibit-A** is a copy of the Remand Application dated 8th September 2020. The Applicant also filed her Bail Application on the very same day. By an Order dated 8th September 2020, the Ld. Magistrate was pleased to reject the said Bail Application of the Applicant. Hereto annexed and marked as **Exhibit-B** is a copy of the Bail Order dated 8th September 2020 and **Exhibit-C** is a copy of the Reply of the Respondents filed in respect of the said Bail Application. That the Applicant has retracted her statements made before the Respondents by way of her Retraction Statement submitted before the Learned Magistrate Court on 8th September 2020. Hereto annexes and marked as **Exhibit-D** is a copy of the Retraction Statement.

37. The Applicant then filed a Bail Application before the Hon'ble Sessions Court on the 9th of September 2020. Hereto annexed and marked as **Exhibit-E** is a copy of the Reply of the Respondents dated 10th September 2020 to the Bail Application preferred by the Applicant. That by an Order dated 11th September 2020, the Hon'ble Sessions Judge was pleased to reject the Bail Application of the Applicant. Hereto annexed and marked as **Exhibit-F** is a copy of the Bail Order dated 11th September 2020. Hereto annexed and marked as **Exhibit-G-Colly** are the Remand Applications of the co-accused in the present case.

38. The Applicant states that the Respondents have started a witch-hunt against her by the investigations at the behest of 3 Central Agencies specialized in investigation of International ramifications. The CBI and ED till today have found no material whatsoever against the Applicant and her family. The allegations have made no headway. The Respondents who are a specialized

agency in preventing international illicit trafficking of drugs has been brought specifically to somehow implicate the Applicant and her family. The goods seized by the Respondents so far have been allegedly small quantities. The Respondents have alleged that the Applicant is a member of a drug syndicate for allegedly being involved in procuring small quantities for the actor Sushant Singh Rajput's consumption. The investigation is totally malafide and beyond the jurisdiction of the Respondents. The investigation is illegal for want of jurisdiction. (18)

39. The brief facts of the prosecution case are as under:

(a) It is alleged that on the 28th of August 2020, the Respondents apprehended Abbas Ramzan Ali Lakhani with 46 grams of marijuana/ganja at Father Peter Periera Road, Sonapur Lane, in front of old Kurla gaon, main entrance gate. It is alleged that Abbas told the Respondents that he purchased the drugs from one person namely Karna Arora of Powai. It is alleged that the Respondents along with Abbas identified and apprehended the said Karna Arora and recovered 13 gms of ganja on 28th August 2020 under a Panchnama. It is alleged that a total of 59 gms of ganja was recovered and both persons were arrested.

(b) It is alleged that based on the disclosures by the Accused, Abbas Lakhani and Karna Arora, the premises of one Zaid Vilatra were searched and Indian currency of Rs. 9,55,750/- along with foreign currency of 2081 US Dollars, 180 UK Pounds and 15 UAE Dirhams were seized under a Panchnama dated 1st September 2020 and he was requested to accompany the Respondents to their office. It is alleged that the statement of the said Zaid Vilatra was recorded by the Respondents wherein he has stated that the seized amount is the sale proceeds of contraband and he had supplied marijuana/ganja/bud psychotropic substances and he had disclosed few names with their details. It is alleged that therefore he was arrested on 2nd September 2020 and produced

Respondents.

- (c) It is alleged that during the voluntary statement of Zaid Vilatra, he disclosed the name of one Abdel Basit Parihar as a receiver of the ganja/marijuana. It is further alleged that during the statement of the said Abdel Basit Parihar, he revealed the purchase and sale of marijuana/ganja. It is alleged that he used to procure drugs from Zaid Vilatra and Kaizan Ebrahim as per the instructions of Showik Chakraborty who was directing them to deliver contraband to Accused Samuel Miranda. It is further alleged that there are other instances where the Abdel Parihar facilitated to arrange for the drugs and that he was in contact with the Applicant's brother Showik Chakraborty, who is Co-Accused in the present matter. It is alleged that it is clear from the statement of Abdel Basit Parihar and electronic evidence gathered by the Respondents that Abdel Parihar is an active member of a drug syndicate connected with high society personalities and drug suppliers. It is alleged that the Abdel Parihar used to pay and receive money via a Google pay account and further as per the revelations made by Abdel Parihar, he was arrested on 3rd September 2020.
- (d) It is alleged that on the voluntary statement of Abdel Parihar, it was disclosed that Kaizan Ebrahim as a supplier of hashish/charas. It is alleged that a premise of Kaizan Ebrahim was searched, based on which the Respondents recovered 0.5 gms of dark brown coloured substance purported to be hashish/charas from Kaizan Ebrahim. It is alleged that on his voluntary statement and alleged involvement in dealing of illicit drugs, Kaizan Ebrahim came to be arrested. It is alleged that Kaizan Ebrahim has disclosed that as per instructions of Showik Chakraborty, he was directed to deliver contraband to Deepesh Sawant.

(c) It is alleged that Kaizan Ebrahim and Abdel Parihar disclosed the name of Samuel Miranda. It is alleged that on the basis of his voluntary statement and alleged involvement in dealing of illicit drugs, Samuel Miranda was placed under arrest on 4th September 2020.

(f) It is alleged that based on the disclosure of Abdel Parihar, Showik Chakraborty was summoned by the Respondents. It is alleged that during his voluntary statement, Showik Chakraborty disclosed that Abdel Parihar provided drugs to Deepesh Sawant through Kaizan Ebrahim. It is alleged that on the basis of his alleged voluntary statement and involvement in dealing of illicit drugs, Showik Chakraborty came to be arrested on 4th September 2020 for an offence under Sections 8(c) read with 20 (b) (ii), 27A, 28 and 29 of the NDPS, Act and remanded to the custody of the Respondents till 9th September 2020.

(g) That during the voluntary statements of Kaizan Ebrahim and Abdel Parihar, they disclosed the name of Deepesh Sawant. It is alleged that his statement was recorded wherein he has stated that he got a contact of weed, Hashish dealer from Showik and dealer name Kaizan. On the basis of his voluntary statement and alleged involvement, Deepesh Sawant came to be arrested and produced before the Learned Magistrate, granting him custody till 9th September 2020.

(h) It is alleged that during the voluntary statement of Kaizan Ebrahim, he disclosed the name of Anuj Keswani as a supplier of the ganja/marijuana. Further, during house search carried out by the Respondents, a total of 585 gms of black colour sticky solid substance purported to be Hashish/charas, a total of 270.12 gms of green leafy, small leafy buds and green leafy granular substance purported to be marijuana/ganja, 3.6 gms of white color powder purported to be THC and 0.62 gms of blot papers purported to be LSD

recovered and seized under Panchnama dated 6th September 2020. It is alleged (21)
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that in his statement, Anuj Keswasni has revealed the purchase and sell of marijuana/ganja, charas and LSD. It is alleged that he used to procure drugs from Rigel Mahalaka with the intent to sell Kaizan Ebrahim. There are other instances where Anuj Keswani facilitated to arrange for drugs and he was in contact with Kaizan Ebrahim. It is alleged that on the basis of his voluntary statement and alleged involvement in dealing in illicit drugs Anuj Keswani was placed under arrest and produced before Magistrate, granting him custody with the Respondents till 9th September 2020.

- (i) It is alleged that Showik during his statement has revealed that he used to facilitate delivery of drugs through Abdel Parihar by Kaizan Ebrahim and Zaid. It is alleged that these deliveries used to be received by aids of Sushant Singh Rajput and every delivery and payment was in conscious knowledge of the Applicant and even some times payment and choice of drug was confirmed from the Applicant herein.
- (j) It is alleged that Samuel Miranda, in his statement has disclosed that he used to procure drugs on direction of Sushant Singh Rajput and the Applicant, and disclosed that financial matter in this regard were being dealt by the Applicant and Sushant Singh Rajput.
- (k) It is alleged that Dipesh Sawant, in his statement has disclosed that he used to receive drugs for Sushant Singh Rajput on his directions and on several occasions the Applicant also instructed him. It is alleged that financial issues for purchase of drugs were also being dealt by Sushant Singh Rajput and the Applicant. It is alleged that Dipesh Sawant used to receive drugs with Samuel Miranda for the consumption of Sushant Singh Rajput.
- (l) It is alleged that based on disclosure of Showik Chakraborty, Samuel Miranda and Dipesh Sawant, the Applicant was summoned and her voluntary

statement under Section 67 of the NDPS Act, 1985 was recorded on 6th, 7th and 8th September 2020. It is alleged that during her statement on all three days, the Applicant was confronted to all other accused persons and facts in their statements were verified. It is alleged that she acknowledged their statements and her role explained. It is alleged that during her statement, the Applicant revealed about her involvement in procurement of drug and financial transaction and also her instructions to Samuel Miranda, Dipesh Sawant and Showik Chakraborty in this regard. It is alleged that the Applicant is an active member of drug syndicate connected with drug supplies. It is alleged that the Applicant used to procure drugs for Sushant Singh Rajput for consumption purpose. It is alleged that the Applicant used to manage finance for drug procurement along with Sushant Singh Rajput. That as per the said disclosures, the Applicant came to be arrested on 8th September 2020 at 1545Hrs for an offence under Section 8 (c), 20(b)(ii), 22, 27A, 28 and 29 of the NDPS Act, 1985.

40. That the specific allegations of the prosecution against the present Applicant as per their Remand Application dated 8th September 2020 and their Replies to her Bail Applications dated 8th September 2020 and 10th September 2020 are as under:-

Allegation	Source	Exhibit
"During statement, Showik Chakraborty has revealed that he used to facilitate the delivery of drugs through Abdel Basit Parihar by Kaizan Ebrahim and Zaid. These deliveries used to be received by aids of Sushant Singh Rajput and every delivery and payment was in conscious knowledge of Rhea Chakraborty and even some times payment and choice of drug was confirmed from Rhea Chakraborty."	Remand Application dated 8 th September 2020	A Pg.4 Para. 10
"During statement, Samuel Miranda also disclosed that	Remand Application dated 8 th September 2020	A Pg.4 Para. 10

used to procure drugs on direction of Sushant Singh Rajput and Rhea Chakraborty and disclosed that financial matter in this regard was being dealt by Rhea Chakraborty and Sushant Singh Rajput.”	Application dated 8 th September 2020	Pg. 4 Para. 11
“During statement , Dipesh Sawant disclosed that he used to receive drugs for Sushant Singh Rajput on his directions and on several occasions Rhea Chakraborty also instructed him. Furthermore the financial issues for purchase of drugs were also being dealt by Sushant Singh Rajput & Rhea Chakraborty. Dipesh Sawant used to receive drugs with Samuel Miranda for consumption of Sushant Singh Rajput.”	Remand Application dated 8 th September 2020	A Pg. 4 Para. 12
“During statement present respondent Rhea Chakraborty revealed about her involvement in procurement of drug and financial transaction and also her instructions to Samuel Miranda, Dipesh Sawant and applicant Showik Chakraborty in this regard. Therefore it is clear from statement that Applicant is an active member of drug syndicate connected with drug supplies. It is also clear from the statement that the present Applicant used to procure drugs for Sushant Singh Rajput for consumption purpose. The present applicant used to manage finance for drug procurement along with Sushant Singh Rajput.”	Remand Application dated 8 th September 2020	A Pg. 5 Para. 13

The prosecution has so far asserted and produced 14-16 Accused for remand who have been charged for various offences. That none of the Accused connected to the present Applicant have been remotely found to be in possession of anything other than small quantity. Hereto annexed and marked as **Exhibit-H**

41. A reading of all the Remand Applications and Replies filed by the prosecution opposing the previous Bail Applications of the Accused clearly indicate that the late Sushant Singh Rajput was the only consumer of drugs and that he was directing his staff members Samuel Miranda and Dipesh Sawant to procure his drugs. Apart from that, the prosecution has made statements to the effect that the Applicant and her brother Showik were used by the late actor to procure drugs for himself. Based on information available in the public domain, one Neeraj, who worked as a cook with the late actor has stated before the Central Bureau of Investigation and the Mumbai police that three days prior to his death, the late Sushant Singh Rajput had directed him to make ganja joints/rolls/doobies and place them in his bedroom. The said Neeraj had further disclosed that he had prepared the joints/doobies and placed them in a box in the bedroom and thereafter when the actor was found dead, he verified from the box that all the said joints/doobies had been consumed as the entire box was empty. Therefore it is clear from the evidence collected by the investigative agencies that it was only the late Sushant Singh Rajput who was the consumer of the drugs and who was in the habit of using those around him to facilitate his drug habit.

42. The Applicant thus prefers this Bail Application on the following amongst other grounds, which are taken in the alternative and without prejudice to one another and prays that this Hon'ble Court be pleased to enlarge the Applicant forthwith on bail in connection with C.R. No. 16 of 2020 registered by the Respondents for an offence under Section 8 (c), 20(b)(ii), 22, 27A, 28, 29 and 30 of the NDPS Act, 1985, on such reasonable terms and conditions as this Hon'ble Court may deem fit to impose in the interest of justice and circumstances of the case.

is a copy of the Chart showing the list of Accused arrested in the present matter and the Sections applied to each under the NDPS Act, 1985. (24)

41. A reading of all the Remand Applications and Replies filed by the prosecution opposing the previous Bail Applications of the Accused clearly indicate that the late Sushant Singh Rajput was the only consumer of drugs and that he was directing his staff members Samuel Miranda and Dipesh Sawant to procure his drugs. Apart from that, the prosecution has made statements to the effect that the Applicant and her brother Showik were used by the late actor to procure drugs for himself. Based on information available in the public domain, one Neeraj, who worked as a cook with the late actor has stated before the Central Bureau of Investigation and the Mumbai police that three days prior to his death, the late Sushant Singh Rajput had directed him to make ganja joints/rolls/doobies and place them in his bedroom. The said Neeraj had further disclosed that he had prepared the joints/doobies and placed them in a box in the bedroom and thereafter when the actor was found dead, he verified from the box that all the said joints/doobies had been consumed as the entire box was empty. Therefore it is clear from the evidence collected by the investigative agencies that it was only the late Sushant Singh Rajput who was the consumer of the drugs and who was in the habit of using those around him to facilitate his drug habit.

42. The Applicant thus prefers this Bail Application on the following amongst other grounds, which are taken in the alternative and without prejudice to one another and prays that this Hon'ble Court be pleased to enlarge the Applicant forthwith on bail in connection with C.R. No. 16 of 2020 registered by the Respondents for an offence under Section 8 (c), 20(b)(ii), 22, 27A, 28, 29 and 30 of the NDPS Act, 1985, on such reasonable terms and conditions as this Hon'ble Court may deem fit to impose in the interest of justice and circumstances of the case.

- (A) That the Applicant is innocent and has not committed any crime whatsoever. The Applicant has been falsely implicated in the present case.
- (B) That the Applicant has been arraigned for an offence punishable under Sections 8(c) read with 20 (b) (ii), 22, 27A, 28, 29 and 30 of the NDPS Act, 1985. Given that no drugs or psychotropic substances have been seized from the present Applicant and the allegations, if any, would pertain strictly to small quantities, and given that though Section 27A has been applied, the ingredients thereof have not been made out, the bar under Section 37(1) of the NDPS Act, 1985 would not apply in the present facts and circumstances. Thus, the offence, if any, is bailable in nature and the Applicant ought to be enlarged on bail forthwith.
- (C) That a plain reading of Section 37 of the NDPS Act, 1985, makes it evident that the embargo imposed upon the grant of bail under the said section is in relation to , *"an offence punishable for offences under section 19 or section 24 or section 27-A and also for offences involving commercial quantity"*. The use of the term 'or' in relation to Sections 19, 24 and 27A and the use of the term 'and' for offences involving commercial quantity, makes it evident that even though Sections 19, 24 and 27A of the NDPS Act, 1985, do not mention any specific quantity, the embargo on bail must and ought to be applied only when the aforesaid sections are invoked in relation to and in conjunction with an offence involving commercial quantities. In the facts and circumstances of the present case, given that no commercial quantity has been alleged in respect of the present Applicant, there has been no recovery from the Applicant and that all allegations pertain only to small quantities, the embargo imposed by Section 37 of the NDPS Act, 1985, would not be applicable.

(D) That the Respondents have mechanically and without application of mind applied Section 27A of the NDPS Act, 1985, in respect of the present Applicant without any evidence and/or ingredients to corroborate the same. That a perusal of the Remand Applications of all the Accused who have been arrested in the present case makes it evident that there is nothing on record to suggest that the present Applicant is in any way involved with the "financing" of illicit traffic and/or harboring of offenders in relation to any narcotic drugs or psychotropic substances.

(E) That the Remand Applications produced thus far by the Respondents are completely silent as to any allegation of harbouring of offenders as mentioned under Section 27A of the NDPS Act, 1985. As far as the allegation of financing the illicit traffic of narcotic drugs or psychotropic substances, it is the case of the Respondents as per their own Remand Applications and their Replies to the Bail Applications preferred by the Applicant that the present Applicant has allegedly only procured any drugs for her late boyfriend Sushant Singh Rajput. The Respondents have contended that the Applicant would "manage finance for drug procurement along with Sushant Singh Rajput" and "procure drugs for Sushant Singh Rajput for consumption purpose." On the basis of these 2 allegations, the Respondents have alleged that the Applicant is "an active member of drug syndicate connected with drug supplies."

(F) That the case of the Respondents are silent as to the amount of alleged financing, quantum of drugs and type of drugs allegedly procured and financed by the present Applicant. The case of the Respondents in layman terms is that the Applicant would co-ordinate the delivery of drugs for Sushant Singh Rajput and occasionally pay for them herself. In essence, her alleged role, if any, is the purchase of a small quantity of drugs for Sushant

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Singh Rajput, which at the most would squarely fall within the ambit of Section 20(b)(ii)(A) which is punishable with a maximum imprisonment of up to 1 year or with fine or both. Hence the allegations against the present Applicant make out an offence that is bailable in nature. That in the present case, the Respondents have used these basic facts to spin a false narrative that portrays the Applicant as being someone who "finances the illicit traffic or harbouring of offenders under Section 27A of the NDPS Act, 1985". There is no allegation of the Applicant having procured or financed any drug whatsoever outside of the period during which she was in a relationship with the late Sushant Singh Rajput. The Respondents have also been deliberately vague as to the quantum of finance, if any, which is directly attributable to the present Applicant. That the Respondents have not disclosed any connection between the Applicant and any drug peddlers/ drug suppliers. It is the case of the Respondents that the present Applicant is only connected to the servants of Sushant Singh Rajput and Co-Accused Samuel Miranda and Dipesh Sawant along with her brother Showik Chakraborty.

- (G) That the allegations against the present Applicant would at the most make out a case of purchasing small quantities of drugs for the consumption of Sushant Singh Rajput, which is in essence a bailable offence. There is not a shred of evidence to connect the Applicant with financing any illicit traffic or harbouring any offenders and hence the ingredients of Section 27A of the NDPS Act, 1985 are not made out in the present facts and circumstances.
- (H) That the ingredients of Section 20(b)(ii)(A) squarely cover the alleged purchase of drugs without any requirement of such drugs being purchased only for self consumption. The case of the prosecution is that the

These allegations fall within the ambit of the aforesaid section and the resultant offence, if any, would be bailable in nature.

- (1) That in the case of **K.K. Ashraf versus the State of Kerala, 2010 Cri LJ 3141**, the Hon'ble High Court of Kerala has specifically held as under,

"17. Apart from mentioning Section 27A as an offence which is alleged to have been committed by the accused, there is no factual foundation for an allegation that they have committed an offence under Section 27A of the Act. There is no allegation that the petitioner indulged in financing, directly or indirectly, any of the alleged activities. There is also no allegation that the petitioner has harboured any person engaged in such activities. The materials on record show that the first accused Shanavas purchased the heroin from the petitioner (second accused) for a sum of Rs. 1,80,000/- and some amount is due to the petitioner. That means the consideration was not paid in full to the petitioner. What is the balance amount due is not forthcoming. The question is whether sale of narcotic drug to a person reserving a part of the price to be paid by the purchaser later would amount to "financing" within the meaning of Section 27A of the Act. The expression "financing" is not defined in the Act. In Blacks Law Dictionary, the verbal meaning of "finance" is shown as "to raise or provide funds". In Chambers Dictionary, the meaning of "finance" is shown as "to manage financially; to provide or support with money". If a person has sold narcotic drugs or psychotropic substances on credit, could it be said that he has indulged in financing? If the full amount is realised by such sale, it cannot be said that he has indulged in financing. What difference it would make if a part of the consideration is reserved to be paid at a later point of time? To my mind, it cannot be said that receipt of part payment of the sale consideration of the contraband reserving the balance to be paid at a later point of time would attract the offence of "financing" within the meaning of Section 27A of the Act. Sale of a narcotic drug on credit is different from financing the activity of sale of a narcotic drug. It cannot be said that a person who did not receive the value in full of the drug would be in a more disadvantageous position than a person who got the full price of the same. The expression "financing" is not related to the payment of the value of the narcotic drug. On the other hand, it involves an activity other than sale or purchase of the narcotic drug, in which a person invests or provides funds or resources for facilitating the activities mentioned in Sub-clauses (i) to (v) of Clause (viii) of Section 2 of the NDPS Act. "Financing" involves the presence of a party who is not a party to the sale of the drug. "Illicit traffic" is defined in Section 2(viii) of the Act. Activities under Subclauses (i) to (v) of Clause (viii) of Section 2 are referred to in Section 27A. Section 27A deals with persons who indulge in financing, directly or indirectly, any of the aforesaid activities. It is relevant to note that the expression "illicit traffic" as defined in Clause (viii) of Section 2 includes financing, directly or indirectly, any of the activities mentioned in Sub-clauses (i) to (v). Clause (viii) of Section 2 reads as follows:

2. Definitions:—... (viii) "illicit traffic", in relation to narcotic drugs and psychotropic substances, means: (i) cultivating any coca plant or gathering any portion of coca plant;

manufacture, possession, sale, purchase, transportation, warehousing, concealment, use or consumption, import inter-State, export inter-State, import into India, export from India or transshipment, of narcotic drugs or psycho-tropic substances; (iv) dealing in any activities in narcotic drugs or psychotropic substances other than those referred to in Sub-clauses (i) to (iii); or (v) handling or letting out any premises for the carrying on of any of the activities referred to in Sub-clauses (i) to (iv); other than those permitted under this Act, or any rule or order made, or any condition of any licence, term or authorisation issued, thereunder, and includes: (1) financing, directly or indirectly, any of the aforementioned activities; (2) abetting or conspiring in the furtherance of or in support of doing any of the aforementioned activities; and (3) harbouring persons engaged in any of the aforementioned activities;

18. Thus it is clear that in order to attract Section 27A, there must be an allegation of financing or harbouring as mentioned therein. There is no such allegation against the petitioner. Since no allegation of financing or harbouring is made, *prima facie*, I am of the view that Section 27A is not attracted and therefore the bar under Section 37(1)(b) would not be available in favour of the prosecution."

(J) That from the observations of the Hon'ble Kerala High Court cited hereinabove, it is evident that there is a clear distinction between the simplicitorsale/purchase of narcotics drugs and financing illicit traffic. The Court specifically observed that financing is not related to the payment of the value of the narcotic drug and involves an activity other than the sale or purchase of the narcotic drug, in which a person invests or provides funds or resources for facilitating the activities outlined in the requisite section. That in the present case, the Respondents have not made a single allegation that the Applicant invested or provided any funds/resources for facilitating illicit traffic by the other Accused. The allegations pertain squarely to the sale and purchase of drugs and that too, of a small quantity. Hence, the provisions of Section 27A of the NDPS Act, 1985, are not attracted in the facts and circumstances of the present case.

(K) That it is also pertinent to understand the legislative intent behind Section 27A of the NDPS Act, 1985, in order to understand as to how it is not applicable in the present facts and circumstances. Article 2 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and

Psychotropic Substances, 1988, which deals with the scope of the Convention, provides that, the purpose of this Convention is to promote co-operation among the Parties so that they may address more effectively the various aspects of illicit traffic in narcotic drugs and psychotropic substances having an international dimension. Hereto annexed and marked as **Exhibit-I** is a copy of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988. In carrying out their obligations under the Convention, the Parties shall take necessary measures, including legislative and administrative measures, in conformity with the fundamental provisions of their respective domestic legislative systems. The NDPS Act, 1985, has been amended twice viz. the NDPS (Amendment) Act, 1989 and the NDPS (Amendment) Act, 2001. Both Section 27A and the Definition of illicit traffic were introduced into the NDPS Act by virtue of the Amendment Act of 1988 and India's accession to the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988, occurred on the 27th of March 1990. The amending Act of 2001 rationalized the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. Thus, it is evident that Section 27 A of the NDPS Act, 1985, was intended to deal with offences relating to the large scale illicit traffic of drugs and not with the sale and purchase of small quantities.

- (I) That the Statement of Objects and Reasons in respect of the Amendment Act, 2001 specifically provides that the NDPS Act prescribes deterrent punishments for various offences relating to illicit trafficking in narcotic drugs and psychotropic substances. Most of the offences invite uniform

punishment of a minimum of ten years rigorous imprisonment which may extend up to twenty years. While the Act envisages severe punishments, it envisages a reformatory approach towards addicts. In view of the general delay in trial, it has been found that the addicts prefer not to invoke the provisions of the Act. The strict bail provisions under the Act add to their misery. Therefore it is proposed to rationalize the sentence structure so as to ensure that while drug traffickers who traffic in significant quantities of drugs are punished with deterrent sentences, the addicts and those who commit less serious offences are sentenced to less severe punishment. This requires rationalization of the sentence structure provided under the Act. It is also proposed to restrict the application of strict bail provisions to those offenders who indulge in serious offences.

- (M) That the Hon'ble Supreme Court of India in the case of **Standard Chartered Bank and Ors. versus Directorate of Enforcement and Ors., (2005) 4 SCC 530**, has held that,

"It is true that all penal statutes are to be strictly construed in the sense that the Court must see that the thing charged as an offence is within the plain meaning of the words used and must not strain the words on any notion that there has been a slip that the thing is so clearly within the mischief that it must have been intended to be included and would have included if thought of. All penal provisions like all other statutes are to be fairly construed according to the legislative intent as expressed in the enactment.

Here, the legislative intent to prosecute corporate bodies for the offence committed by them is clear and explicit and the statute never intended to exonerate them from being prosecuted. It is sheer violence to commonsense that the legislature intended to punish the corporate bodies for minor and silly offences and extended immunity of prosecution to major and grave economic crimes.

28. The distinction between a strict construction and a more free one has disappeared in modern times and now mostly the question is "what is true construction of the statute?"

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A passage in *Craies on Statute Law* 7th Edn. reads to the following effect :

"The distinction between a strict and a liberal construction has almost disappeared with regard to all classes of statutes, so that all statutes, whether penal or not, are now construed by substantially the same rules. 'All modern Acts are framed with regard to equitable as well as legal principles.' "A hundred years ago", said the court in *Lyons'* case, "statutes were required to be perfectly precise and resort was not had to a reasonable construction of the Act, and thereby criminals were often allowed to escape. This is not the present mode of construing Acts of Parliament. They are construed now with reference to the true meaning and real intention of the legislature."

At page-532 of the same book, observations of Sedgwick are quoted as under:

"The more correct version of the doctrine appears to be that statutes of this class are to be fairly construed and faithfully applied according to the intent of the legislature without unwarrantable severity on the one hand or unjustifiable lenity on the other, in cases of doubt the courts inclining to mercy."

29. The question, therefore, is what is the intention of the legislature."

- (N) That the Hon'ble Supreme Court in the case of **Rajinder Singh vs. State of Punjab, (2015), 6 SCC477**, has held that, "A decision of the Judicial Committee in *Dyke v. Elliott*, cited by the learned Counsel as an aid for construction neatly states the principle and therefore may be extracted: Lord Justice James speaking for the Board observes at page 191:

No-doubt all penal Statutes are to be construed strictly, that is to say, the Court must see that the thing charged as an offence is within the plain meaning of the words used, and must not strain the words on any notion that there has been a slip, that there has been a *casus omissus*, that the thing is so clearly within the mischief that it must have been intended to be included if thought of. On the other hand, the person charged has a

right to say that the thing charged although within the words, is not within the spirit of the enactment. But where the thing is brought within the words and within the spirit, there a penal enactment is to be construed like any other instrument, according to the fair commonsense meaning of the language used, and the Court is not to find or make any doubt or ambiguity in the language of a penal statute, where such doubt or ambiguity would clearly not be found or made in the same language in any other instrument.

In our view this passage, if we may say so, restates the rule of construction of a penal provision from a correct perspective."

- (O) That the Hon'ble Supreme Court has expressed in no uncertain terms similar views in various judgments namely **Bangalore Water Supply and Sewerage Board versus A. Rajappa**, (1978)2SCC213, **M. Paintiah versus Muddala Veeramallappa**, AIR 1961 SC 1107, **State of Karnataka versus Hansa Corporation**, (1980)SC697, and **CBI versus Ramesh Gill**, (2016)3 SCC 788, among others, all of which reaffirm the views of Lord Denning, L.J. in **Seaford Court Estates Ltd. v. Asher**, [1949] 2 All. E. R. 155 at 164, where he held that,

"When a defect appears a judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament- and then he must supplement the written words so as to give " 'force and life' to the intention of legislature. A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

- (P) That in the present facts and circumstances, the entire prosecution case is that the Applicant allegedly procured the drugs for the late Sushant Singh Rajput. Apart from allegedly coordinating the purchase of drugs and occasionally paying for the said purchase, there is no other allegation

against the present Applicant and yet the prosecution is terming her alleged acts as "financing illicit traffic". Given the Statement of Objects and Reasons in respect of the Amendment Act, 2001, it is evident that the allegations against the Applicant would come within the ambit of "less serious offences" not warranting any strict bail provisions.

(Q) That the prosecution surprisingly has not disclosed a single telephonic call, mobile call, SMS, WhatsApp message or email of the late Sushant Singh Rajput as to how he procured his drugs for his own consumption other than blaming his entire staff, the present Applicant, her brother and a host of others who allegedly supplied drugs for his own consumption. There has been no allegation against anyone else that they were consuming drugs. Not a single payment has been traced to Sushant Singh Rajput. That it was Sushant Singh Rajput in his own admission to the Applicant (which she disclosed to the Respondents) told her that he developed a large liking to ganja sometime in 2015-2016 at the shooting of his film "Kedarnath" in Kedarnath. The prosecution has not investigated any angle as to how Sushant Singh Rajput, who lived in many apartments with so many other people managed his drug habits prior to meeting the Applicant. All his servants against whom allegations are made of procuring drugs were employed by Sushant and his sister Priyanka much before April 2019. It is clear from the above that the Applicant and her brother are the sole targets of this witch-hunt and entire exercise of the Respondents.

(R) That the entire case of the prosecution is based on the fact that the late Sushant Singh Rajput was the sole consumer of the drugs allegedly sourced and paid for by the Co-Accused including the Applicant. That if the late actor were alive today, he would have been charged for consumption of small quantities under Section 20(b)(ii)(A), which is a bailable offence

having punishment of a term of imprisonment of up to one year. That the prosecution is now seeking to charge the present Applicant with an offence under Section 27A of the NDPS Act, 1985, attracting a punishment of imprisonment of up to twenty years, for allegedly having paid for the purchase of drugs consumed by the late actor on a few occasions which admittedly was of small quantities. It is preposterous that while the consumer of drugs would receive a maximum punishment of up to one year of imprisonment, the Applicant allegedly having paid for the said consumption on a few occasions, would be subject to a maximum punishment of up to twenty years of imprisonment. Thus in the present facts and circumstances, the observations of the Hon'ble Supreme Court requiring a pragmatic and rational Interpretation of Statutes keeping in mind the Legislative intent behind their enactment would be extremely relevant to avoid the absurd proposition of the prosecuting agency.

- (S) That in the facts and circumstances of the present case and a perusal of the allegations put forth by the prosecution, it is clear that it was the late Sushant Singh Rajput who was the only consumer of the drugs allegedly procured by the Applicant. It is apparent that the late actor used the Applicant, her brother Showik and members of his household staff to facilitate his own drug habit while ensuring that he did not leave a paper trail of his own in the form of any electronic evidence whatsoever. Apart from allegedly procuring the drugs for the late actor, there are no allegations against the Applicant of being involved in any other form of illicit traffic or even of purchasing drugs for any other person. Hence, terming the Applicant as being part of a "drug syndicate" or having financed the "illicit traffic" of drugs is wholly farfetched and without application of mind. Given the observations of the Hon'ble Supreme

having punishment of a term of imprisonment of up to one year. That the

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(20)

prosecution is now seeking to charge the present Applicant with an offence under Section 27A of the NDPS Act, 1985, attracting a punishment of imprisonment of up to twenty years, for allegedly having paid for the purchase of drugs consumed by the late actor on a few occasions which admittedly was of small quantities. It is preposterous that while the consumer of drugs would receive a maximum punishment of up to one year of imprisonment, the Applicant allegedly having paid for the said consumption on a few occasions, would be subject to a maximum punishment of up to twenty years of imprisonment. Thus in the present facts and circumstances, the observations of the Hon'ble Supreme Court requiring a pragmatic and rational Interpretation of Statutes keeping in mind the Legislative intent behind their enactment would be extremely relevant to avoid the absurd proposition of the prosecuting agency.

- (S) That in the facts and circumstances of the present case and a perusal of the allegations put forth by the prosecution, it is clear that it was the late Sushant Singh Rajput who was the only consumer of the drugs allegedly procured by the Applicant. It is apparent that the late actor used the Applicant, her brother Showik and members of his household staff to facilitate his own drug habit while ensuring that he did not leave a paper trail of his own in the form of any electronic evidence whatsoever. Apart from allegedly procuring the drugs for the late actor, there are no allegations against the Applicant of being involved in any other form of illicit traffic or even of purchasing drugs for any other person. Hence, terming the Applicant as being part of a "drug syndicate" or having financed the "illicit traffic" of drugs is wholly farfetched and without application of mind. Given the observations of the Hon'ble Supreme

strict letter but bearing in mind the legislative intent, it is obvious that the allegations against the present Applicant would not fall within the ambit of Section 27A of the NDPS Act, 1985.

- (T) That there is electronic evidence to show that the Applicant was in fact trying her level best to rid the late actor of his drug habit by consistently restricting the quantity of drugs he had access to. The Applicant also discussed her concerns regarding the late actor combining his drug habit with prescription medication with his doctor namely Dr. Kersi Chavda. However, the late actor being an adult and having his own mind was the ultimate decision maker. It is unfortunate that the late Sushant Singh Rajput took advantage of those closest to him to sustain his drug habit and thought it fit to expose them to the perils that would entail.
- (U) That the late Sushant Singh Rajput had been consuming drugs much prior to his entering into a relationship with the Applicant. The same is duly corroborated by statements of witnesses and Co-Accused, some of whom are staff members of the late actor who were working with him much prior to 2019 and are hence privy to his lifestyle during that time. Hence it is not the case of the prosecution that the Applicant or her brother Showik got the late actor hooked onto drugs. It is also not the case of the prosecution that the Applicant and her brother Showik would routinely procure drugs and force the late actor to consume the same. A perusal of the various Remand Applications make it evident that this is in fact a case of the late actor using his then girlfriend, her brother and members of his staff to sustain his drug habit and nothing else. The Applicant learnt that the late Sushant Singh Rajput developed and became a more active user of drugs

- (V) That the present prosecution smacks of malafide intent as a simple purchase and/or purchases of small quantities of ganja/marijuana at the behest of a third person are being used to invoke the stringent provisions of Section 27A of the NDPS Act, 1985 against the present Applicant. It is an admitted position that the Applicant had a personal relationship with the late Sushant Singh Rajput and thus her allegedly having paid for any small quantity of drugs for the late actor could not be terms as "financing illicit traffic", that too for a sole transaction of Rs. 12,000/-.Infact, there is no direct link even between this transaction and the purchase of drugs , given that it is the statement of the co-accused that he used the Applicant's credit card to withdraw the said amount in cash and then proceeded to use that amount for the alleged purchase of drugs. The prosecution in the present case is deliberately invoking the aforesaid section so as to make the Applicant subject to stringent bail provisions in an attempt to unlawfully deprive her of her liberty.
- (W) That it is pertinent to note that despite identical allegations being foisted upon the Applicant and Co-Accused Kaizan Ebrahim, the Respondents did not invoke Section 27A in respect of Co-Accused Kaizan Ebrahim. Infact the Respondents submitted before the Learned Magistrate that the custody of Co-Accused Kaizan Ebrahim was not required by them. The said Co-Accused was in fact released on provisional cash bail on the very first day of his remand by the Learned Magistrate.
- (X) That Abbas Lakhani and Karna Arora, who were arrested in the present case and from whom a collective quantity of 59 grams of ganja was allegedly recovered have both been released on bail by the Ld. Magistrate.

- (Y) That during her custody, the Applicant was coerced into making self-incriminatory confessions. That by her Application dated 8th September 2020 before the Learned Magistrate; the Applicant has formally retracted all such incriminatory confessions.
- (Z) That the Applicant was summoned by the Respondents and interrogated for hours on the 6th, 7th and 8th of September 2020 at the NCB office. The Applicant had no access to any legal advice during her questioning when she was interrogated for a minimum of 8 hours at a stretch by multiple male officers. These officers included Kiran Babu, Intelligence Officer, NCB, Zonal Unit, Indore (M.P.), Sameer Wankhede, Zonal Director, NCB, Mutha Ashok Jain, Deputy Director General, South Western Region, NCB, K.P. Malhotra, Deputy Director, NCB and others. The Applicant can identify all of the aforesaid officers. There was not a single lady officer who interrogated the present Applicant as mandated by law.
- (AA) That the Hon'ble Supreme Court in the case of **Sheela Barse v. State of Maharashtra AIR 1983 SC 378**, has held that interrogation of females should be carried out only in the presence of female police officers/constables. It is evident in the facts of the present case, the aforesaid directive of the Hon'ble Supreme Court has not been complied with.
- (BB) That the Applicant was interrogated by the Respondents on the 7th and 8th of September 2020 and infact on the 7th of September 2020, the Respondents even made a statement that the Applicant was cooperating with the investigation. Hence, the arrest of the Applicant is unwarranted and without justification. The Applicant's liberty has been arbitrarily curtailed.

(CC) That Section 20(b)(ii)(A) of the NDPS Act, 1985 provides that where any alleged contravention involves a small quantity, the said contravention would be punishable with rigorous imprisonment with a term which may extend to one year or with a fine which may extend to Rs. 10,000 or with both. Thus the said Section read in conjunction with the provisions of Schedule II of the Code of Criminal Procedure, 1973 would make the present offence, if any, bailable in nature.

(DD) That Section 436 of the Code of Criminal Procedure, 1973, specifically provides that when any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceeding before such Court to give bail, such person shall be released on bail. Thus it is a well settled position of law that if the offence is bailable, the Accused is entitled to be released on bail. That in **Stefan Mueller Vs. State of Maharashtra 2010 (112(7)) BomLR 2990**, the Hon'ble Bombay High Court held that *"...It is well settled position of law that if the offence is bailable, the accused is entitled to be released on bail and even where he does not make an application for bail, it is the responsibility of the concerned police officer, if he has arrested or detained the accused for a bailable offence, to inform him about his right to be released on bail. Similarly, it is also settled position of law that where a person accused of bailable offence appears or is produced before a Magistrate, it is responsibility of such Magistrate to inform him of his right to be released on bail..."*

(EE) That the Hon'ble Apex Court in **Rasiklal vs. Kisore AIR 2009 SC 1341** held that *"...There is no doubt that under Section 436 of the Code of Criminal Procedure a person accused of a bailable offence is entitled to be released on bail pending his trial. As soon as it appears that the accused person is prepared to give bail, the police*

officer or the court before whom he offers to give bail, is bound to release him on such terms as to bail as may appear to the officer or the court to be reasonable. It would even be open to the officer or the court to discharge such person on his executing a bond as provided in the Section instead of taking bail from him. The position of persons accused of non-bailable offence is entirely different. The right to claim bail granted by Section 436 of the Code in a bailable offence is an absolute and indefeasible right. In bailable offences there is no question of discretion in granting bail as the words of Section 436 are imperative. The only choice available to the officer or the court is as between taking a simple recognizance of the accused and demanding security with surety. The persons contemplated by Section 436 cannot be taken into custody unless they are unable or willing to offer bail or to execute personal bonds. There is no manner of doubt that bail in a bailable offence can be claimed by accused as of right and the officer or the court, as the case may be, is bound to release the accused on bail if he is willing to abide by reasonable conditions which may be imposed on him..."

(FF) That in the present facts and circumstances, the alleged offence if any, is bailable in nature and hence the present Applicant being ready and willing to furnish bail, this Hon'ble Court ought to enlarge her on bail forthwith.

(GG) That the Applicant apprehends serious risk to her life if she were to be unduly detained in judicial custody. The Applicant has been at the receiving end of hundreds of death and rape threats for the past several months. The Applicant has been cooperating with various investigative agencies since inception, without abusing her liberty in any manner. Given the grave risk to her welfare, the present bail application ought to be decided expeditiously.

(HH) That the Applicant has been appearing before the Respondents when summoned and as per the various Remand Applications, the statements of

- the Co-Accused have already been recorded hence there is no ground for the Respondents to seek that the Applicant be detained in judicial custody.
- (II) That given that identical allegations have been cast upon all the Co-Accused, but Section 27A of the NDPS Act, 1985 has been applied only on the present Applicant and her brother Showik without substantiation, the present Applicant deserves to be enlarged on bail on the ground of parity as well.
- (JJ) That there is nothing on record to suggest that the present Applicant is in any way connected with the production, manufacture, possession, sale, purchase, transport, import, export or use of any cannabis/ganja/marijuana or the financing, illicit trafficking and/or harboring of offenders in relation to any narcotic drugs or psychotropic substances and hence the ingredients of any offence under the NDPS Act, 1985 are not prima facie made out in respect of the present Applicant.
- (KK) That the allegations being leveled by the Respondents are not corroborated/substantiated in any manner whatsoever.
- (LL) That in **Stefan Mueller Vs. State of Maharashtra 2010 (112(7)) BomLR 2990**, the Hon'ble Bombay High Court held that *"...Under Section 37(1)(b) of the NDPS Act, additional conditions or limitations under that Section are applicable only to specified offences in that section. The offences under Section 20(b)(ii)(a) and Section 27 are not such offences and therefore, the conditions or limitations put in Section 37(1)(b) are not applicable to them and as they are bailable offence under Cr.P.C. also, no conditions can be imposed except about appearance before a Court at particular place or on particular date. In view of this, it will be clear that the conditions not to travel abroad without permission of the Court is also not permissible under the law for these offences..."*

Application No. 811 of 2018, the Hon'ble Bombay High Court has held that:

"...7. So the punishment prescribed for lesser than the commercial quantity but greater than small quantity is ten years with fine of Rs.1 lakh. What is prescribed under Section 20(b)(ii)(A) of the N.D.P.S. Act is that a person if involved in small quantity, i.e. 1000 grams or less, the same is punishable with rigorous imprisonment for a period of one year or fine of Rs.10,000/- or both.

8. What is recovered from the present applicant is admittedly 430 grams and in any case same is within the limit of small quantity prescribed under the Schedule.

9. That being so, the punishment prescribed under Section 20(b)(ii)(A) is maximum one year and as such, in my opinion, the applicant is entitled to be released.

10. Apart from the aforesaid considerations, the fact remains that there are no similar criminal antecedents against the applicant nor it is the case of the prosecution that the narcotic substance seized from both the accused were for commercial trade..."

(NN) That a Bail Application for an alleged offence which is bailable in nature shall be heard at the same time as the remand and hence in the present facts and circumstances, the Learned Magistrate ought to have enlarged the Applicant at the time of her first Remand.

(OO) The position of law is well settled by the Hon'ble Supreme Court in the landmark judgment of **SiddharamSatlingappaMhetre/ State of Maharashtra (2011) 1 SCC 694** has held that:

'113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of that case.

The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.'

'116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case.'

- (PP) It is submitted that the Hon'ble Supreme Court of India in the landmark judgement of Sanjay Chandra V/s CBI relying upon previous judgements clearly said that the purpose of section 439 and 437 is to release the Applicant on bail and the purpose is not to detain an Accused for the purposes of giving him a taste of conviction prior to the conviction of the court of competent jurisdiction.
- (QQ) That the Hon'ble Supreme Court has held in a catena of decisions, that the paramount consideration of bail is the availability of the person for facing the trial and the likelihood of his tampering with the evidence and hampering investigation. Therefore, no coercive procedure may be adopted against the Applicant if she undertakes to make herself available in the trial. In the present case, the Applicant has strong roots in the society and is a permanent resident of Mumbai along with her family members. Thus, the Applicant is firmly based in society and as such there is no likelihood that the Applicant would abscond or flee away from justice.
- (RR) That no incriminating contraband drugs or any other material was recovered at the instance of the Applicant or on her person.
- (SS) That the judicial custody of the Applicant in the present case is unwarranted.
- (TT) That there is nothing on record to suggest that the Applicant would abuse her liberty if enlarged on bail and given that several Co-Accused have already been enlarged on bail, this is a fit case in which bail ought to be granted.

- (UU) That the Applicant is only 28 years old and apart from the present proceedings, has been subjected to three other investigations/enquiries along with a substantial media trial. All of these proceedings have taken a severe toll on the Applicant's mental health and well-being. Any further custody of the Applicant would only worsen her condition.
- (VV) That India is currently dealing with the Covid-19 pandemic and the city of Mumbai has been especially suffering as a result thereof. Presently, India is recording record spikes in the number of Covid-19 cases. Given the factual matrix of the present case and the ongoing pandemic, remanding the Applicant to extended custody would be gravel prejudicial to her physical health as well.
- (WW) That in any event the Applicant is ready and willing to cooperate with the Investigating Agency as and when required.
- (XX) That the Applicant undertakes to abide by any reasonable terms and conditions imposed by this Hon'ble Court.
- (YY) The Applicant has deep roots in society and will not tamper with the investigation or abscond.
43. That no other Application for bail is filed or pending before this Hon'ble Court or any other court in India.
44. The Applicant is in judicial custody; hence her verification may be dispensed with.
45. It is therefore prayed that:
- a) This Hon'ble Court may be pleased to enlarge the Applicant forthwith on bail in connection with C. R. No. 16 of 2020 registered with the Respondents for an offence punishable under Sections 8(c) read with 20 (b) (ii), 22, 27A, 28, 29 and 30 of the NDPS Act, 1985, on such reasonable terms and conditions as this Hon'ble Court may deem fit to impose in the interest of justice and the circumstances of the case; and

- b) For such further and other reliefs as this Hon'ble Court may deem fit to impose in the interest of justice and circumstances of the case.

**FOR THIS ACT OF KINDESS THE APPLICANT AS IN DUTY BOUND
SHALL EVER PRAY.**

Mumbai

This 20th day of September 2020

Advocate for the Applicant

Petition drawn by

Anandini Fernandes and

Namita Maneshinde, Advocates

Petition Settled by

Satish L. Maneshinde, Esquire