

IN THE HIGH COURT OF JUDICATURE AT PATNA

(CIVIL WRIT JURISDICTION)

C.W.J.C. No. _____ of 2020

Mr. ABC

...Petitioner

Versus

Bihar State Aids Control Society and Ors.

...Respondents

Subject: -

INDEX

Sl. No.	Annexure	Particulars	Page
1.		Synopsis & List of Dates	
2.		An application U/A 226 of Constitution of India with Affidavit.	
3.	ANNEXURE-1	A true copy of the “Operational guidelines for the ART Services” issued by the National Aids Control Organisation in July, 2012.	

4.	ANNEXURE-2	A true copy of the “Scheme for the Centre of Excellence in HIV Care” issued by the National Aids Control Organisation in January, 2012.	
5.	ANNEXURE-3	A true copy of the Annual Report for the year 2018-19 of the National Aids Control Organization.	
6.	ANNEXURE- 4	A true copy of the ‘Guidance note for the persons engaged in HIV/Aids response under National AIDS Control Programme in view of COVID-19 Scenario’ dated 23.03.2020 issued by the Additional Director General, NACO to the Project Directors of all the State Aids Control Society of the country.	
7.	ANNEXURE-5	A true copy of the letter sent by the petitioner to the Executive Director (Health) cum Project Director, Bihar State Aids Control Society on 27.03.2020.	

8.	ANNEXURE-6	A true copy of the letter no. 1478 issued by the Executive Director (Health) cum Project Director, Bihar State Aids Control Society to the Director, Rajendra Memorial Research Institute, Patna, the Director, Dankan Hospital, Raxaul, the Superintendents of all the Medical College and Hospitals in Bihar, the Principal, Katihar Medical College, Katihar and all the Civil Surgeons in the state of Bihar on 27.03.2020.	
9.	ANNEXURE-7	A true copy of the letter no. 1483 issued by the Additional Project Director, Bihar State Aids Control Society to the Director, Rajendra Memorial Research Institute, Patna, the Director, Dankan Hospital, Raxaul, the Superintendents of all the Medical College and Hospitals in Bihar, the Principal, Katihar Medical College, Katihar and all the Civil	

		Surgeons in the state of Bihar on 27.03.2020.	
10.	ANNEXURE-8.	A true copy of the screenshot of the official of the ART Centre, Department of Medicines, Banaras Hindu University (BHU), Varanasi dated 12.04.2020.	
11.	ANNEXURE-9	A true copy of the email dated 16.04.2020 sent to the Bihar Aids Control Society by an official of RMRI-ART.	
12.	ANNEXURE-10	A true copy of the email dated 16.04.2020 sent to the Centre of Excellence, Institute of Medical Sciences, Banaras Hindu University (BHU), Varanasi and Project Director, BSACS by the petitioner.	

Vakalatnama Vakalatnama shall be submitted after court reopens.

IN THE HIGH COURT OF JUDICATURE AT PATNA

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SYNOPSIS

This instance writ petition is being preferred for the grant of following reliefs:

- I. To issue a writ of mandamus or any other appropriate writ(s)/order(s) or direction(s) commanding the Executive Director (Health) cum Project Director, Bihar State AIDS Control Society (BSACS), the Secretary, National AIDS Control Organization (NACO), Government of India, the Principal Secretary, Department of Health, Government of Bihar and the Government of Bihar to make available the

prescribed medicines/ ARV drugs to the petitioner and similar other patients undergoing treatment of Third-line Antiretroviral Therapy (ART) for the treatment of HIV AIDS in the State of Bihar;

- II. To issue a writ of mandamus or any other appropriate writ(s)/order(s) or direction(s) commanding the Executive Director (Health) cum Project Director, Bihar State AIDS Control Society (BSACS), the Secretary, National AIDS Control Organization (NACO), the Principal Secretary, Department of Health, Government of Bihar and the Government of Bihar to take immediate steps to ensure the home delivery of medicines /ARV drugs to the petitioner and similar other patients undergoing Antiretroviral Therapy (ART) including Third-line Antiretroviral Therapy (ART) as per the notification by the Additional Project Director, Bihar State AIDS Control Society (BSACS) issued a letter bearing Letter No. 1483 dated 27.03.2020 in the State of Bihar;

III. To issue a writ of mandamus or any other appropriate writ(s)/order(s) or direction(s) commanding the Secretary, National AIDS Control Organization (NACO), Government of India, the Principal Secretary, Department of Health, Government of Bihar and the Executive Director (Health) cum Project Director, Bihar State AIDS Control Society (BSACS), Government of Bihar to ensure that there is sufficient stock of the essential medicines/ARV drugs especially for the Third-line Antiretroviral Therapy (ART) which is currently not available to the petitioner and similar other patients in the state of Bihar at least upto continuation of the restriction on public transportation due to lockdown but not less than of 3 months;

IV. To issue a writ of mandamus or any other appropriate writ(s)/order(s) or direction(s) commanding the Secretary, National AIDS Control Organization (NACO), Government of India, the Principal Secretary, Department of Health, Government of Bihar and the Executive

Director (Health) cum Project Director, Bihar State AIDS Control Society (BSACS), Government of Bihar to devise a mechanism to make availability of medicines /ARV drugs for the treatment of patients undergoing Third-line Antiretroviral Therapy (ART) for HIV AIDS in the State itself so as to avoid frequent visits (as the PLHIV undergoing Third-line of ART are more vulnerable to opportunistic infections) by a patient to the Centre of Excellence at BHU, Varanasi to get the required medicines/ ARV drugs;

- V. To issue a writ of mandamus or any other appropriate writ(s)/order(s) or direction(s) commanding the Secretary, National AIDS Control Organization (NACO), Government of India, the Principal Secretary, Department of Health, Government of Bihar and the Executive Director (Health) cum Project Director, Bihar State AIDS Control Society (BSACS), Government of Bihar to take immediate steps for the establishment of the 'Centre of Excellence' (COE)

to facilitate the treatment of the Persons Living with HIV AIDS (PLHIV) and also particularly for those undergoing Third-line Antiretroviral Therapy (ART) in the State of Bihar.

AND/OR

- VI. To pass any other order or direction which deems fit in the interest of justice, equity and good conscience.

LIST OF DATES & EVENTS

Date	Event
24.03.2020	Complete lockdown announced in the country by the Government of India.
27.03.2020	The petitioner sent a representation letter via Whatsapp to the Executive Director (Health) cum Project Director, Bihar State Aids Control Society requesting to avail medicines of third line for him and four other Persons Living with HIV Aids (PLHIV). Executive Director (Health) cum Project Director, Bihar State Aids Control Society issued a letter bearing Letter No. 1478 to the Director, Rajendra Memorial Research

	<p>Institute, Patna, the Director, Dankan Hospital, Raxaul, the Superintendents of all the Medical College and Hospitals in Bihar, the Principal, Katihar Medical College, Katihar and all the Civil Surgeons in the state of Bihar for the availability of ARV drugs to the Persons Living with HIV Aids during COVID-19 pandemic.</p> <p>Additional Project Director, Bihar State Aids Control Society issued a letter bearing Letter No. 1483 to the Director, Rajendra Memorial Research Institute, Patna, the Director, Dankan Hospital, Raxaul, the Superintendents of all the Medical College and Hospitals in Bihar, the Principal, Katihar Medical College, Katihar and all the Civil Surgeons in the state of Bihar for ensuring the home delivery of ARV drugs to the Persons Living with HIV Aids during COVID-19 pandemic.</p>
28.03.2020	<p>The petitioner contacted the Bihar State Aids Control Society (BSACS) telephonically to avail medicines of the third line for his treatment.</p>
10.04.2020	<p>Bihar State Aids Control Society (BSACS) sent the medicines of 5 persons living with HIV-Aids (PLHIV) to</p>

	the Rajendra Memorial Research Institute (RMRI) -ART Centre, Agamkuan, Patna.
11.04.2020	The petitioner received his medicines for one month from the RMRI-ART Centre, Agamkuan, Patna.
12.04.2020	The petitioner received a message on his Whatsapp from an official of the ART Centre, Department of Medicines, Banaras Hindu University (BHU), Varanasi who asked him to deliver the medicines of 15 days to a PHLV residing in Sonpur, Bihar.
16.04.2020	<p>An official from RMRI-ART Centre sent an email to the Bihar Aids Control Society for availing the third line medicines to the patients.</p> <p>The petitioner sent an email to the Centre of Excellence, Institute of Medical Sciences, Banaras Hindu University (BHU), Varanasi and Project Director, BSACS requesting for the third line medicine for the PLHIV in the state of Bihar.</p>

No action taken, hence this writ application.

IN THE HIGH COURT OF JUDICATURE AT PATNA

(CIVIL WRIT JURISDICTION)

C.W.J.C. No. _____ of 2020

In the matter of an application
under Article 226 of the
Constitution of India;

And

In the matter of:

Mr. ABC. (Male) aged about 46 years, R/o Patna, Bihar-800004

...Petitioner

Versus

1. Executive Director (Health) cum Project Director, Bihar State
Aids Control Society, Bihar
2. Union of India, through its Secretary, National Aids Control
Organisation, 9th Floor, Chandralok Building, Janpath, New
Delhi

3. Principal Secretary, Department of Health, Government of
Bihar **...Respondents**

To,

The Hon'ble Mr. Justice Sanjay Karol, the Chief Justice of the High
Court of Judicature at Patna and his companion Justices of the
said Hon'ble Court.

The humble petition on behalf
of the petitioner above named.

MOST RESPECTFULLY SHEWETH :

1. This instance writ petition is being preferred for the grant
of following reliefs:

- I. To issue a writ of mandamus or any other
appropriate writ(s)/order(s) or direction(s)
commanding the Executive Director (Health) cum
Project Director, Bihar State AIDS Control
Society (BSACS), the Secretary, National AIDS
Control Organization (NACO), Government of
India, the Principal Secretary, Department of
Health, Government of Bihar and the
Government of Bihar to make available the
prescribed medicines/ ARV drugs to the

petitioner and similar other patients undergoing treatment of Third-line Antiretroviral Therapy (ART) for the treatment of HIV AIDS in the State of Bihar;

- II. To issue a writ of mandamus or any other appropriate writ(s)/order(s) or direction(s) commanding the Executive Director (Health) cum Project Director, Bihar State AIDS Control Society (BSACS), the Secretary, National AIDS Control Organization (NACO), the Principal Secretary, Department of Health, Government of Bihar and the Government of Bihar to take immediate steps to ensure the home delivery of medicines /ARV drugs to the petitioner and similar other patients undergoing Antiretroviral Therapy (ART) including Third-line Antiretroviral Therapy (ART) as per the notification by the Additional Project Director, Bihar State AIDS Control Society (BSACS) issued a letter bearing Letter No. 1483 dated 27.03.2020 in the State of Bihar;

III. To issue a writ of mandamus or any other appropriate writ(s)/order(s) or direction(s) commanding the Secretary, National AIDS Control Organization (NACO), Government of India, the Principal Secretary, Department of Health, Government of Bihar and the Executive Director (Health) cum Project Director, Bihar State AIDS Control Society (BSACS), Government of Bihar to ensure that there is sufficient stock of the essential medicines/ARV drugs especially for the Third-line Antiretroviral Therapy (ART) which is currently not available to the petitioner and similar other patients in the state of Bihar at least upto continuation of the restriction on public transportation due to lockdown but not less than of 3 months;

IV. To issue a writ of mandamus or any other appropriate writ(s)/order(s) or direction(s) commanding the Secretary, National AIDS Control Organization (NACO), Government of India, the Principal Secretary, Department of Health, Government of Bihar and the Executive

Director (Health) cum Project Director, Bihar State AIDS Control Society (BSACS), Government of Bihar to devise a mechanism to make availability of medicines /ARV drugs for the treatment of patients undergoing Third-line Antiretroviral Therapy (ART) for HIV AIDS in the State itself so as to avoid frequent visits (as the PLHIV undergoing Third-line of ART are more vulnerable to opportunistic infections) by a patient to the Centre of Excellence at BHU, Varanasi to get the required medicines/ ARV drugs;

- V. To issue a writ of mandamus or any other appropriate writ(s)/order(s) or direction(s) commanding the Secretary, National AIDS Control Organization (NACO), Government of India, the Principal Secretary, Department of Health, Government of Bihar and the Executive Director (Health) cum Project Director, Bihar State AIDS Control Society (BSACS), Government of Bihar to take immediate steps for the establishment of the 'Centre of Excellence' (COE)

to facilitate the treatment of the Persons Living with HIV AIDS (PLHIV) and also particularly for those undergoing Third-line Antiretroviral Therapy (ART) in the State of Bihar.

AND/OR

- VI. To pass any other order or direction which deems fit in the interest of justice, equity and good conscience.

2. That the instant petition is being preferred, among others to be urged at the bar, on the following:

Grounds:

- i. Whether the National AIDS Control Organization (hereinafter NACO), Department of Health, Government of Bihar and Bihar State AIDS Control Society (hereinafter referred as BSACS) has been gravely negligent with regard to the plight of the Persons Living with HIV AIDS (hereinafter referred as PLHIV) especially to the petitioner and to those patients undergoing Third-line Antiretroviral

Therapy (ART) for the treatment of HIV AIDS in the state of Bihar during the COVID-19 and subsequent national lockdown?

- ii. Whether the NACO Department of Health, Government of Bihar and BSACS has failed to take necessary steps for ensuring the unhindered treatment and medication of the PLHIV especially to the petitioner and to those patients undergoing Third-line Antiretroviral Therapy (ART) for the treatment of HIV AIDS residing in the state of Bihar?
- iii. Whether the negligence of the NACO, Department of Health, Government of Bihar and BSACS towards the miserable condition of PLHIV especially to the petitioner and to those patients undergoing Third-line Antiretroviral Therapy (ART) for the treatment of HIV AIDS in the state is in violation with the provisions of Article 14 and Article 21 of the Constitution of India?

3. That the Petitioner is a citizen of India and resides within the territorial jurisdiction of this Hon'ble Court. He himself is a Person living with HIV/AIDS (PLHIV), undergoing Third-line Antiretroviral Therapy (ART) for the

treatment of HIV/AIDS and is working for the welfare of the PLHIV in the state of Bihar. The Petitioner was being approached by many PLHIV who are undergoing Third-line Antiretroviral Therapy (ART) for the treatment of HIV AIDS and informed him about the non-availability of the prescribed medicine to them amid nation wide lockdown due to pandemic COVID 19. The Petitioner and the respondents are amenable to the writ jurisdiction of this Hon'ble Court.

4. That the identity of the Petitioner has been masked as per the provisions provided under Section 34 of The HIV and AIDS (Prevention and Control) Act, 2017.

34. (1) In any legal proceeding in which a protected person is a party or such person is an applicant, the court, on an application by such person or any other person on his behalf may pass, in the interest of justice, any or all of the following orders, namely:—

(a) that the proceeding or any part thereof be conducted by suppressing the identity of the applicant by substituting the name of such person with a pseudonym in the records of the

proceedings in such manner as may be prescribed;

(b) that the proceeding or any part thereof may be conducted in camera;

(c) restraining any person from publishing in any manner any matter leading to the disclosure of the name or status or identity of the applicant.

(2) In any legal proceeding concerning or relating to an HIV-positive person, the court shall take up and dispose of the proceeding on priority basis.

5. That the instant writ is being filed as a Class action litigation representing the by the petitioner, who is an aggrieved and a public spirited person, as well as similarly situated persons who are also aggrieved by the action but lack the resources to approach this Hon'ble Court.
6. That the NACO, Ministry of Health and Family Welfare established the ART Centres in the country under the National Aids Control Programme (hereinafter NACP). The main objective of Antiretroviral Therapy (hereinafter ART) Centre is to provide a comprehensive package of Care,

Support and Treatment services to persons living with HIV/AIDS (PLHIV).

7. That the “Operational guidelines for the ART Services” issued by the NACO in July, 2012 provides a model for the HIV Treatment Services which says that the Persons Living with HIV AIDS (PLHIV) shall be categorized in three categories. The first category is the medication facilities through Link ART centres which are to be carried by the Sub-District Level Hospitals and Community Health Centres (CHCs). The second category is the medication facilities through the ART Centres which are to be carried by the District Level Hospitals and the Medical Colleges. The third category is the medication facilities through the Centres of Excellence (hereinafter CoE) which are to be carried by the selected medical colleges.

A true copy of the “Operational guidelines for the ART Services” issued by the NACO in July, 2012 has been annexed herewith as

ANNEXURE-1.

8. That as per the “Operational guidelines for the ART Services” issued by the NACO in July, 2012 one of the

main objectives of the ART Centres is to refer patients requiring specialised services (including admission) to other departments/higher facilities/ Centre of Excellence.

9. That the Ministry of Health and Family Welfare, Government of India and the NACO issued a “Scheme for the Centre of Excellence in HIV Care” in January, 2012 which were supposed to serve as a role model for the treatment and medication of the PLHIV.

A true copy of the “Scheme for the Centre of Excellence in HIV Care” issued by NACO in January, 2012 has been annexed herewith as

ANNEXURE-2.

10. The Centre of Excellence ideally should have an environment that is comfortable for the care provider as well as the beneficiary, for obtaining optimal results. The Centre of Excellence should have effective linkages with relevant departments and organizations in order to provide all services that are essential for the comprehensive care of PLHIV.
11. That the Institutions selected as Centres of Excellence are medical colleges or tertiary centres of high technical

repute and willing to provide dedicated staff, infrastructure and technical support towards the program. The centres have been providing comprehensive HIV care over the years including ART, support and treatment and have been involved in training and research.

12. That the medication/ ARV drugs necessary for the patients under Third-line Antiretroviral Therapy (ART) is made available through the Centres of Excellence.
13. That as per the Annual Report for the year 2018-19 of the National Aids Control Organization, there are 1.15 lakhs PLHIV in the state of Bihar. As per the data available on the website of NACO, there are 15 ART centres and 13 Link ART centres in the state of Bihar for the treatment and medication of the PLHIV. In addition to these, there are 6 Nodal ART centres in the state of Bihar, namely- Patna Medical College Hospital, Patna, Rajendra Medical Research Institute, Patna, Anugrah Narayan Magadh Medical College Hospital, Gaya, Jawahar Lal Nehru Medical College and Hospital, Bhagalpur, Darbhanga Medical College Hospital, Darbhanga and Sadar Hospital, Madhubani.

A true copy of the Annual Report for the year 2018-19 of the National Aids Control Organization has been annexed herewith as **ANNEXURE-3**.

14. That as per the Annual Report for the year 2018-19 of NACO, there are eleven CoE in the country but none is located in the state of Bihar. The nearest CoE from the state of Bihar is the Institute of Medical Sciences, Banaras Hindu University, Varanasi, Uttar Pradesh. As a result, the PLHIV(s) from the state of Bihar who need third line medicines have to go there to get the third line medicines.

Facts:

15. That the present scenario of lockdown in the state due to COVID- 19 pandemic and this has impacted the most to the various vulnerable groups in the state of Bihar including the petitioner and similar other PLHIV(s) who reside in the state.

16. That on 23.03.2020, the Additional Director General, NACO issued a 'Guidance note for the persons engaged in HIV/Aids response under National AIDS Control Programme in view of COVID-19 Scenario', to all the

Project Directors of the State Aids Control Societies of the country which provides for the three months Multi Month Dispensation of the first and the second line medication to the PLHIV(s). But this guidance note is silent about the medication facilities which are to be provided to the PLHIV(s) who are in need of third line medication.

A true copy of the 'Guidance note for the persons engaged in HIV/Aids response under National AIDS Control Programme in view of COVID-19 Scenario' dated 23.03.2020 issued by the Additional Director General, NACO to the Project Directors of all the SACS of the country is annexed herewith as

ANNEXURE-4.

17. That on 27.03.2020 the petitioner sent a representation letter via Whatsapp to the Executive Director (Health) cum Project Director, Bihar State Aids Control Society requesting to make the availability of medicines of third line for him and four other Persons Living with HIV Aids (PLHIV).

A true copy of the letter sent by the petitioner to the Executive Director (Health) cum Project Director, Bihar State Aids Control Society on 27.03.2020 has been annexed herewith as **ANNEXURE-5**.

18. That on 27.03.2020 the Executive Director (Health) cum Project Director, Bihar State Aids Control Society issued a letter bearing Letter No. 1478 to the Director, Rajendra Memorial Research Institute, Patna, the Director, Dankan Hospital, Raxaul, the Superintendents of all the Medical College and Hospitals in Bihar, the Principal, Katihar Medical College, Katihar and all the Civil Surgeons in the state of Bihar for the availability of ARV drugs to the Persons Living with HIV Aids during COVID-19 pandemic.

A true copy of the letter no. 1478 issued by the Executive Director (Health) cum Project Director, Bihar State Aids Control Society to the Director, Rajendra Memorial Research Institute, Patna, the

Director, Dankan Hospital, Raxaul, the Superintendents of all the Medical College and Hospitals in Bihar, the Principal, Katihar Medical College, Katihar and all the Civil Surgeons in the state of Bihar on 27.03.2020 has been annexed herewith as **ANNEXURE-6**.

19. That on 27.03.2020, the Additional Project Director, Bihar State Aids Control Society issued a letter bearing Letter No. 1483 to the Director, Rajendra Memorial Research Institute, Patna, the Director, Dankan Hospital, Raxaul, the Superintendents of all the Medical College and Hospitals in Bihar, the Principal, Katihar Medical College, Katihar and all the Civil Surgeons in the state of Bihar for ensuring the home delivery of ARV drugs to the Persons Living with HIV Aids during COVID-19 pandemic.

A true copy of the letter no. 1483 issued by the Additional Project Director, Bihar State Aids Control Society to the Director, Rajendra Memorial Research Institute, Patna,

the Director, Dankan Hospital, Raxaul, the Superintendents of all the Medical College and Hospitals in Bihar, the Principal, Katihar Medical College, Katihar and all the Civil Surgeons in the state of Bihar on 27.03.2020 has been annexed herewith as **ANNEXURE-7**.

20. That on 28.03.2020, the petitioner contacted the Bihar State AIDS Control Society (BSACS) telephonically to avail medicines of the third line for his treatment but his request was not entertained.
21. That on 10.04.2020, Bihar State AIDS Control Society (BSACS) sent the medicines of 5 persons living with HIV-AIDS (PLHIV) to the Rajendra Memorial Research Institute (RMRI) -ART Centre, Agamkuan, Patna.
22. That on 11.04.2020, the petitioner received his medicines of one month from the RMRI-ART Centre, Agamkuan, Patna.
23. That on 12.04.2020, the petitioner received a message on his Whatsapp from an official of the ART Centre,

Department of Medicines, Banaras Hindu University (BHU), Varanasi who asked him to deliver the medicines of 15 days to a PLHIV residing in Sonpur, Bihar. Further, the petitioner delivered the medicines to the PLHIV residing in Sonpur, Bihar.

A true copy of the screenshot of the official of the ART Centre, Department of Medicines, Banaras Hindu University (BHU), Varanasi dated 12.04.2020 has been annexed herewith as **ANNEXURE-8**.

24. That on 16.04.2020, an official from RMRI-ART Centre sent an email to the Bihar AIDS Control Society for availing the Third line medicines to the patients.

A true copy of the email dated 16.04.2020 sent to the Bihar Aids Control Society by an official of RMRI-ART has been annexed herewith as **ANNEXURE-9**.

25. That on 16.04.2020, the petitioner sent an email to the Centre of Excellence, Institute of Medical Sciences, Banaras Hindu University (BHU), Varanasi and Project

Director, BSACS requesting for the Third line medicine for the PLHIV in the state of Bihar.

A true copy of the email dated 16.04.2020 sent to the Centre of Excellence, Institute of Medical Sciences, Banaras Hindu University (BHU), Varanasi and Project Director, BSACS by the petitioner has been annexed herewith as **ANNEXURE-10.**

26. That the petitioner has raised his concerns for the availability of the Third line medicines before the NACO, BSACS and Centre of Excellence, Varanasi but no heed has been paid to his grievances.
27. That till date the respondent authorities have not informed the petitioner regarding his medicine and have failed to provide the essential necessity to the petitioner which is in violation of Article 14 and 21 of the constitution of India.
28. That the petitioner has no other effective and efficacious remedy than to move to your lordships by way of filing this writ petition for redressal of the grievances.

29. That the petitioner has not moved earlier before this Hon'ble court in this matter.

It is, therefore, prayed that your Lordship may graciously be pleased to admit this application and issue RULE NISI calling upon the respondents to show cause as to why the relief sought for in paragraph 1 of this writ application may not be granted to the petitioners and after hearing the parties considering of the show Cause if any and allow this writ petition

AND/OR

Be pleased to pass such other orders or orders, writ(s) or its direction or directions as this Hon'ble Court may deem fit and proper in the facts and

circumstances of the case for the
ends of Justice.

And for this the petitioner shall ever pray.