

**IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE-III,
MAVELIKARA**

Present:- Smt.Pooja.P.P, Additional Sessions Judge-III,
Thursday the 05th day of February 2026

CRL.M.P No.2625/2025 in SC. No.1160/2022

Crime No.1032/2022 of Police Station , Kayamkulam

(Filed on 26.10.2025)

Petitioner/ 1st Accused:- 1. Shamna, aged 33 years,
D/o Sharafudeen, Thekkedath
Kizhakkathil, Kappil Kizhak Muri,
Krishnapuram village.
2. Muhammad Kunju, @ Ani, aged 34 years,
D/o Thahakutty, Kandisseril,
Desathinakom Muri, Krishnapuram
Village.

(By Adv.P.S.Zameer)

Respondent/

Complainant :- State of Kerala represented by SHO,
Kayamkulam Through
Public Prosecutor, Mavelikara.

This petition having been finally heard on 31.01.2026
and the court on 05.02.2026 passed the following.

ORDER

The petition is filed by the accused u/s 250 (1) of BNSS.

2. According to the petitioners, they were charge sheeted u/s 8(c) r/w Section 22(b) and 29 of NDPS Act. As per the prosecution records 1.02 grams of MDMA was recovered from the first petitioner and .86 gram of MDMA was recovered from the car which owned by her. A total quantity of 1.88 grams was allegedly recovered from her and 1.13 grams of MDMA was allegedly recovered from the back pocket of the pants of the second petitioner. As per the FSL report the contraband recovered was methamphetamine. Total 1.89 grams of methamphetamine was allegedly recovered from the second accused. So, they allegedly possessed only small quantity. The prosecution has no

case that the petitioners committed the offence in furtherance of their common intention. So, Section 29 of NDPS Act cannot be attracted. The prosecution could not find out the source of the contraband or the petitioners were jointly made financial transaction with respect to the purchase of the contraband. So, Section 8 (c) r/w 22(b) and 29 of NDPS Act are not attracted against the accused and they are entitled to a discharge.

3. Prosecution filed objection contending that the petitioners have not raised such objection at the time of framing of charge and they are not entitled to a discharge as claimed by them

4. Heard both sides.

5. The points that arise for determination are:-

1. Are the petitioners entitled to a discharge as sought for?

2. Order.

6. **Point No.1:-** The accused seek a discharge by contending that the contraband allegedly recovered from their possession was not MDMA but methamphetamine and the prosecution has no case that the accused possessed the above contraband. It is also contended that the total quantity of the contraband allegedly seized from the 1st and 2nd accused was 1.02 grams and 1.13 grams respectively. It is also contended that since the prosecution has no allegation that the accused had the common intention and they spent money jointly for the procurement of the contraband, Section 8 and 29 of the Act have no application.

8. As per the prosecution allegation accused were found in possession of 1.02 grams and 1.13 grams of the contraband which was allegedly MDMA. It is also the allegation of the prosecution that 0.86 grams of MDMA was detected from the dash board of the car in which the accused were allegedly travelling at the relevant time. So it cannot be found that contraband seized from the car was not in the joint

possession of the accused only for the reason that the car was owned by A1 and driven by her. Even if it is found that the contraband seized was small quantity the same is not sufficient to record a discharge. The accused had sufficient opportunity to raise the above contention at the stage of hearing on the framing of charge which was not availed. So, the plea of discharge on the ground of smallness of the quantity cannot be entertained at his belated stage.

7. The other contention raised is that the contraband allegedly seized was not MDMA, but methamphetamine as made out from the FSL report. It is true that there is merit in the above contention of the accused. But the same is also insufficient to order a discharge. At the most the above ground is available to alter the charge which can be resorted at any stage of the proceedings. So, the above ground pressed into service is also not available to pass an order of discharge, as canvassed by the accused. However the charge will be altered accordingly. Accordingly, the point is found against the accused.

8. **Point No.2:-** In view of the findings on point No.1 the petition is without any merit and the same is liable to be dismissed.

In the result, the petition is dismissed.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 05th day of February, 2026.

Sd/-

**POOJA P.P,
ADDITIONAL SESSIONS JUDGE- III,
MAVELIKARA.**

Appendix: Nil

Sd/-

ADDITIONAL SESSIONS JUDGE - III