

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-II,
MAVELIKKARA.**

Present: Sri.Anandhu.J.B, Judicial First Class Magistrate-II

Dated this the 11th day of March, 2026.

CMP 2170/2025 in CC 78/2025

Petitioners/Accused : Sabu T K, S/o Thankachan, Kavullathil House, Cherumukha, Ayiranikudy P.O, Nooranadu.
(By Adv.Stephen J Daniel)

Cr.petitioner/Complainant : State of Kerala – represented by the Sub Inspector of Police, Nooranadu in Crime No.338/2025.
(By APP, JFCMC-II, Mavelikara)

Section of Law : U/s.274 of BNSS.

Sentence or order : The accused is discharged U/s 274 of BNSS.

This petition coming on this day for consideration, the court passed the following:-

ORDER

1. Petition filed by the accused in CC 78/2025 on the file of this court (Nooranadu in Crime No.338/2025) to discharge him. The offence alleged against the accused is punishable U/s 27(b) of NDPS Act 1985.

2. The averments of the petitioner are as follows:- Petitioner is the accused in the above case. Petitioner stands incriminated for the offences punishable U/s 27(b) of NDPS Act 1985. The article allegedly used was not recovered and there is no sufficient evidence to justify the allegation. Moreover, the arrest was made solely based on the smell from the accused. The time of arrest mentioned in the final report are contradictory. There is no seizure mahazar or any medical report to

support the allegation. The final report filed by the police is not maintainable and he is entitled to be discharge of the offences alleged. Hence, this petition.

3. The learned APP opposed the petition. It is stated that the final report filed by the police is legally maintainable. The learned APP seeks to dismiss the petition.

4. The point to be considered is:

1. whether the accusation against the petitioner is groundless so as to discharge him as per the proviso to Section 274 of Bharatiya Nagrik Suraksha Sanhita 2023?

2. Order?

5. Prosecution case is that, on 28.02.2025 at 3.50 pm the accused was found smoking near Mattappally junction and when the police party approached him he threw away the cigarette kept in his hand. The Investigating officer perceived strong odour of ganja from the breath of the accused and this case was registered U/s 27(b) of NDPS Act 1985.

6. The case arose on a final report filed by the Nooranad police, upon an FIR registered suo motu. The time of arrest shown in the final report are different. It is alleged that the accused threw away the cigarette and the same could not be traced out. No medical certificate produced and the witness cited are police officials. Therefore, there are no materials before this court to prima facie establish that the petitioner has committed the offence alleged against him. Mere opinion of the investigating officer that the petitioner was smoking ganja beedi is not sufficient to incriminate the petitioner.

7. Hon'ble High Court of Kerala in **Ibnu Shijil Vs State of Kerala (2024(5) KHC 476)** has held that To identify the nature of the contraband on the basis of smell, that too, from the breath of a person cannot be a piece of acceptable evidence to justify a criminal prosecution. As noted earlier, it could be the basis for suspicion, but certainly not the sole basis for prosecution. If a person is permitted to be prosecuted on the mere basis of smell from his breath, it can lead to anomalous situations where the Investigating Officers would be able to rope in any person as an accused in an NDPS offence.

8. In the present case, apart from a bare allegation that smell of narcotic drug was perceived by the detecting officer, no contraband were produced. No medical certificate was also produced to rationalize the consumption of a narcotic drug by the accused. No independent persons were cited as witness. Mere sensory perception of a police officer is not sufficient for initiating a prosecution for an offence U/s 27(b) of NDPS Act.

8. Therefore, relying on the above decision, it can be concluded that the accusation levelled against the petitioner U/s 27(b) NDPS Act is groundless.

In the result, CMP is allowed. The accused is discharged U/s 274 of BNSS.

(Dictated to the C.A., typed and transcribed by her, corrected and pronounced by me in open Court on the 11th day of March, 2026.)

Judicial First Class Magistrate-II,
Mavelikara