

**IN THE COURT OF JUDICIAL MAGISTRATE OF THE FIRST  
CLASS- I, KOCHI**

Present: Sri. Kannan L, Judicial First Class Magistrate - I, Kochi

Dated, this 2<sup>nd</sup> day of September, 2025

**CMP 791/2025 in CC 527/2024**

Accused/  
Petitioner : Afsal, aged 21/24 years, S/o Pookoya, Dharul Aman,  
Amini, Lakshadhweep  
(By Assistant Public Prosecutor, JFCM -1, Kochi)

Respondent : State represented by the Sub Inspector of Police, Harbour  
Police Station, in Cr. No. 575/2024

Offences : U/s 20(B) II A NDPS Act

Order : Dismissed

**ORDER**

This is an application for discharge filed by the accused in this case.

2. The allegations of the prosecution in brief are as follows: on 24.12.2024 at about 01.30 a.m. the accused was found in possession of 350.87 grams of ganja. At Ernakulam Wharf Checking Point, Willington Island. Thereby the accused had committed the offence punishable under Section 20(b)II A of NDPS Act.

3. The averments in the application are as follows. The allegations levelled against the petitioner are false. There is no properly prepared or produced inventory mahazar at the time of the alleged seizure. Furthermore, there is no clear statement in the final report, mahazar, or in the statements of any witnesses indicating the exact location from which the alleged

contraband was seized. While CW5 claims the substance was found on a table, CW1 states that the contraband was found wrapped in a plastic cover when the petitioner was restrained and examined. However, none of the records specify the precise place of seizure. The mandatory requirement under Section 50 of the NDPS Act has not been complied with. The petitioner was not informed of his legal right to be searched before a Gazetted Officer or a Magistrate, and there is no record indicating that such an offer was made or declined in writing. Similarly, Section 52A of the Act has not been followed in relation to the handling and certification of the seized material, and Section 57, which requires reporting of arrest and seizure to the immediate superior officer, has also not been complied with. Moreover, there is no independent witness present at the time of seizure. The non-compliance with these mandatory provisions is fatal to the prosecution case, even if the contraband involved is of a small quantity. Crucially, there is no evidence to establish that the petitioner was in conscious possession of the allegedly seized substance. The charge sheet fails to disclose any necessary factual details or credible material linking the petitioner to the alleged offence. In such circumstances, the petitioner is entitled to be discharged.

4. Heard both sides.
5. The following point arise for consideration.

Whether the allegations levelled against the petitioner are groundless.?

6. **The point:** Before going further, it should be noted that the present petition is filed under Section 227 of Cr.PC which is not the provision applicable in this case. However, a mere misquoting of a provision is not fatal and it can be ignored. It is to be noted that the proviso to Section 274 of the Bharatiya Nagarik Suraksha Sanhita, 2023, stipulates that where the accusations against the accused are found to be groundless, the accused may be released, and such release shall have the effect of a discharge. The question that now arises for consideration is whether the accusations levelled against the petitioner can be considered as groundless.

7. In the application, the inconsistencies between the statements of two witnesses have been highlighted, and it is contended that there is no clear evidence identifying the exact spot from which the contraband was recovered. As such, the recovery is vague and insufficient to support the prosecution case. At this stage, the statements of prosecution witnesses and any inconsistencies are not to be examined, as these are matters to be evaluated during the trial.

8. Now the petitioner raises the non-compliances of statutory provisions of the NDPS Act namely Section 50, 52A and 57A of the NDPS Act.

9. Regarding Section 50, it is pertinent to note that in the present case, the allegation of the prosecution is that during a checking conducted by an officer of CISF., the contraband was found in the possession of the petitioner,

wrapped in a raincoat. Therefore, the contraband was not recovered from the body of the petitioner or from his clothing, but from a raincoat carried by him. Furthermore, the recovery in this case appears to be purely accidental or by chance.

10. Thereafter, the information was conveyed to the police, and the CW5, the Inspector of Police, Harbour Police Station, reached the scene. The seizure mahazar prepared by the CW5 indicates that the petitioner was informed of his right to be searched in the presence of a Gazetted Officer or a Magistrate. According to the police, the petitioner waived this right, following which CW5 proceeded to conduct the body search. Nothing was found during the body search conducted by the police. The contents of the seizure mahazar indicate that there was compliance with Section 50 of the NDPS Act.

11. In any case, in the absence of any recovery from the petitioner's person, the applicability and alleged non-compliance with Section 50 would not materially affect the prosecution's case at this stage.

12. About the non compliance of Section 57 and 57A. It is now settled that the provisions are directory and not mandatory. In *State of Punjab vs. Balbir Singh* AIR 1994 SC 1872 Hon'ble Supreme court held that the provisions of Sections 52 and 57 which deal with the steps to be taken by the officers after making arrest or seizure under sections 41 to 44 are by themselves not mandatory. If there is non-compliance or if there are lapses like delay etc.

then the same has to be examined to see whether any prejudice has been caused to the accused and such failure will have a bearing on the appreciation of evidence regarding arrest or seizure as well as on merits of the case. So, the alleged non compliance of Section 57 or Section 57A has no effect at this stage of the case.

13. Now coming to the alleged non compliance of Section 52A, the Hon'ble High Court of Kerala in Pavithran vs State of Kerala 2018 1 KLJ 706 had held that -The mere fact that the Investigating Officer has not moved the learned Magistrate under Section 52A will not in any way affect the case of the prosecution. In the instant case, the very purpose of Section 52A is to ensure that the contraband substance is disposed of under the supervision of a Magistrate and if the Magistrates follows the mandate under Section 52A, then the certificate issued by him is per se admissible in evidence and it is not necessary for the police or the investigating agency to produce the bulk seized material, which is The case property before the court. In case Section 52A is not complied with and the seized material is not destroyed, then it is the duty of the prosecution to produce the same before the trial court during the stage of trial.

14. Relying on the judgment of Hon'ble High Court of Kerala above cited, the ground of non compliance of 52A of the Act is also not available to the petitioner at this stage.

15. Now going to the prosecution records, it can be seen that at the time of incident contraband was seized from the possession of the petitioner and the chemical analysis report confirms that it is ganja. The veracity of the search and of the seizure and the lodging of prosecution can only be considered at the stage of trial. On the basis of above discussion, I am of the view that the allegations levelled against the petitioner cannot be considered groundless. Point found against the petitioner. As a result, this application is dismissed.

(Pronounced by me in the open court on this the 2<sup>nd</sup> day of September, 2025).

Sd/-

**Judicial Magistrate of the First Class – I, Kochi**