

**IN THE COURT OF THE ADDITIONAL DISTRICT & SESSIONS JUDGE – I,
N. PARAVUR**

Present:- Smt. Mallika A.S., Additional District & Sessions Judge – I

Saturday, the 6th day of June, 2026/ 16th Jyaishta, 1948.

Crl. M.P. No.8/2026 in S.C.No.266/2026

Petitioner/Accused No.1:-

Ajunal Sha, aged 28 years, S/o.Zakkeer, Mulakkaparambil House, Ramankuthu, Vettichal, Nilambur P.O., Malapuram, Now residing at Nabeel's House, Manthiackal, Companyppady, Thaikkattukara, Aluva, Ernakulam District - 683 106.

By Adv. Akhil Krishnan A.

Respondent/Complainant:-

State of Kerala, represented by Station House Officer, Angamaly Police Station.

By Adv. Hari N.K., Addl. Public Prosecutor,
N.Paravur

This petition filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita to enlarge the petitioner/accused No.1 on bail.

This Petition coming on for hearing before me on 01.06.2026 and the court on 06.06.2026 passed the following:-

ORDER

This is an application for bail filed under Section 483 of BNSS, 2023 to enlarge the petitioner who is the accused No. 1 in SC No. 266/2026 of Additional District and Sessions Court-I, North Paravur on bail.

2. The petition, in brief, are as follows :

The petitioner is the first accused in Crime No. 1751/2025 of Ankamaly Police Station, Ernakulam District. The offence alleged against the petitioner and the second accused is under Section 22(c) and 29 of NDPS Act on the case that on 30.08.2025 at about 08.20 a.m. the accused Nos. 1 and 2 were found in possession of 191.78 grams of MDMA in a car bearing registration number KL-40-P-1666 in which the accused Nos. 1 and 2 were travelling, near Angamaly TB junction, thereby the accused persons have committed the aforesaid offence.

3. In the above case, the first accused was arrested and produced before the jurisdictional Magistrate on 30.08.2025 and was remanded to judicial custody and since then the petitioner is in judicial custody. According to the petitioner, he is innocent of the offence alleged against him and he has not committed any offence as alleged by the prosecution and the contraband article has not been seized from the possession of the petitioner at any point of time and has no connection with the recovery of contraband article in this case, thereby he was falsely implicated in the above case.

4. Learned Additional Public Prosecutor opposed the bail application. Inspector of Police, Angamaly Police Station filed report objecting the bail

application stating that if the first accused/petitioner is released on bail he may commit the similar offence and intimidate or influence the witnesses in this case and there is likelihood of tampering with the evidence in this case and also there is possibility for absconding from the jurisdiction of this court. So it is prayed by the Investigating Officer that the bail application filed by the first accused may be dismissed.

5. Heard both sides and perused the records.

6. The main argument advanced on the side of the first accused/petitioner is that the officer who has conducted arrest of the first and second accused has not complied with the mandatory provision of furnishing grounds of arrest to the accused Nos.1 and 2 at the time of arrest thereby they have violated the mandatory provisions of Article 22 of the Indian Constitution, which provides that the accused should be informed of the grounds of arrest immediately after recording his arrest and any violation of the same will invalidate the arrest and detention of the petitioner and this right was affirmed by the legislature as per Section 52 of the NDPS Act and Section 47(1) of the BNSS, which specifically provides that whole particulars of the offence has to be communicated to the accused in the arrest memo as well as in the arrest intimation. According to the counsel for the petitioner, in the case of the first

accused, no such information has been given to the first accused as regards the grounds of arrest and the same was also not communicated to the near relatives of the petitioner in this case. And on perusal of the final report submitted by the prosecution also it is clear that the grounds of arrest has not been communicated by the officer who arrested the petitioner at the time of his arrest. Further though the prosecution alleged that the grounds of arrest has been duly communicated to the petitioner which had resulted in dismissal of the previous bail application of the petitioner, but on receipt of the copy of the final report from this court, it has come to the notice of the first accused that no documents whatsoever has been prepared by the prosecution so as to prove that the grounds of arrest has been communicated to the petitioner/accused and his wife. Further, it was submitted that the quantity of the contraband articles allegedly seized from the first accused has not been stated in the notice given to the accused and it is only mentioned the statutory provision as regards the offence which alleged against the accused persons under the provisions of NDPS Act.

7. The counsel for the accused/petitioner has relied on various decisions of the Hon'ble Apex Court as well as the Hon'ble High Court in support of his argument that the non compliance of the provisions of Article

22(1) of the Constitution and Section 47 of the BNSS would render the arrest illegal and which itself is a ground for release of the accused. The petitioner has relied on the decisions of the Hon'ble Apex Court in *Mihir Rajesh Shah Vs. State of Maharashtra and another* (2025 INSC 1288), *Pankaj Bansal Vs. Union of India and others* ((2024) 7 SCC 576), *Prabir Purkayastha v. State (NCT of Delhi)* ((2024) 8 SCC 254), *Vihaan Kumar Vs. State of Haryana and others* (2025 SCC Online SCC 269) and *Mihir Rajesh Shah v. State of Maharashtra and Another* (2025 SCC OnLine SC 2356). Further it is submitted that the Hon'ble Apex court in *Kasireddy Upender Reddy Vs. State of Andhra Pradesh and others* (2025 SCC Online SC 1228) and the Hon'ble High Court of Kerala in *Shahina Vs. State of Kerala* (2025 KHC 706) and in *Vishnu N.P. Vs. State of Kerala* (2025 KHC Online 1262), it was observed that the mandate of Article 22 would be satisfied only if the grounds of arrest are communicated to the near relatives of the accused also as provided in Section 48 of BNSS.

8. Further it was submitted that in *Fahad Alevi Vs. State of Kerala (Bail Application No. 10487/2025)* the Hon'ble High Court in para 10 of the judgement held that even if the nature of the offence is mentioned, if the quantity of the contraband seized is not communicated to the accused, that itself is a ground for showing that the grounds of arrest has not been stated to

the accused/petitioner. It was also submitted that this court has granted bail to the 2nd accused as per Order dated 18.05.2026 in CrI.MP No.6/2026 on the same ground that the grounds of arrest has not been communicated to the 2nd accused also. So, according to the petitioner, the first accused is entitled to get bail for the non-compliance of the mandatory provisions contained in Article 22(1) of Constitution and Section 47 of BNSS.

9. The learned Additional Public Prosecutor on the other hand submitted that all the statutory provisions have been complied with at the time of arrest of the accused persons and the grounds of arrest has been properly communicated to the 1st accused/petitioner and the records produced in this case would reveal that the grounds of arrest has been stated separately in a notice prepared and communicated to the accused and has obtained the acknowledgment regarding the grounds of arrest communicated to the first accused. It was also submitted that in *Shahina v. State of Kerala and others (2025 (5) KHC 203)* the Hon'ble High Court of Kerala has considered the fact as to whether long period of custody without trial would entitle the accused to get him released on bail, when alleged to have committed offence for possessing commercial quantities of narcotic drugs and held that the period of custody has no bearing in the matter of bail in a case involving commercial quantities of

drugs under the NDPS Act. It was also submitted that in that case the Hon'ble High Court of Kerala laid down 10 principles for considering the compliance regarding the mandatory provision contained in Article 22(1) of the Indian Constitution.

10. Based on the argument advanced on both sides, firstly the question to be considered is whether the twin conditions as specified in Section 37 of the NDPS Act have been satisfied in this case. Admittedly the petitioner herein was alleged to have committed offence under the NDPS Act for possessing commercial quantity of narcotic drugs. The scheme of Section 37 of the NDPS Act requires that power to grant bail under the NDPS Act is subject to the limitation placed in the said provision, over and apart from the restrictions under the procedural law and that the twin conditions stipulated therein are required to be satisfied which stipulates that in all cases where the Public Prosecutor has opposed the application, only if the court is satisfied that there are reasonable grounds for believing that the accused is not guilty of such offence and that he is not likely to commit any offence while on bail, the accused be released on bail. In the decision in *State of Kerala and others Vs. Rajesh and others* (2020 (12) SCC 122), the scope and ambit of Section 37 of the NDPS Act was discussed and found that only if the rigor of the twin

conditions as specified in Section 37 of NDPS Act is satisfied, the accused involved in NDPS case for possessing commercial quantities of narcotic drugs is entitled for bail. By considering the nature of offence and the quantity of contraband article involved in this case and the facts and circumstances of this case, I am of the considered view that there is no material to arrive at a conclusion that the petitioner herein is not guilty of the offence alleged against him and that there is no likelihood of committing similar offence while on bail. So I am of the view that the twin conditions as specified in Section 37 of the NDPS Act is not diluted.

11. The next question to be considered is whether there is any non-compliance of Article 22(1) of the Constitution and Section 47 of the BNSS in this case. In Pankaj Bansal Vs. Union of India and others ((2024) 7 SCC 576) the Hon'ble Apex Court, while dealing with Section 19 of the Prevention of Money Laundering Act, 2002, held that no person who is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest. The Hon'ble Apex Court further held that the accused has a constitutional and statutory right to be informed of the grounds of arrest which are compulsorily recorded in writing by the authorized officer under Section 19(1) of the Prevention of Money Laundering Act. In Prabir Purkayastha v.

State (NCT of Delhi) ((2024) 8 SCC 254), the Hon'ble Apex Court, while dealing with the offence under the Unlawful Activities Prevention Act (UAPA) Act, held that any person arrested for an allegation of commission of offences under the Provisions of UAPA Act, or for that matter any other offence, has a fundamental and statutory right to be informed about the grounds of arrest in writing and a copy of such a written grounds of arrest has to be furnished with the accused person as a matter of course and without exception at the earliest. It was observed that the right to be informed about the ground of arrest flows from Article 22(1) of the Constitution of India and any infringement of his fundamental right would vitiate the process of arrest and remand. The Hon'ble Apex Court further held that the requirement to communicate the ground for arrest in writing to a person arrested in connection with an offence contained in Article 22 (1) of the Constitution of India is sacrosanct and cannot be breached under any situation. It was further observed that non-compliance of constitutional requirement and statutory mandate would lead to the custody of being rendered illegal. In Ramkumar v. State of Haryana (AIR 2025 SC 1388) the Hon'ble Apex Court held that requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement and that it is a fundamental right of every person arrested and

detained in custody to be informed of the grounds of arrest as soon as possible and if the accused is not so informed it would amount to violation of the fundamental right of the arrestee guaranteed under Article 22(1) of the Constitution of India. Further it was held that it will amount to depriving the arrestee of his liberty under Article 21 also.

12. In *Shahina Vs. State of Kerala* (Supra), in para 21 of the judgment, the Hon'ble High Court of Kerala laid down the following principles:

"21. On reconciling the above decisions of the Supreme Court, the following ten principles can be culled out:

(i). The requirement of informing a person arrested of the grounds for arrest is a mandatory requirement under Article 22(1);

(ii). The information of the grounds for arrest must be provided to the arrested person in such a manner that sufficient knowledge of the basic facts constituting the offence is imparted and communicated to the arrested person effectively in the language which he understands. The mode and method of communication must be such that the object of the Bail Appl. Nos.6366, 6621, 6676, 6677, 6989, 6996, 7025, 7162, & 7266/2025 2025:KER:48864 constitutional safeguard is achieved;

(iii). When arrested accused alleges non-compliance with the requirements of Article 22(1), the burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1);

(iv). Non-compliance with Article 22(1) will be a violation of the fundamental rights of the accused guaranteed by the said Article and it will vitiate the arrest. Moreover it will amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution.

(v). When an arrested person is produced before a Judicial Magistrate for remand, it is a duty of the Magistrate to ascertain the compliance with Article 22(1) and other mandatory safeguards;

(vi). For the purpose of compliance of Article 22(1), it is not necessary to furnish full details of the offence but information should be sufficient to enable the arrestee to understand why he has been arrested. The grounds to be communicated should be somewhat similar to the charge framed by the Court for the trial of the case.

(vii). If the police want to prove communication of the grounds for arrest only based on a case diary entry, it is necessary to incorporate those grounds for arrest in the case diary entry or any other document. The grounds for arrest must exist before the same are informed.

(viii). When an accused is arrested on warrant, there is no requirement to furnish the grounds for arrest separately as the very warrant itself contains the reason for arrest and that a reading of the warrant to him is sufficient compliance with the requirement of informing the grounds for his arrest.

(ix). The grounds for arrest should not only be provided to the Bail Appl. Nos.6366, 6621, 6676, 6677, 6989, 6996, 7025, 7162, & 7266/2025 2025:KER:48864 arrestee but also to his family members and relatives/friends so that necessary arrangements are made to secure the release of the person arrested at the earliest possible opportunity so as to make the mandate of Article 22(1) meaningful and effective, failing which, such arrest may be rendered illegal.

(x). When a violation of Article 22(1) is established, it is a duty of the court to forthwith order release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist. The statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.

13. In **Mihir Rajesh Shah v. State of Maharashtra and another (2025 SCC Online SC 2356)** the Hon'ble Apex Court has laid down the following principles as regards the compliance of Article 22(1) of the Constitution in para 56 and 57 of the above judgement:

"56. In conclusion, it is held that:

i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860 (now BNS 2023);

ii) The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands;

iii) In case(s) where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to production of the arrestee for remand proceedings before the magistrate.

iv) In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to set free.

57. After having come to the above conclusion, it is pertinent to note that the provision of law under Section 50 of CrPC 1973 (Section 47 of BNSS 2023) does not provide for a specific mode of or time frame for communication of the grounds of arrest to the person arrested. This court in Prabir Purkayastha (supra) held that the grounds of arrest be conveyed to the arrestee in writing in all offences at the earliest, which means it need not be given at the time of arrest but within a reasonable time thereafter, for offences under all the statutes, which period would be as has been laid down above in this order.

14. In ***Vihaan Kumar Vs. State of Haryana ((2025) (5) SCC 799)***, the consequences of violation of Article 22(1) and Article 22(2) of the Constitution are narrated as follows:

11. The view taken in Pankaj Bansal Vs. Union of India [(2024) 7 SCC 576 : (2024) 3 SCC (Cri) 450] was reiterated by this court in Prabir Purkayastha Vs. State (NCT Delhi) [(2024) 8 SCC 254 :

(2024) 3 SCC (Cri) 573]. In paragraphs nos. 28 and 29, this Court held thus: (Prabir Purkayastha case, SCC p.278)

"28. The language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly the identical. Neither of the constitutional provisions require that the 'grounds' of 'arrest' or 'detention', as the case may be, must be communicated in writing. Thus, interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would ipso facto apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.

29. Hence, we have no hesitation in reiterating that the requirement to communicate the grounds of arrest or the grounds of detention in writing to a person arrested in connection with an offence or a person placed under preventive detention as provided under Articles 22(1) and 22(5) of the Constitution of India is sacrosanct and cannot be breached under any situation. Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal, as the case may be'.

15. In **Yazin S. Vs. State of Kerala (2025 KHC Online 2383)**, the Hon'ble

High Court of Kerala held as follows :-

"8. The learned counsel for the petitioner submitted that the quantity of the contraband allegedly seized has not been mentioned in the arrest intimation. The learned counsel further submitted that

the penal provision invoked is also not mentioned. Relying on Rayees R.M. v. State of Kerala [2025 KHC 2086], the learned counsel for the petitioner submitted that since there was no reference to the quantity of the contraband seized and the penal provision invoked, the mandate of Article 22(1) of the Constitution of India and Sections 47 and 48 of the BNSS has not been complied with. In Rayees R.M (Supra), this Court held thus- " 9. On a perusal of the case diary, it is noticed that separate grounds for arrest have been communicated to the petitioner. However, except for mentioning that the arrest is for illegal possession of MDMA, there is no reference to the quantity of contraband seized from the petitioner. Since the quantity of contraband determines whether an offence under the NDPS Act is bailable or non bailable, the said requirement is mandatory to effectively communicate the grounds for arrest. However, in the arrest intimation, there is specific reference that the accused was found in possession of 54.10 grams of MDMA. As the grounds for arrest have not been properly communicated to the petitioner, I am satisfied that the arrest is vitiated."

16. In Bail Application No.12603/2025 (Vishnu N P Vs. State of Kerala)

the Hon'ble High Court of Kerala in para 33 of the judgment laid down as follows :-

“33. Requirement of Article 22 is not statute specific

(a) Section 47 of the BNSS cannot have the effect of diluting the requirement of Article 22(1). If held so, Section 47 will attract the vice of unconstitutionality. Section 47 lays down the requirement of

communicating the full particulars of the offence for which a person is arrested to him.

(b) The ‘other grounds for such arrest’ referred to in Section 47(1) have nothing to do with the grounds of arrest referred to in Article 22(1). Statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.

(c) Existence of power to arrest and justification for exercise of such power are two different aspects.

(d) Obligation to inform grounds of arrest is not mere procedural formality, it flows from personal liberty.

(e) In terms of Section 48 and 47 of BNSS the person making arrest has to inform the arrestee of his right to indicate his relative, friend or such other person for the purpose of giving information with regard to the arrest.

(f) Person effecting arrest is liable to forthwith inform of such arrest thereafter with reasons and place where such arrested person is being held. The police officer making arrest shall make an entry as to who has been informed of such arrest in a book to be kept in police station. This is in addition to be made aware of grounds of arrest.

(g) Failure to supply the grounds in writing to the arrestee prior to or immediately after arrest would not vitiate arrest on grounds of noncompliance under Section 47 of BNSS provided grounds can be supplied in writing within reasonable time and in any case two hours prior to production of arrestee in remand proceedings. {Vide:

Vihaan Kumar v. State of Haryana [(2025) 5 SCC 799] and Mihir Rajesh Shah v. State of Maharashtra and Another (2025 SCC OnLine SC 2356)}

17. So in view of the judicial pronouncements as above, we have to consider whether the detecting officer has complied with the mandatory provisions as contained in Article 22(1) and Section 47 of the BNSS. On a perusal of the seizure mahazar, it is seen stated that at the time of preparing the seizure mahazar, accused persons namely Ajumalsha (A1) and Anjithkumar (A2) are present. Notice under Section 52 of NDPS Act has been seen served to the accused Ajmal Shah who is the petitioner herein and his signature was obtained therein in which it is stated that he was found possessing MDMA in the car bearing registration number KL 40-P-1666 in which he was travelling along with the 2nd accused without having any authorized documents. He was arrested on 30.08.2025 at 11.10 a.m alleging offences under Sections 22(c), 8(c) and 29 of NDPS Act. It is seen from the case records that there is a notice as annexure I to the FIR, which is a notice given to Ajmal Shah (A1) to inform the arrestee of the grounds and reasons for arrest under Sections 47 and 35(1)(b)(2) of BNSS. It is stated in the separate column for detailed grounds in Annexure I as above, the reasons for the arrest is seen stated as “the accused was found

possessing the contraband article; 191.78 grams of MDMA in the car bearing registration number KL-40/P-1666 without having any authority, thereby he has committed the offence under Section 22(c), Section 8(c) and Section 29 of NDPS Act". It was seen signed by the 1st accused, Ajmal Shah on 30.08.2025 at 11.10 a.m. There is another Annexure 1 with same particulars and grounds of arrest which was seen communicated to the 2nd accused Anijithkumar also on 30.08.2025 at 11.20 a.m. As per the FIR, it is seen that accused Nos.1 and 2 were arrested on 30.08.2025 at about 11.10 am and 11.20 am respectively. Further, there is another Annexure -I attached to the remand report with the same particulars as stated above was seen communicated to one Thasny W/o Ajmal Shah (A1) and one Nandakumar, F/o Anijithkumar (A2) and they also seen put their signatures acknowledging the receipt of the above notices.

18. From the above records it is very clear that the grounds of arrest has properly been communicated to the 1st accused/petitioner and his wife by stating the brief facts of the case including quantity of contraband article, the nature of contraband article and the provision under which they have committed the offence etc. So from the above it is very clear that there is no violation of the mandatory provisions contained in Article 22(1) and Section 37 of the BNSS as contended by the first accused/petitioner in this case.

19. So in the light of the discussions made above, I am satisfied that there are no grounds for granting bail to the 1st accused/petitioner since the accused has involved in a NDPS case for having possessed commercial quantity of MDMA, and further that the twin conditions as stipulated in Section 37 of the NDPS Act was also not satisfied. So in the above circumstances I am not inclined to grant bail to the 1st accused/petitioner at this stage. Hence the bail application filed by the accused is hereby dismissed.

20. In the result, the petition is dismissed.

Pronounced in open Court, on this the 6th day of June, 2026.

Sd/-
Mallika A.S.
Additional Sessions Judge – I

Appendix:- Nil.

Sd/-
Additional Sessions Judge – I

Typed by : Siji
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Crl. M.P. No.8/2026 in

S.C.No.266/2026

ORDER

Dated: 06.06.2026.