

IN THE COURT OF SESSIONS, PALAKKAD DIVISION
Present : Shri. D.Sudheer David, Additional Sessions Judge-II

Saturday, the 27th day of September, 2025
5th day of Aswina, 1947 S.E

CRIMINAL MISCELLANEOUS PETITION No.4988/2025
in SESSIONS CASE No. 282/2025
in Crime No.99/2025 of Mannarkkad Police Station

Petitioner/Accused No.1:

Arun.P.S., aged 33 /2024, S/o Surendran, Pulliparambil House, Manakkody,
Arimbur, Thrissur District.

Vs.

Respondents/Complainants:

State of Kerala, Rep. by the Inspector of Police, Mannarkkad Police Station.

This petition is filed u/s.483 and 37 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) by the petitioner/accused No.1, in Sessions case No.282/2025 in Crime No. 99/2025 of Mannarkkad Police Station, praying that in the circumstances stated therein, this court may be pleased to grant relief.

This petition coming on for hearing today in the presence of Shri. Prasanth.K.P., Shri.T.A.Ajmal Husain, Shri.Arun Raj.S., Smt. Sunitha.K.G. and Smt.Sreelakshmi.K, Advocates for the petitioner/accused No.1, and the Special Public Prosecutor on behalf of the state and this court passed the following:-

ORDER

This is an application under section 483 and 37 of BNSS filed by the accused.

2. Accused is facing indictment of the offence punishable under sections 20(b)(ii) B and 29 of NDPS Act.

3. The case of the prosecution is that, the petitioner, who is the first accused in the aforesaid case, is found, transporting 15.730 kilograms of ganja along with the second accused, who were escorted by the third accused in a bike on the noon of 19.01.2025 at 1.50 PM and caught red handed by the detecting officer.

4. Petitioner was arrested on the date of detection itself and he is undergoing judicial custody since then.

5. Petitioner would contend that he is innocent and he has no connection whatsoever with the contraband. It is that it is a false implication, which can be proved at the time of trial.

6. During hearing the learned counsel for the petitioner projected the violation of the mandatory requirement of the process of arrest, that he and his relatives were not intimated of the grounds of arrest, which, according to him is a violation of the fundamental right, that vitiates the arrest. He would rely on the lay down by the Honourable Supreme Court reported in **Vihaan Kumar v. State of Haryana (2020 K LT online 1238)** and also the dictum of the Honourable High Court **Babu v. State of Kerala (2025 (2) KLT 817)** in support of his contention. So also, it is conducted that he was not produced before the jurisdictional magistrate within 24 hours, in complaints of the mandate of Section ... of BNSS.

7. The learned Additional Public Prosecutor produced the case diary and opposed the bail application affirming his involvement in the commission of the crime and there is every chance of his repeating the same, if he is released on bail. He argued that the statutory requirement of intimate in the ground of arrest is complied with and on that ground bail cannot be granted to him.

8. For the purpose of this petition the following points are raised for consideration.

1. Whether the petitioner is entitled to be release on bail?
2. Order?

9. **Point No.1:-** The imputation against the petitioner is that he was found transporting 15.730 kilograms of ganja along with the second accused, who

were escorted by the third accused in a bike on the noon of 19.01.2025 at 1.50 PM and caught red handed by the detecting officer.

10. Notwithstanding the merits of the matter, the thrust of the contention of the learned counsel for the petitioner is the violation of the mandatory requirement of the process of her arrest, that the grounds of his arrest was not indicated to his friends, relatives or such other persons nominated by him. According to the learned counsel it is a clear violation of the fundamental right of petitioner guaranteed under Article 22 (1) of the Constitution of India.

11. On going through the case diary it is seen that a written notice was given to the petitioner, but it does not contain anything as to the ground of arrest, making it find that there is no communication of the ground of arrested to the petitioner. So also, it is found from the order of the Magistrate passed in the remand report that he was produced before the Magistrate after the expiration of 24 hours, is also a violation of the mandatory requirement of law. As such there is absolutely nothing to show that it was intimated to her friends, relatives or other persons nominated by him, which is also ruled to be a mandatory requirement of the process of arrest in a subsequent ruling render by the Honourable Supreme Court adding to the rules and principles lay down in **Vihaan Kumar v. State of Haryana (2025 KLT online 1238)** with respect to the mandatory requirement of the process of arrest in a special leave petition filed in that same case (**SLP (Crl) No. 13320 of 2024**). It reads *“the requirement of communicating the grounds of arrest in writing is not only to the arrested person, but also to the friends, relatives, or such other person as may be disclosed or nominated by the arrested person, so as to*

make the mandate of Article 22 (1) of the Constitution of India meaningful and effective, failing which, such arrest may be rendered illegal". (as reported in the online legal site Indian Kanoon).

12. Needless to say, this law by itself makes the arrest of the petitioner illegal, for the reason that no intimation of the grounds of arrest was given to the friends, relatives or other persons disclosed or nominated by him was made by the arresting police officer, making it a violation of the process of arrest. The legal effect of the non-compliance of that mandatory requirement, is ruled in the above stated **Vihaan Kumar's** case in the lines that ***"on the failure to comply with the requirement of informing grounds of arrest, as mandated under Article 22(1) of the Constitution of India, the arrest is vitiated and the person arrested cannot remain in custody even for a second"***.

13. This law is reiterated and applied in an NDPS case registered for the offence under section 22 (c) by the Honourable High Court in **Babu's** case (*supra*).

14. It makes no chance other than to find that arrest of the petitioner in connection with this case is illegal and he cannot be kept in custody anymore. So he is to be bailed out immediately and accordingly this bail application is allowed. Point is answered in favour of the petitioner.

15. **Point No. 2:-** In the result, petition is allowed and bail is granted to the petitioner on the following conditions:-

- 1) Petitioner shall execute a bond of ₹1,00,000/- (Rupees One lakh only) with two solvent sureties of the like amount.

- 2) The sureties shall produce the original of their title deeds for perusal.
- 3) Petitioner shall appear before the investigating officer on all Saturdays at 10.00 AM.
- 4) Petitioner shall not leave the jurisdiction of Kerala without permission.
- 5) Petitioner shall surrender his passport before court, and if he does not have one, he shall file an affidavit to that effect within a week from the date of his release from judicial custody.
- 6) Petitioner shall not engage in committing any offences while on bail.
- 7) Petitioner shall not intimidate or influence the witnesses or tamper with the evidences connected in this case.
- 8) In the violation of any of these conditions, prosecution can apply for cancellation of his bail.

Dictated by voice typing to Google docs app, typed by it and corrected by me and pronounced in open court on this the 27th day of September, 2025.

Sd/-
Additional Sessions Judge-II

**Fair/Copy of Order in
Crl.MP No. 4988/2025 in
SC No. 282/2025
Dated: 27.09.2025**