

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

Friday, the 9th day of January, 2026
19th day of Pousha, 1947 S.E

CRIMINAL MISCELLANEOUS PETITION No.6995/2025
IN SESSIONS CASE No. 375/2025
in Crime No.67/2024 of Excise Enforcement & Anti Narcotic Special Squad,
Palakkad

Petitioner/Accused:

Arjun Shibu, aged 21/2024, S/o Shibu, Mankavu House, Mankavu Desom,
T.V.Puram Village, Vaikkom Taluk, Kottayam District.

Vs.

Respondents/Complainants:

State of Kerala, Rep. by the Assistant Commissioner of Excise (Enforcement),
Palakkad.

This petition is filed u/s.483 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) by the petitioner/accused, in Crime No. 67/2024 of Excise Enforcement & Anti Narcotic Special Squad, Palakkad praying that in the circumstances stated therein, this court may be pleased to release him on bail.

This petition coming on for hearing today in the presence of Shri.Sam Issac Pothiyil and Smt.S.Suraja, Advocate for the petitioner/accused, and the Special Public Prosecutor on behalf of the state and this court passed the following:-

ORDER

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

2. Accused is facing indictment of the offence punishable under sections 22(c) of NDPS Act.

3. The case of the prosecution is that, the petitioner, who is the accused in the aforesaid case, is found in possession of 57.115 grams of methamphetamine at Pampampallam Toll Plaza, near to transformer on the board of 9.11.2024 at 7:50 AM.

4. Petitioner was arrested on the date of detection itself and he is undergoing judicial custody since then, completing 386 days.

5. Petitioner would contend that he is innocent and he has no connection whatsoever with the contraband. He shall not abscond and commit any offence while on bail. He is ready to cooperate with the investigation and to abide by what condition that is imposed to bail out him.

6. It is further alleged that the Excise of team that arrested him has violated the mandatory requirement of the process of arrest, as he was not properly intimated of the grounds of arrest nor was his friends, relatives or such other persons nominated by him were intimated of the grounds of arrest. According to him it is a violation of his fundamental right, that vitiates the arrest. He would rely on the lay down by the Honourable Supreme Court reported in a number of decisions, including **Vihaan Kumar v. State of Haryana (2025 K LT online 1238)**.

7. The learned Additional Special Public Prosecutor produced the case diary and opposed the bail application on the ground of gravity of the offence committed by the accused. According to him, grounds of arrest was duly given to him and his relatives vide the arrest memo and arrest intimation. He would also point out that intimation of the grounds of the accused was given to District Legal Services Authority also.

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 found in possession of 81.9 grams of methamphetamine at Pampampallam Toll Plaza, near to transformer on the board of 26.12.2024 10 AM.

10. This is the second bail application filed by the accused. However, the grounds in which this application is filed is the non-complaints of the constitutional mandate indicating him and his relatives of the grounds of arrest envisaged in Article 22 (1) of the Constitution of India. According to his learned counsel the grounds of his arrest was not communicated to the him and his friends, relatives or such other persons nominated by her, which 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 no written communication of the grounds of arrest was given to the accused and to him and his friends, relatives. It is seen, the learned Special Public Prosecutor would concede it, but with the claim that arrest memo was given to the accused, intimating him of the ground of arrest and arrest intimation was given to his cousin brother over mobile phone, which sufficiently compliance with their requirement of the above said mandate of Article 22 (1) of the Constitution of India.

12. In this regard, it is a mandatory requirement of law to communicate the grounds of arrest to the accused and his relatives and as per the settled position of law it should invariably be made in writing. Honourable Supreme Court in the latest decision reported in **Mihir Rajesh Shah v. State of Maharashtra (2025 INSC 1288)** (Judicial Vision December 2025), has ruled this proposition with the explanation that, if it was not possible to communicate the grounds of arrest in

writing to the arrestee at the time of arrest, it can be communicated orally and thereafter in a later point of time, which is at least 2 hours before the production of the arrestee before the Magistrate, it should be communicated to him in writing. With respect to the non-compliance of this mandate, it is ruled that, arrest made in violation of this mandate of law makes the arrest and subsequent remand of the arrestee illegal and a person will be at liberty to set it free.

13. Needless to say, the factual situation in this case for squarely within the mischief of this law, as there is no written communication of the grounds of arrest to the accused or his friends or relatives. The only thing done by the arresting Excise Official is preparing of arrested memo and giving arrested intimation to his cousin, which is a routine procedure of arrest. It cannot satisfy the mandatory requirement of the Constitution provision of Article 22 (1) of the Constitution of India. This makes the arrest and the subsequent remain of the accused illegal, which entitles him to get released for with, as held by the Apex Court in **Vihaan Kumar v. State of Haryana (2025 KLT online 1238)**. Accordingly, this bail application is allowed. Point is answered in favour of the accused.

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

- 1) Accused 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) Accused shall appear before the Circle Inspector of Excise, Excise Enforcement and Anti Narcotic Special Squad Palakkad on all Saturdays at 10 AM.

- 4) Accused shall not leave the jurisdiction of Kerala without permission.
- 5) Accused 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) Accused shall not engage in committing any offences while on bail.
- 7) Accused shall not intimidate or influence the witnesses or tamper with the evidences 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 9th day of January 2026.

Sd/-
Addl. Sessions Judge-II

**Fair/Copy of Order in
Crl.MP No. 6995/2025 in
SC No. 375/2025
Dated: 09.01.2026**