

IN THE COURT OF THE JUDICIAL MAGISTRATE OF FIRST CLASS,
PATTAMBI

Present:- Smt. Neema Noor Mohamed, Judicial Magistrate of First Class

Tuesday, this the 17th day of March, 2026.

C.M.P. No. 01/2026 in S.T. No. 1922/2025.

Shoukathali, S/o. Aboobacker, Thurakkal House, : Petitioner/Accused
Cherukudangad P.O, Pallippuram, Palakkad.
(By Adv. Sri. Yadder Arafath K.J.)

Vs.

State represented by the Sub Inspector of Koppam : Respondent/Complainant
Police Station Crime No. 417/2025.
(By: Smt. Reshmi.V.S. APP Gr.II.)

ORDER

This is an application filed under Section 262 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking discharge of the accused from the offences alleged against him.

2. Petition averments are as follows: The learned counsel for the petitioner/accused submitted that a perusal of the prosecution records would reveal that the culpability of the accused has been alleged solely on the basis of the sensory perception of the detecting officer. It is contended that the prosecution case is that the detecting officer identified the alleged consumption of contraband substance only from the smell emanating from the breath of the accused and his behaviour, without any recovery of contraband or any scientific or medical corroboration. It is further submitted that such a mode of identification is inherently subjective and unreliable. Strong reliance is placed on the decision of the Hon'ble High Court of Kerala in ***Ibnu Shijil v. State of Kerala, 2024 (5) KHC 476***, wherein it has been held that sensory perception, particularly smell, is not a standardized or constant parameter and cannot be treated as a substitute for legal proof. The Hon'ble High Court has also observed that the functioning of olfactory receptors varies from person to person, and therefore, reliance solely on such perception is unsafe. It is further contended that in the absence of seizure of any contraband substance, or at least a medical examination

to establish consumption, the prosecution cannot prove the nature of the alleged substance. On the above grounds, the petitioner seeks discharge.

3. The learned Assistant Public Prosecutor opposed the application and submitted that the issues raised by the petitioner pertain to matters of evidence, which can be properly appreciated only during trial. It is contended that the sufficiency or reliability of evidence cannot be gone into at the stage of discharge and that the application is premature.

4. Points for Consideration:

1. Whether the petitioner/accused is entitled to be discharged under Section 262 BNSS?
2. What is the order?

5. **Point No. 1:** On a careful perusal of the prosecution records, it is seen that the allegation against the accused is that he was found smoking a bidi at about 02:45 a.m. while CW1, a police official, was on night patrolling duty, and upon questioning him, CW1 allegedly sensed the smell of ganja from the breath of the accused and also noticed certain behavioural aspects. Significantly, there is no case for the prosecution that any contraband substance was recovered from the possession of the accused. There is also no material to show that any sample was seized or sent for chemical analysis. Further, no medical examination appears to have been conducted to ascertain whether the accused had consumed any narcotic substance. Thus, the entire prosecution case rests solely on the subjective sensory perception of the detecting officer, namely, the alleged smell emanating from the breath of the accused, coupled with his behaviour.

6. At this juncture, it is apposite to consider the legal position laid down in ***Ibnu Shijil (Supra)***. In the said decision, the Hon'ble High Court of Kerala has categorically held that sensory perception of smell is not a standardized or constant factor, as it depends upon the variability of olfactory receptor genes among individuals. It was further held that such subjective perception cannot be treated as conclusive proof of the nature of a substance. The Hon'ble High Court has also emphasized that in the absence of recovery of contraband or scientific or medical

evidence to establish consumption, it would be unsafe to proceed solely on the basis of such perception.

7. Applying the above principle to the facts of the present case, it becomes evident that there is a total absence of objective or scientific evidence to substantiate the allegation. The prosecution has not placed any material to prima facie establish the nature of the alleged contraband or its consumption by the accused.

8. It is true that at the stage of discharge, a meticulous evaluation of evidence is not warranted. However, the Court is bound to consider whether the materials placed by the prosecution, if taken at face value, disclose the commission of the offence alleged. In the present case, even if the entire prosecution version is accepted as such, the same only indicates a subjective inference drawn by the detecting officer, which, in the light of the legal position discussed above, cannot form the basis for proceeding against the accused.

9. Thus, this Court is of the considered view that the materials on record are insufficient to frame a charge and proceed with the trial. The point for consideration is answered in favour of the petitioner/accused.

Point No. 2:

In the result,

This application is allowed and the accused is discharged under Section 262 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

Pronounced by me in open court, this the 17th day of March, 2026.

Sd/-
Judicial Magistrate of First Class,
Pattambi.

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Judicial Magistrate of First Class,
Pattambi.