

IN THE COURT OF THE ADDL. SESSIONS JUDGE -IV,
THIRUVANANTHAPURAM
PRESENT : SRL SUDHAKANTH. R, ADDL SESSIONS JUDGE – IV

Saturday the 28th day of March, 2026/ 7th Chaitram, 1948

CRIMINAL M.P. No.5/2026 IN SC.141/2026

(Crime No.934/2025 of Kovalam Police Station)

Petitioners/ 2nd Accused:-

Sanjay Satheesh, S/o Satheesh Kumar,
aged 26 years, Flat No 219, Rajaji Nagar, GPO P O
Thiruvananthapuram-695001

(By Adv. Vivek V N)

Counter Petitioners:-

- 1 State of Kerala represented by Public Prosecutor,
Thiruvananthapuram
- 2 Station House Officer, Kovalam Police Station

(By Adv. Sri. R. Praveen Kumar, Addl. Public Prosecutor)

This petition is coming on for hearing on **26.03.2026** and the
Court on **27.03.2026** passed the following:-

O R D E R

This is an application for bail filed by the learned counsel for the
accused No. 2 u/s 483 of BNSS 2023.

2. The accused 7 in number stand charge sheeted by the Police Inspector, Kovalam Police Station alleging offences u/s 8 (c), 22(c), 20(b) (ii) A and 29 of the Narcotic Drugs and Psychotropic Substance Act 1985 and u/s 238 of BNS

3. The prosecution allegation can be summarised as follows:

On 30/07/2025 at about 15:00 hours accused Nos. 1 to 4 found in conscious possession and transporting hybrid ganja to the tune of 10.70 grams kept in a flip cover and 0.501 KG MDMA kept concealed in bag and transporting the same in car bearing registration No. KL 02 BU 8656 through the public road near Kovalam junction and passing through the by pass public road. The offence was detected by the Sub Inspector of police of Anti Narcotic Squad , Thiruvananthapuram. The accused were apprehended and the contraband item were sized into custody on complying with the statutory formalities. On enquiry it was realized that accused No. 5 to 7 hatched up a conspiracy with accused Nos. 1 to 4 to procure the contraband item and transferred money to be paid as consideration. Thus the accused alleged to have committed the aforesaid offence.

4. The avements in the application can be summarised as follows:-

The petitioner is innocent and he has not committed the alleged offence. There is no cogent evidence on record to prove the involvement of the petitioner in the alleged offence and he has falsely implicated in the above case. This court already granted bail to accused

No. 1 and 4 as per order in CP No. 4/2026. 3rd accused was enlarged on bail as per order in CMP 5338/2025 . The petitioner is entitled for the benefit of rule of parity . The petitioner is a distant relative of 1st accused , who contacted the petitioner , while he was at Kanyakumari stating that he has reach Kanyakumari from Bangalore with his family and he is intending to return Thiruvananthapuram and requested the petitioner to arrange a car for retuning to the native place. The petitioner believing the words of 1st accused contacted the 3rd accused , who was conducting car rental services . The 3rd accused agreed to pick up the 1st accused and his family only if the petitioner shall accompany him. Accordingly the petitioner accompanied the 3rd accused , the petitioner was having no knowledge regarding the possession of contraband with the other accused. While returning the Kanyakumari police intersected the vehicle and arrested accused Nos. 1 to 4. The petitioner is having no criminal antecedence . The allegation levelled by the prosecution against the petitioner is not sufficient to find his involvement or conspiracy with the other accused person. Petitioner is in judicial custody for more than 223 days and the investigation is completed and final report filed. There is no justifiable reason to keep the petitioner in judicial custody.

5. The Inspector of police, Kovalam police station filed a factual report against granting bail. It is contended in the report that the petitioner / accused No.2 is a business partner of accused No. 1 for conducting the business of drugs . It is contended in the report that the petitioner had hatched a conspiracy with the other accused and provided

the vehicle for carrying the contraband from Kanyakumri to Thiruvananthapuram. It is stated in the final report that the petitioner/accused No. 2 was traveling in the vehicle used for transporting the contraband at time of detection of the offence. It is further stated in the report that the petitioner is having history of involvement in 2 cases of similar nature.

6. Heard both sides. Learned Additional public prosecutor opposed the application. It is urged for the prosecution that there is sufficient material to prove that the petitioner is involved in alleged offence and he was traveling on the car in which the contraband item was being transported along with co-accused. According to the prosecution the quantity of contraband involved is a commercial quantity and there is no ground to dilute the rigor of the twin condition u/s 37 of the NDPS Act. The learned counsel for the petitioner reiterated the ground as urged in the bail application at the time of the argument. It is further urged by the learned counsel for the petitioner that the arrest is illegal as the petitioner accused No. 2 was produced before the learned Magistrate after a period of 24 hours since his liberty was actually curtailed and same is beyond prescribed period rendering the arrest illegal.

7. On a meticulous scrutiny of the materials on records, it can be realized that the petitioner was travelling in the vehicle in which the contraband was being transported. The case of the petitioner is that he was not informed of the quantity of contraband involved at the time

recording their arrest or when the grounds for the arrest was informed . It is further contended that though his liberty was curtailed by the detecting officer on 30/07/2025 at 3:00 PM, he was produced before the Judicial First Class Magistrate Court- Neyyatinkara only at 5:10 PM on 31/12/2025, which is after 24 hours since his liberty was actually curtailed beyond the prescribed period, render the arrest illegal.

8. The learned counsel for the petitioner relied on the decision **Viswajit Mandal V Inspector Narcotic Control Bureau reported in 2025 (5) KHC 361** and **Yazin S V State of Kerala reported in 2025 KHC 2383** to substantiate the above stated contention. It can be seen from the case diary that the accused 1 to 4 found carrying the alleged contraband and the offence was detected by the detecting officer on 30/07/2025 at 3:00 PM and they were produced before the learned Magistrate on 31/07/2025 at 5:10 PM. It can be seen that the arrest memo was prepared at the time of apprehending the petitioner and same is affixed with his signature. It can be also seen that at the time of arrest, the notice informing the grounds for arrest was served upon the petitioner at the time of arrest. There is no whisper as to the description and the quantity of contraband involved in the above case is stated in the above documents. It is true that in the arrest intimation memo of the petitioner, the description and the quantity of the contraband is specifically stated. The point for consideration is whether the existence of above stated discrepancy as to not stating the description and quantity of the contraband in the arrest memo as well as in the notice of information of the arrest would make the arrest illegal. In the decision

in **Yazin S v State of Kerala** (reported in 2025 KHC 23830 it has been held “10. *The mode of communication of grounds of arrest is to be in such a manner that the effectiveness of the same deserves to be tested on the touchstone whether the mode of communication subserves the fundamental object mentioned above. Non – Compliance of this constitutional requirement and the statutory mandate would lead to the custody or the detention of the arrestee or detainee being rendered illegal, as it would amount to violation of the fundamental right of the arrestee or detainee . Filing a chargesheet and order of cognizance will not validate the arrest which is per se unconstitutional . The burden is on the police to establish that the grounds of arrest were properly communicated to the arrestee. { Vide : Pankaj Bansal v. Union of India [(2024) 7 SCC 576], Prabir Purkayastha v State (NCT of Delhi) [(2024) 8 SCC 254], Kasireddy Upender Reddy v. State of Andra Pradesh [2025 SCC OnLine SC 1228] , Vihaan Kumar v. State of Hariyana [(2025) 5 SCC 799], Mihir Rajesh Shah v. State of Maharashtra and Another [2025 SCC OnLine SC 2356 , Shahina v. State of Kerala [2025 (5) KHC 203] and Vishnu N.P.v State of Kerala [2025 KHC OnLine 1262]}*

11. *On a perusal of the records of investigation, it is noticed that the grounds for arrest have not been communicated as contemplated by law as there is no reference to the nature of contraband or the quantum seized from the petitioner. Though in the arrest intimation there is reference to the nature of contraband , there is no mention about the*

quantity seized . In view of the above , I am satisfied that the grounds for arrest were not communicated as contemplated by law”

9. It can be seen from the remand report that the petitioner was produced before the Judicial First Class Magistrate Court – Neyyattinkara on 31/07/2025 at 5:10 PM. As per the arrest memo of petitioner/accused No.2, it is recorded that he was arrested at 17:30 hours on 30/07/2024 . The certificate of examination of petitioner 1 and 2 by the medical officer after their arrest is appended to the remand report. It is can be seen in the certificate of examination of petitioner that he was produced before the Medical officer in Community health center Vizhinjam 4: 20 PM on 31/07/2025 . It is stated in the recovery mahazar that the vehicle in which the petitioner was traveling were intercepted by the police at 3:00 pm on 30/07/2025 and the petitioner was in custody of police since the above time till they were produced before the Magistrate with remand application at 5:10 PM on 31/07/2025. Thus the above record would show that they were produced before the Magistrate only after 24 :00 hours since the time in which their personal liberty was actually curtailed. Then the points arise for consideration is what is the time time which is to be reckoned for computing the 24:00 hours for producing the arrestee before the Magistrate is it the time at which the arrest was recorded or the liberty of the arrestee was actually curtailed . In the decision in **Biswjith Mandal v. Inspector , Narcotic Control Bureau reported in 2025 (5) KHC 361** it has been held “ 20. *Hence the period of twenty - four hours to produce an accused before the Magistrate commences not when the actual time of arrest is*

recorded by the police, but runs from the time when the accused was effectively detained or his liberty was curtailed.

21. Adverting to the facts of the case, the mahazar reveals that petitioner was taken into custody at 3:00 pm on 25/01/2025, while his arrest was recorded at 2:00 pm on 26/01/2025 , but produced before the Magistrate only at 8:00pm on 26/01/2025. The liberty of the petitioner was effectively curtailed from 3:00 pm on 25/01/2025, from which period onwards , he was under the control of the NCB officers. Though the notice for giving the statement under S.67 of the Act was given to the petitioner , even before and after service of notice , petitioner was under the custody of the NCB Officers. There was not a moment after 3:00 pm on 25/01/2025 till his arrest , when he could have been regarded as being free. However , the petitioner was produced before the Magistrate only at 8:00 pm on 26/01/2025. Therefore, there has been an unrecorded period of custody , which indicates illegal detention. Petitioner is hence required to be enlarged on bail.”

10. Considering the grounds urged in the bail application and in the light of facts discussed above, in the light of the principles embodied in the above cited decisions, it can be realized that the grounds for the arrest was not properly informed to the petitioner at the time of recording their arrest and he was detained in custody for an unrecorded period since the time when the personal liberty was actually curtailed till the time of recording their arrest and he was produced only after a

period of 24 :00 hours before the Magistrate would render their arrest vitiated . Considering the above this court is considered view that bail can be granted to the petitioner subject to stringent conditions.

In the result, the application is allowed on the following terms:-

- 1) Petitioner (accused No. 2) shall execute a bail bond for a sum of Rs. 1,50,000/- with two solvent sureties each for the like sum. It is made clear that the sureties shall produced the original documents with true copies for proving their solvency and verification by the court. The original documents to be returned after verification.
- 2) Petitioner (accused No. 2) shall appear before the Sub Inspector of Police, Kovalm Police Station on every Saturday between 11:00 AM to 1:00 PM until further order.
- 3) Petitioner (accused No. 2) shall not involve in any other case of similar in nature during the pendency of this bail failing which the bail bond will be stand forfeited and cancelled.
- 4) Petitioner (accused No. 2) shall not leave the territory of Union of India without obtaining to the prior permission of the Court, the petitioner shall surrender their Indian Passport before the court in a period of 10 days of their release from custody. If he was not holding a passport he shall filed an affidavit in that regard .

- 5) Petitioner (accused No. 2) shall not make any attempt to influence or intimidate either expressly or by necessary implication of any of the independence witness for the prosecution.

(Dictated to the Personal Assistant, transcribed and typed by him, corrected and pronounced by me in open Court on this the 28th day of March, 2026)

Sd/

SUDHAKANTH. R
ADDL. SESSIONS JUDGE-IV

// True Copy//

By Order
Sd/-

Typed by : Sreeja
Compared by: Smitha

SHERISTADAR

Copy of Order in
Crl. M.P.No.5/2026 in SC 141/2026
Dated: 28.03.2026