



2026:KER:29661

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 1ST DAY OF APRIL 2026/11TH CHAITHRA, 1948

BAIL APPL. NO. 1772 OF 2026

CRIME NO.587/2025 OF CHALISSERY POLICE STATION, PALAKKAD

AGAINST THE ORDER DATED 21.02.2026 IN CRMP 2/2026 IN CRMP NO.2 OF
2026 OF DISTRICT COURT & SESSIONS COURT / RENT CONTROL APPELLATE

AUTHORITY, PALAKKAD

PETITIONER/ACCUSED:

SARAFUDHEEN
AGED 31 YEARS, SON OF SAIDALAVI,
PANTHAPULAKKAL HOUSE, MUKKILAVEEDIKA, PARUTHUR,
PATTAMBI, PALAKKAD, PIN - 679303

BY ADV SHRI.ANEESH K.R

RESPONDENT/COMPLAINANT:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031

BY ADV.
SRI.M.C. ASHI, SR. PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
01.04.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



ORDER

This application is filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, BNSS), seeking regular bail.

2. The applicant is the accused No.1 in Crime No.587/2025 of Chalissery Police Station, Palakkad District. The offences alleged are punishable under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act 1985 (for short 'the NDPS Act').

3. The prosecution case, in short, is that on 16.08.2025 at about 12.20 p.m., accused Nos.1 to 3 were found in possession of 69.90 grams of MDMA in a house at Narimada under the ownership of Seenath, Thalakkassery House, in contravention of the NDPS Act and Rules and thereby committed the aforementioned offences.

4. I have heard Sri. Aneesh K.R., the learned counsel for the applicant and Sri.M.C.Ashi, the learned Senior Public Prosecutor. Perused the case diary.

5. The learned counsel appearing for the



applicant submitted that the requirement of informing the arrested person of the grounds of arrest is mandatory under Article 22(1) of the Constitution of India and Section 47 of the BNSS and inasmuch as the applicant was not furnished with the grounds of arrest, his arrest was illegal and is liable to be released on bail. On the other hand, the learned Senior Public Prosecutor submitted that all legal formalities were complied with in accordance with Chapter V of the BNSS at the time of the arrest of the applicant. It is further submitted that the alleged incident occurred as part of the intentional criminal acts of the applicant and hence he is not entitled to bail at this stage.

6. The applicant was arrested on 16.08.2025 and since then he is in judicial custody.

7. Though prima facie there are materials on record to connect the applicant with the crime, since the applicant has raised a question of absence of communication of the grounds of his arrest, let me consider the same.

8. Chapter V of BNSS, 2023 deals with the



arrest of persons. Sub-section (1) of Section 35 of BNSS lists cases when police may arrest a person without a warrant. Section 47 of BNSS clearly states that every police officer or other person arresting any person without a warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. Article 22(1) of the Constitution of India provides 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. Thus, the requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory statutory and constitutional requirement. Noncompliance with Article 22(1) of the Constitution will be a violation of the fundamental right of the accused guaranteed by the said Article. It will also amount to a violation of the right to personal liberty guaranteed by Article 21 of the Constitution.

9. The question whether failure to communicate written grounds of arrest would render the



arrest illegal, necessitating the release of the accused, is no longer res integra. The Supreme Court in ***Pankaj Bansal v. Union of India and Others*** [(2024) 7 SCC 576], while dealing with Section 19 of the Prevention of Money Laundering Act, 2002, has 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. It was further held that a copy of written grounds of arrest should be furnished to the arrested person as a matter of course and without exception. In ***Prabir Purkayastha v. State (NCT of Delhi)*** [(2024) 8 SCC 254], while dealing with the offences under the Unlawful Activities Prevention Act, 1967 (for short, 'UAPA'), it was held that any person arrested for an allegation of commission of offences under the provisions of UAPA or for that matter any other offence(s) has a fundamental and a statutory right to be informed about the grounds of arrest in writing and a copy of such written grounds of arrest has to be furnished to the arrested person as a matter of course and without exception at the earliest. It was



observed that the right to be informed about the grounds of arrest flows from Article 22(1) of the Constitution of India, and any infringement of this fundamental right would vitiate the process of arrest and remand.

10. In ***Vihaan Kumar v. State of Haryana and Others*** [2025 SCC OnLine SC 269], the Supreme Court, while dealing with the offences under IPC, reiterated that the requirement of informing the person arrested of the grounds of arrest is not a formality but a mandatory constitutional requirement. It was further held that if the grounds of arrest are not informed, as soon as may be after the arrest, it would amount to the violation of the fundamental right of the arrestee guaranteed under Article 22(1) of the Constitution, and the arrest will be rendered illegal. It was also observed in the said judgment that although there is no requirement to communicate the grounds of arrest in writing, there is no harm if the grounds of arrest are communicated in writing and when arrested accused alleges non-compliance with the requirements of Article 22(1) of the Constitution, the



burden will always be on the Investigating Officer/Agency to prove compliance with the requirements of Article 22(1).

11. In ***Kasireddy Upendar Reddy v. State of Andhra Pradesh*** (2025 SCC OnLine SC 1228), the Supreme Court held that reading out the grounds of arrest stated in the arrest warrant would tantamount to compliance of Art.22 of the Constitution. It was further held that when an accused person is arrested on warrant and it contains the reason for arrest, there is no requirement to furnish the grounds for arrest separately and a reading of the warrant to him itself is sufficient compliance with the requirement of informing the grounds of his arrest. In ***State of Karnataka v. Sri Darshan*** (2025 SCC OnLine SC 1702), it was held that neither the Constitution nor the relevant statute prescribes a specific form or insists upon a written communication in every case. Substantial compliance of the same is sufficient unless demonstrable prejudice is shown. It was further held that individualised grounds are not an inflexible requirement post Bansal and absence of written grounds



does not *ipso facto* render the arrest illegal unless it results in demonstrable prejudice or denial of an opportunity to defend. However, in **Ahmed Mansoor v. State** (2025 SCC OnLine SC 2650), another two Judge Bench of the Supreme Court distinguished the principles declared in **Sri Darshan** (supra) and observed that in **Sri Darshan** (supra), the facts governing are quite different in the sense that it was a case dealing with the cancellation of bail where the chargesheet had been filed and the grounds of detention were served immediately. Recently, in **Mihir Rajesh Shah v. State of Maharashtra and Another** (2025 SCC OnLine SC 2356), the three Judge Bench of the Supreme Court held that grounds of arrest must be informed to the arrested person in each and every case without exception and the mode of communication of such grounds must be in writing in the language he understands. It was further held that non supply of grounds of arrest in writing to the arrestee prior to or immediately after arrest would not vitiate such arrest provided said grounds are supplied in writing within a



reasonable time and in any case two hours prior to the production of arrestee before the Magistrate.

12. A Single Bench of this Court in **Yazin S. v. State of Kerala** (2025 KHC OnLine 2383) and in **Rayees R.M. v. State of Kerala** (2025 KHC 2086) held that in NDPS cases, since the quantity of contraband determines whether the offence is bailable or non bailable, specification of quantity is mandatory for effective communication of grounds. It was further held that burden is on the police to establish proper communication of the arrest. In **Vishnu N.P. v. State of Kerala** (2025 KHC OnLine 1262), another Single Judge of this Court relying on all the decisions of the Supreme Court mentioned above specifically observed that the arrest intimation must mention not only the penal section but also the quantity of contraband allegedly seized.

13. The following principles of law emerge from the above mentioned binding precedents.

(i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all



offences under all statutes including offences under IPC/BNS.

(ii) The grounds of arrest must be communicated in writing to the arrestee in the language he understands.

(iii) In cases where the arresting officer/person is unable to communicate the grounds of arrest in writing 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 the production of the arrestee for the remand proceedings before the Magistrate.

(iv) In NDPS cases, specification of quantity of the contraband seized is mandatory for effective communication of grounds of arrest.

(v) In case of non compliance of the above, the arrest and the subsequent remand would be rendered illegal and the arrestee should be set free forthwith.

(vi) The burden is on the police to establish the proper communication of grounds of arrest.



(vii) The filing of charge sheet and cognizance of the order cannot validate unconstitutional arrest.

14. I went through the case diary. On a perusal of the case diary, it is noticed that separate grounds of arrest were communicated to the applicant. However, except for mentioning that the arrest is for illegal possession of the narcotic drugs, there is no reference to the quantity of the contraband seized from the applicant. Hence, I hold that the requirement of Article 22(1) of the Constitution and Section 47 of BNSS have not been satisfied. Therefore, applicant's arrest and his subsequent remand are nonest and he is entitled to be released on bail.

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

(i) The applicant shall be released on bail on executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Magistrate/Court.

(ii) The applicant shall fully co-operate with



the investigation.

(iii) The applicant shall appear before the investigating officer between 10.00 a.m and 11.00 a.m. every Saturday until further orders. He shall also appear before the investigating officer as and when required.

(iv) The applicant shall not commit any offence of a like nature while on bail.

(v) The applicant shall not attempt to contact any of the prosecution witnesses, directly or through any other person, or in any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation.

(vi) The applicant shall not leave the State of Kerala without the permission of the trial Court.

(vii) The application, if any, for deletion/modification of the bail conditions or cancellation of bail on the grounds of violating the bail conditions shall be filed at the jurisdictional court

Sd/-

**DR. KAUSER EDAPPAGATH
JUDGE**



APPENDIX OF BAIL APPL. NO. 1772 OF 2026

PETITIONER ANNEXURES

- ANNEXURE A1** THE TRUE COPY OF THE ORDER DATED 21.02.2026
IN CRL MP NO 2/2026 IN CRIME NO 587/2025 OF
CHALLISSERY POLICE STATION
- ANNEXURE A2** THE TRUE COPY OF THE DATED 12.02.2026 IN BA
NO 731/2026 OF HIGH COURT
- ANNEXURE A3** HIGH COURT OF KERALA IS PRODUCED HEREWITH AND
MARKED AS ANNEXURE A2. THE TRUE COPY OF THE
ORDER DATED 12.03.2026 IN CRL MP NO 3/2026 IN
CRIME NO CRIME NO 587/2025 OF CHALLISSERY
POLICE STATION