



2025:KER:91583

B.A.Nos.12287,12289,12376 & 12603 of 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 25TH DAY OF NOVEMBER 2025 / 4TH AGRAHAYANA,

1947

BAIL APPL. NO. 12603 OF 2025

CRIME NO.697/2025 OF THAMARASSERY POLICE STATION, KOZHIKODE

PETITIONER/ACCUSED (IN CUSTODY FROM 12.07.2025):

VISHNU N P
AGED 30 YEARS
S/O MANOJ, NADUPUTHALATH, KORANGAD, THAMARASSERY,
KOZHIKODE DISTRICT, PIN - 673573

BY ADVS.
SRI.P.MOHAMED SABAH
SRI.LIBIN STANLEY
SMT.SAIPOOJA
SRI.SADIK ISMAYIL
SMT.R.GAYATHRI
SRI.M.MAHIN HAMZA
SHRI.ALWIN JOSEPH
SHRI.BENSON AMBROSE

RESPONDENTS/STATE & COMPLAINANT:

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



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2 THE STATION HOUSE OFFICER
THAMARASSERY POLICE STATION, THAMARASSERY P.O,
KOZHIKODE DISTRICT, PIN - 673573

BY ADV
SRI.M C ASHI, SR PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
25.11.2025, ALONG WITH Bail Appl..12287/2025, 12289/2025
AND CONNECTED CASES, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:



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B.A.Nos.12287,12289,12376 & 12603 of 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 25TH DAY OF NOVEMBER 2025 / 4TH AGRAHAYANA,

1947

BAIL APPL. NO. 12287 OF 2025

CRIME NO.489/2025 OF NILAMBUR POLICE STATION, MALAPPURAM

PETITIONER/ACCUSED NO.1 (IN CUSTODY FROM 08.05.2025) :

MUHAMMED SHIBIL
AGED 20 YEARS
S/O MUHAMMED BASHEER, VALAPPURAM HOUSE,
BEEMBUNGAL, MAMPAD, MALAPPURAM DISTRICT,
PIN - 676542

BY ADVS.
SRI.P.MOHAMED SABAH
SRI.LIBIN STANLEY
SMT.SAIPOOJA
SRI.SADIK ISMAYIL
SMT.R.GAYATHRI
SRI.M.MAHIN HAMZA
SHRI.ALWIN JOSEPH
SHRI.BENSON AMBROSE

RESPONDENTS/STATE & COMPLAINANT:

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



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2 THE STATION HOUSE OFFICER
NILAMBUR POLICE STATION, NILAMBUR P.O,
MALAPPURAM DISTRICT, PIN - 679329

BY ADV
SRI.G.SUDHEER, PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
25.11.2025, ALONG WITH Bail Appl..12603/2025 AND CONNECTED
CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



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B.A.Nos.12287,12289,12376 & 12603 of 2025

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 25TH DAY OF NOVEMBER 2025 / 4TH AGRAHAYANA,

1947

BAIL APPL. NO. 12289 OF 2025

CRIME NO.1082/2024 OF ERNAKULAM SOUTH POLICE STATION,

ERNAKULAM

PETITIONER/ACCUSED NO.4:

MOHAMMED RAFI
AGED 32 YEARS
SON OF ABDUL KAREEM PULLISSERY, PULLISSERY HOUSE,
NOTTAPPURAM, KANNAMANGALAM (P.O), MALAPPURAM.,
PIN - 676304

BY ADVS.
SRI.NIREESH MATHEW
SRI.VIVEK VENUGOPAL
SRI.BABU JOSE
SHRI.GAJENDRA SINGH RAJPUROHIT
SHRI.AKHIL GEORGE
SHRI.ATHUL POULOSE

RESPONDENT/COMPLAINANT-STATE:

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



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BY ADV

SMT.M.K.PUSHPALATHA, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
25.11.2025, ALONG WITH Bail Appl..12603/2025 AND CONNECTED
CASES, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

TUESDAY, THE 25TH DAY OF NOVEMBER 2025 / 4TH AGRAHAYANA,

1947

BAIL APPL. NO. 12376 OF 2025

CRIME NO.1925/2025 OF ALUVA POLICE STATION, ERNAKULAM

PETITIONER/2ND ACCUSED:

SYAM.S
AGED 34 YEARS
S/O SURESH KUMAR, KUZHIKKANATHU VEEDU,
MERA NAGAR, MUNDAKKAL, KOLLAM,, PIN - 691001

BY ADVS.
SRI.S.K.ADHITHYAN
SHRI.REUBEN CHARLY
SMT.SHAHINA NOUSHAD
SHRI.KRISHNA S. KARUNAKARAN

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
ERNAKULAM, PIN - 682031
- 2 STATION HOUSE OFFICER
ALUVA POLICE STATION, ERNAKULAM, PIN - 683101



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BY ADV
SRI.G.SUDHEER, PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
25.11.2025, ALONG WITH Bail Appl..12603/2025 AND CONNECTED
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'C.R'**COMMON ORDER**

All these Bail Applications are being disposed of by this common order, as the questions of law involved are similar.

2. The issue raised in these Bail Applications pertains to the alleged violation of the petitioners' right under Article 22(1) of the Constitution of India and Sections 47 and 48 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS'). The petitioners assert that they were not informed of the grounds of their arrest.

Submissions

3. I have heard the learned counsel for the petitioners and the learned Public Prosecutors.

4. The learned counsel appearing for the petitioners submitted that the arrest and remand of the petitioners were in gross violation of the constitutional protection contained in Articles 21 and 22(1) of the Constitution of India and Sections



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47 and 48 of the BNSS. The learned counsel for the petitioners relied on **Pankaj Bansal v. Union of India [(2024) 7 SCC 576]**, **Vihaan Kumar v. State of Haryana [(2025) 5 SCC 799]**, **Ahmed Mansoor v. State (MANU/SCOR/77602/2025)**, **Kasireddy Upender Reddy v. State of Andhra Pradesh (2025 SCC OnLine SC 1228)**, **Shahina v. State of Kerala (2025 (5) KHC 203)** and **Mihir Rajesh Shah v. State of Maharashtra and Another (2025 SCC OnLine SC 2356)** in support of their contentions. The learned counsel for the petitioner in B.A No.12376/2025, apart from adopting the contentions raised by the learned counsel for the other petitioners, relied on **Manikandan N P v State of Kerala [2025 (1) KHC 451]** and **Nijamu A v. State of Kerala (2023 KHC OnLine 10117)**, to contend that the petitioner is entitled to the benefit of the principle of parity as the other accused in that crime was released on bail by a learned Sessions Judge for the reason that grounds of arrest were not communicated to him. The learned counsel, relying on



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Anuraj v. State of Kerala [2024 (4) KHC 68], submitted that even after specific directions issued by this Court, the Government have not taken any steps to expedite the forensic science examination. The learned counsel further submitted that there is no possibility of the trial being concluded in the near future, which would curtail the petitioner's liberty as provided under Article 21 of the Constitution.

5. The learned Public Prosecutors submitted that Article 22(1) of the Constitution and Section 47 of the BNSS do not require the communication of the grounds of arrest in writing. The learned Prosecutors vehemently contended that, insofar as the communication of the grounds of arrest is concerned, 'substantial compliance' is the law. They relied on **State of Karnataka v. Sri Darshan (2025 SCC OnLine SC 1702)** to fortify their contentions.

6. The learned counsel for the petitioners, relying on **Mihir Rajesh Shah v. State of Maharashtra and Another**, submitted that the communication of the grounds of arrest in



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writing is the law.

7. The learned Public Prosecutors, relying on **Sri Darshan** (supra), submitted that the mere absence of written grounds does not *ipso facto* render the arrest illegal, unless it results in demonstrable prejudice or a denial of a fair opportunity to defend.

8. The learned counsel for the petitioners submitted that **Sri Darshan** turned on materially different facts, and that in **Ahmed Mansoor** another two Judge Bench of the Supreme Court distinguished the principles declared in **Sri Darshan**.

Consideration

9. The jurisprudence relating to personal liberty can be traced to Magna Carta, clause 39 of which reads thus:-

"No free man shall be seized or imprisoned or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment of his equals or by the law of the land."

10. The liberty of being informed the grounds of arrest to a person generated from the constitutional safeguard provided



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under Article 21 of the Constitution.

11. Article 21 reads thus:-

"21. Protection of life and personal liberty.-No person shall be deprived of his life or personal liberty except according to procedure established by law."

12. The personal liberty enshrined in Article 21 takes in procedural safeguard from the abuse of power by the State agencies.

13. Article 22 of the Constitution strengthens the protection of personal liberty of a person.

14. Article 22 of the Constitution reads thus:-

"22. Protection against arrest and detention in certain cases.-(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or



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detained

under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7); or

(b) such person is detained in accordance with the provisions of any law made by Parliament under sub-clauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);



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(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under sub-clause (a) of clause (4)."

15. The Parliament, in Section 50 of the Code of Criminal Procedure (corresponding Section 47 of BNSS), incorporated a procedural mandate intended to protect the personal liberty of the person so arrested.

16. Section 47 reads thus:-

"47. Person arrested to be informed of grounds of arrest and of right to bail

(1) Every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest.

(2) Where a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf."

17. The scope of Section 47 was further extended in Section 48 of the BNSS (corresponding to Section 50A of Cr.P.C., 1973), which reads thus:-

"48. Obligation of person making arrest to inform about arrest, etc., to relative or friend.



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(1) Every police officer or other person making any arrest under this Sanhita shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his relatives, friends or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information and also to the designated police officer in the district.

(2) The police officer shall inform the arrested person of his rights under sub-section (1) as soon as he is brought to the police station.

(3) An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as the State Government may, by rules, provide.

(4) It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person."

The object of furnishing grounds of arrest to the accused

18. The foundational principle of informing grounds of arrest to a person emerges from the constitutional protection of life and personal liberty safeguarded under Article 21 of the Constitution of India. The impacts of arrest are multidimensional. Clauses (1) and (2) of Article 22 guarantee the following rights to a person arrested:

(a) The right to be informed as soon as may



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be of grounds of arrest.

- (b) The right to consult and to be represented by a lawyer of his own choice.
- (c) The right to be produced before the Magistrate within 24 hours.
- (d) The immunity from being detained beyond the said period except by the order of the Magistrate.

18.1. The language of Clause (3) of Article 22 provides only two exceptions to the applicability of the above safeguards and does not admit room for adding any more exceptions.

18.2. The fundamental object sought to be subserved by Article 22 (1) are the following:

- (a) To apprise the arrested person of why he/she is being arrested.
- (b) To enable the arrestee to frame his defence against possible detention and to seek appropriate legal aid.



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18.3. 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.

18.4. The expression used in Clause (1) of Article 22 is "inform" whereas the expression used in Clause (2) is "communicate"; what signifies in both the expressions is that sufficient knowledge of the facts constituting "the grounds" should be imparted effectively and fully to the arrestee in a language which he understands.

The views of the Supreme Court on the mode of Communication of the grounds of arrest from **Harikisan** to **Mihir Rajesh Shah**.

19. While dealing with the question of communication of the grounds of arrest as provided in Article 22(5) of the Constitution, a Constitution Bench of the Apex Court in **Harikisan v. State of Maharashtra and Others (AIR 1960 SC 911)** held that oral explanation by a police officer serving



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the arrestee the grounds of arrest does not fulfill the requirement of the law. The Constitution Bench observed that the arrestee should have knowledge of arrest or detention which are in nature of the charge against him setting out the kinds of prejudicial act which the authorities attribute to him. The Constitution Bench added that communication in this context must therefore means imparting to the detainee sufficient knowledge of all the grounds on which the order of detention is based. The Constitution Bench categorically held that oral translation or explanation given by the Police Officer serving those on the detainee would not amount to communicating the grounds. The Constitution Bench made it clear that in order to satisfy the requirement of the Constitutional mandate the detainee must be given the grounds in a language which he can understand, and in a script which he can read.

20. The declaration of law by the Constitution Bench was reaffirmed by the Supreme Court in **Lallubhai Jogibhai Patel v. Union of India [(1981) 2 SCC 427]** and held that grounds



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of detention must be communicated to the detainee in writing in a language which he understands. In **Prabir Purkayastha v. State (NCT of Delhi) [(2024) 8 SCC 254]**, a Two Judge Bench of the Apex Court, following **Harikisan** (supra) and **Lallubhai Jogibhai Patel** (supra), reiterated that the grounds on which the liberty of a citizen is curtailed, must be communicated in writing so as to enable him to seek remedial measures against the deprivation of his liberty.

21. In **Pankaj Bansal**, the Apex Court after taking note of the then prevailing practices in different parts of the Country on the mode of informing the grounds of arrest to the accused left the option to the officers concerned to either furnish such grounds of arrest in writing or to allow the arrested person to read the grounds or to read over the grounds and explain the same to the person arrested.

21.1. The Court then pointed out the fallacy in reading out the grounds as follows:

- (i) In the event such grounds of arrest are orally read out to the arrested person, it may boil down



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to the word of the arrested person against the word of the authorised officer as to whether or not there is due and proper compliance in this regard. Such a precarious situation and the consequence thereof can be obviated by furnishing the written grounds of arrest under due acknowledgement instead of leaving it to the debatable *ipse dixit* of the authorised officer.

- (ii) In the event the grounds of arrest are voluminous, it would be well-nigh impossible for an accused to remember all that they had read or heard being read out for future recall so as to avail legal remedies.
- (iii) A person who has just been arrested would not be in a calm and collected frame of mind and may be utterly incapable of remembering the contents of the grounds of arrest read by or read out to him/her.



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21.2. The Supreme Court held that the very purpose of this constitutional and statutory protection would be rendered nugatory by permitting the authorities concerned to merely read out or permit reading of the grounds of arrest, irrespective of their length and detail, and claim due compliance with the constitutional requirement under Article 22(1). That is why the mode of conveying information of the grounds must be meaningful so as to serve the objects stated above.

21.3. The Supreme Court further held that if any sensitive material finds mention in such grounds of arrest, it would be open to him to redact such sensitive portion and furnish an edited copy of the grounds of arrest to the arrested person to maintain the sanctity of investigation and further held that henceforth a copy of the written grounds is furnished to the accused person without exception. The Court observed that merely reading out the grounds to the arrestee or permitting to read the same cannot be construed as adequate compliance with the mandate of Article 22 (1).



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22. In **Prabir Purkayastha** the Supreme Court laid down that the language used in Article 22(1) and Article 22(5) of the Constitution of India regarding the communication of the grounds is exactly identical. Neither of the constitutional provisions require that the “grounds” of “arrest” or “detention”, as the case may be, must be communicated in writing.

22.1. The Court held that the interpretation to this important facet of the fundamental right as made by the Constitution Bench while examining the scope of Article 22(5) of the Constitution of India would *ipso facto* apply to Article 22(1) of the Constitution of India insofar as the requirement to communicate the grounds of arrest is concerned.

22.2. On the said reasoning the Supreme Court held that the requirement to communicate the grounds of arrest in writing to a person arrested or detained under preventive detention is sacrosanct and the same cannot be breached under any situation. The non-compliance of the said requirement was held as rendering the arrest illegal.



23. In **Vihaan Kumar** the Apex Court held that the grounds of arrest are to be effectively communicated not only to the arrestee but also to his friends, relatives or any other nominated persons as envisaged under Section 50A of Cr.PC.

23.1. As regard the mode of communication in **Vihaan Kumar** the Supreme Court laid down the following propositions:

- (a) Communication of sufficient knowledge of the basic facts constituting grounds of arrest amounts to compliance with the mandate of Article 22.
- (b) The grounds should be effectively and fully communicated in the language that the arrestee understands. The Court noted that in Article 22 there is no requirement that the grounds of arrest should be communicated in writing.
- (c) The Supreme Court reasoned that obviously, before a police officer communicates the grounds of arrest, the same has to be formulated. Therefore, there is no harm if the grounds of arrest are communicated in writing. Although there is no requirement to communicate the grounds of arrest in writing,



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what is stated in **Pankaj Bansal** are suggestions that merit consideration.

- (d) It may not be practicable to implement what is suggested. If the course, as suggested, is followed, the controversy about the non compliance will not arise at all. The police have to balance the rights of a person arrested with the interests of the society. Therefore, the police should always scrupulously comply with the requirements of Article 22.

24. In **Kasireddy Upender Reddy**, the Supreme Court held that reading out the grounds of arrest stated in the warrant would tantamount to compliance of Article 22. The Supreme Court further held that when an accused 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 for his arrest.

25. In **Sri Darshan** the Supreme Court held that neither the Constitution nor the relevant statute prescribes a specific form or insists upon a written communication in every case.



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Judicial precedents have clarified that substantial compliance of the same is sufficient unless demonstrable prejudice is shown (Reliance was placed on **Kasireddy Upender Reddy** and **Vihaan Kumar**). The Supreme Court 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.

26. In **Ahmed Mansoor**, the Supreme Court observed that in **Sri Darshan** the facts governing are quite different in the sense that it was a case dealing with the cancellation of bail where the charge sheet had been filed and the grounds of detention were served immediately.

27. In **Mihir Rajesh Sha** the Supreme Court laid down the following principles:

- (A) No plausible Justification as to why a written copy of grounds of arrest ought not be provided to the arrestee as a standard procedural requirement without exception.



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- (B) In cases where the accused is under the supervision of the investigation agency and there is an apprehension of him absconding, the grounds must be furnished in writing.
- (C) It is also to be followed in cases involving offences which are based on documentary evidence where the grounds of arrest must be furnished in writing.
- (D) In cases where the accused is apprehended red-handed where the informing of grounds of arrest is rendered impractical, it shall be sufficient for the police officer making arrest to convey the same to the person at the time of his arrest.
- (E) Later within reasonable time in any case not later than two hours prior to the production of arrestee before the Magistrate, grounds of arrest should be supplied to the interested person.
- (F) The thumb rule of two hours is prescribed as lower limit to ensure that the arrestee is accorded meaningful safe guard. This period would ensure that counsel has adequate time frame to scrutinise the grounds of arrest and



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gather material to defend the arrestee, shortened interval may jeopardize such preparation and render the arrest illusory.

- (G) The threshold of two hours prescribes the balance between safeguarding the right of arrestee and preserving operational continuity of criminal investigation.
- (H) Arrest will be rendered illegal if the above schedule of two hours for supplying grounds is not adhered to.
- (I) On release, if remand or custody is required the following steps should be taken (I) An application for remand or custody should be moved (ii) With reasons and necessity for such remand (iii) After supply of grounds of arrest in writing setting forth the explanation for non-supply thereof within the above stipulated time.
- (J) In cases where the arresting officer is unable to communicate the grounds of arrest in writing or 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



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of arrestee before the Magistrate for remand proceedings.

- (K) The grounds of arrest must be conveyed to the arrestee in writing in all offences at the earliest which means it need not be given at the time of arrest but within a reasonable time thereafter which period would be at least two hours prior.

28. In order to avoid uncertainty emanating from the lack of consistency regarding the written requirement of the grounds of arrest, the Supreme Court in **Mihir Rajesh Shah** held that the procedure as affirmed by the said judgment shall **govern the arrest henceforth.**

The other relevant principles governing Article 22 and Sections 47 and 48 of the BNSS

29. The arrest memo and grounds of arrest are different.

The grounds of arrest are different from the arrest memo. The arrest memo incorporates the name of the arrested person, his permanent address, present address, particulars of FIR and penal section applied, place of arrest, date and time of arrest,



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the name of the officer arresting the accused and name, address and phone number of the person to whom information about arrest has been given. The information about the arrest is completely different from information about the grounds of arrest. Mere information of arrest will not amount to furnishing grounds of arrest. If the police want to prove communication of the grounds based on a diary entry, it is necessary to incorporate those grounds of arrest in the diary entry or any other document. The grounds of arrest must exist before the same are informed. There must be a contemporaneous record, which records what the grounds of arrest were {Vide: **Vihaan Kumar v. State of Haryana [(2025) 5 SCC 799]**}.

30. Burden of proof

a) When an arrestee pleads before a Court that grounds of arrest were not communicated, the burden to prove the compliance of Article 22(1) is on the police.

b) When a violation of Article 22(1) is alleged with respect to grounds of arrest, there can be possible two



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contentions raised: (a) that the arrested person was not informed of the grounds of arrest, or (b) purported information of grounds of arrest does not contain any ground of arrest. As far as the first contention is concerned, the person who is arrested can discharge his burden by simply alleging that grounds of arrest were not informed to him. If such an allegation is made in the pleadings, the entire burden is on the arresting agency or the State to satisfy the court that effective compliance was made with the requirement of Article 22(1) {Vide: **Vihaan Kumar v. State of Haryana [(2025) 5 SCC 799]**}.

31. Consequence of violation of Article 22(1) & Article 22(2)

- (a) Non-compliance of this constitutional requirement and statutory mandate would lead to the custody or the detention being rendered illegal. Mere fact that a charge-sheet has been filed in the matter, would not validate the illegality and the unconstitutionality



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committed at the time of arresting the accused and the grant of initial police custody remand to the accused.

- (b) If the grounds of arrest are not informed as soon as may be after the arrest, it would amount to a violation of the fundamental right of the arrestee guaranteed under Article 22(1). It will also amount to depriving the arrestee of his liberty.
- (c) The procedure established by law in Article 21 also includes what is provided in Article 22(1). Therefore, when a person is arrested without a warrant, and the grounds of arrest are not informed to him, as soon as may be, after the arrest, it will amount to a violation of his fundamental right guaranteed under Article 21 as well.
- (d) Once the arrest is held to be vitiated, the person arrested cannot remain in custody even for a moment.



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- (e) Once it is held that arrest is unconstitutional due to violation of Article 22(1), the arrest itself is vitiated. Therefore, continued custody of such a person based on orders of remand is also vitiated.
- (f) Filing a charge sheet and order of cognizance will not validate an arrest which is *per se* unconstitutional, being violative of Articles 21 and 22(1) of the Constitution of India.
- (g) When a violation of Article 22(1) is established, it is the duty of the court to forthwith order the release of the accused. That will be a ground to grant bail even if statutory restrictions on the grant of bail exist.
- (h) Once a violation of a fundamental right under Article 22(1) is alleged, it is the duty of the High Court to go into the said contention and decide in one way or the other. {Vide: **Vihaan Kumar v. State of Haryana [(2025) 5 SCC 799]**}.

32. The expression "as soon as may be"



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- a. Article 22 mandates that no arrested person shall be detained without being informed of the grounds at the earliest opportunity.
- b. If the grounds of arrest are not communicated to the arrestee, as soon as may be, he will not be able to effectively exercise the right to consult an advocate. Thus, it is the fundamental right of every person arrested and detained in custody to be informed of the grounds of arrest as soon as possible. If a person is not informed of the grounds of arrest as soon as may be, it would amount to violation of fundamental right rendering the arrest illegal.
- c. Arrested person must be well equipped with the information not only about his arrest but the reasons and grounds thereof prior to the production so as to enable him to oppose police custody.
- d. Time frame within which the grounds of arrest should be supplied cannot be put into a straight jacket formula.
- e. As soon as may be in Article 22 does not mean prior to arrest but can be on arrest or



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thereafter. It indicates as early as it can be conveyed

- f. There can be situations where it may not be possible to supply such grounds to the arrested person at the time of his arrest or immediately. A rigid insistence on informing grounds of arrest immediately thereafter may result in police officer not being able to discharge his duty and responsibility efficiently and effectively.
- g. In cases where the accused is apprehended red- handed where the informing of grounds of arrest is rendered impractical, it shall be sufficient for the police officer making arrest to convey the same to the person at the time of his arrest. Later within reasonable time in any case not later than two hours prior to the production of arrestee before the Magistrate, grounds of arrest should be supplied to the interested person.
- h. The rule of two hours prescribed as lower limit would ensure that counsel has adequate time frame to scrutinize the grounds of arrest and gather material to defend the arrestee,



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shortened interval may jeopardize such preparation and render the arrest illusory.

- i. The threshold of two hours prescribes the balance between safeguarding the right of arrestee and preserving operational continuity of criminal investigation.
- j. Arrest will be rendered illegal if the above schedule of two hours for supplying grounds is not adhered to. {Vide: **Vihaan Kumar v. State of Haryana [(2025) 5 SCC 799]** **Pankaj Bansal v. Union of India [(2024) 7 SCC 576]** and **Mihir Rajesh Shah v. State of Maharashtra and Another (2025 SCC OnLine SC 2356)**} .

33. Requirement of Article 22 is not statute specific

- (a) Section 47 of the BNSS cannot have the effect of diluting the requirement of Article 22(1). If held so, Section 47 will attract the vice of unconstitutionality. Section 47 lays down the requirement of communicating the full particulars of the offence for which a person is arrested to him.
- (b) The 'other grounds for such arrest' referred to in Section 47(1) have nothing to do with the



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grounds of arrest referred to in Article 22(1). Statutory restrictions do not affect the power of the court to grant bail when the violation of Articles 21 and 22 of the Constitution is established.

- (c) Existence of power to arrest and justification for exercise of such power are two different aspects.
- (d) Obligation to inform grounds of arrest is not mere procedural formality, it flows from personal liberty.
- (e) In terms of Section 48 and 47 of BNSS the person making arrest has to inform the arrestee of his right to indicate his relative, friend or such other person for the purpose of giving information with regard to the arrest.
- (f) Person effecting arrest is liable to forthwith inform of such arrest thereafter with reasons and place where such arrested person is being held. The police officer making arrest shall make an entry as to who has been informed of such arrest in a book to be kept in police station. This is in addition to be made aware of grounds of arrest.



- (g) Failure to supply the grounds in writing to the arrestee prior to or immediately after arrest would not vitiate arrest on grounds of non-compliance under Section 47 of BNSS provided grounds can be supplied in writing within reasonable time and in any case two hours prior to production of arrestee in remand proceedings. {Vide: **Vihaan Kumar v. State of Haryana [(2025) 5 SCC 799]** and **Mihir Rajesh Shah v. State of Maharashtra and Another (2025 SCC OnLine SC 2356)**}.

34. Duty of the magistrate in Remand proceedings

- (a) The remand papers shall contain the grounds of arrest and in case there is delay in supply thereof, a note indicating cause for it should be included for the information to the Magistrate.
- (b) When an arrested person is produced before a Judicial Magistrate for remand, it is the duty of the Magistrate to ascertain whether compliance with Article 22(1) has been made. The reason is that due to non-compliance, the arrest is rendered illegal; therefore, the arrestee cannot be remanded after the arrest is rendered illegal. It is the obligation of all the Courts to uphold the fundamental rights.



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- (c) Magistrate Court cannot act as post office affixing a stamp of approval to the remand papers presented before him.
- (d) Magistrate has to satisfy himself that the stipulations regarding passing on relevant information to the relative and the entry to this effect is to be recorded by the police officer.
- (e) If the arrested person is released and if remand is sought thereafter subject to the conditions expressed herein above, the magistrate shall decide the same expeditiously preferably within a week of submission thereof by adhering to the principles of Natural Justice. {Vide:**Vihaan Kumar v. State of Haryana [(2025) 5 SCC 799]** and **Mihir Rajesh Shah v. State of Maharashtra and Another (2025 SCC OnLine SC 2356)**}.

35. In the context of the offences under the NDPS act this Court in **Shahina** (supra) held thus:

"22. In this context, it has to be borne in mind that under the NDPS Act, unlike in other statutes, the very possession of a narcotic drug itself, that too in intermediate and commercial quantities, would constitute a 'ground of arrest'. In such instances, the requirement for arrest stems from possession and it need not be just to prevent further offences or to ensure proper investigation or



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presence in court or to prevent tampering with evidence. The Parliament enacted the NDPS Act with an objective of providing deterrence to the menace of drug abuse in India. Consequently the provisions contained therein are very stringent compared to other statutes. The said objective cannot be lost sight of while considering the issue.”

36. Now I turn to consider the contentions raised by the petitioners that grounds of their arrest were not communicated.

B.A.No.12287 of 2025

37. The petitioner is accused No.2 in Crime No.489/2025 of Nilambur Police Station, Malappuram. The offences alleged against the petitioner are punishable under Sections 22(c) & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 .

37.1. The prosecution case is that on 8.5.2025 at about 1.45 p.m., the petitioner along with the other accused were found in possession and transportation of 310.8 grams of Methamphetamine in a scooter bearing Reg.No.TO 325 KL 5867 D.

37.2. The case of the petitioner is that the grounds and reasons for his arrest were not communicated to him.



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37.3. The learned Public Prosecutor countered and submitted that there is substantial compliance of the mandatory requirements. The learned Public Prosecutor produced a copy of the arrest intimation, along with the grounds and reasons for the arrest communicated to the petitioner.

37.4. The arrest intimation communicated to a near relative of the petitioner shows that only the penal Sections were conveyed to him. The specific allegations against the petitioner were not communicated to him. Moreover, the grounds and reasons, including the quantity of the contraband allegedly seized, were also not conveyed. So, this Court comes to the conclusion that the requirement of Article 22(1) of the Constitution of India and Sections 47 and 48 of the BNSS have not been satisfied. Therefore, the petitioner's arrest and the subsequent remand are *non est*, and he is entitled to be released on bail.

B.A.No.12289 of 2025

38. The petitioner is accused No.4 in Crime No.1082/2024



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of Ernakulam Town South Police Station. The offences alleged against the petitioner are punishable under Sections 22(c), 22(b) & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

38.1. The prosecution case is that on 18.12.2024 at 8.15 p.m., accused Nos.1 and 2 were found carrying 0.3668 grams of LSD Stamp and 0.899 grams of MDMA in a motorcycle. The MDMA was claimed to have been supplied by the petitioner.

38.2. The petitioner was formally arrested when produced before the Court on a production memo.

38.3. The learned counsel for the petitioner submitted that no intimation of arrest was communicated to the near relative. Admittedly, it is not disputed that the intimation of arrest was not conveyed to his near relative. Therefore, the arrest of the petitioner is illegal and *non est*.

B.A.No.12376 of 2025

39. The petitioner is accused No.2 in Crime No.1925/2025 of Aluva East Police Station. The offences alleged against the



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petitioner are punishable under Sections 22(c), 8(c), 20(b((ii)A & 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

39.1. The prosecution case is that on 28.8.2025 at 6.50 p.m., the petitioner along with the other accused was found in possession of 24.520 grams of MDMA and 380 grams of Ganja at Choornikkara Village.

39.2. The learned counsel for the petitioner relied on the following grounds to challenge the arrest:

- (a) The grounds of arrest of the petitioner were not communicated to him or to his near relative or friend as required.
- (b) Accused No.1 was granted bail by the learned Sessions Judge on the ground that grounds of his arrest were not communicated.
- (c) There is violation of the directions issued by this Court in **Anuraj v. State of Kerala [2024 (4) KHC 68]** which results in delay in the trial.
- (d) The contraband substance was recovered from the



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exclusive possession of accused No.1.

- (e) The prosecution *prima facie* failed to establish the complicity of the petitioner in the commission of the offences.

Ground (a)

39.3. The learned Public Prosecutor produced the Case Diary, which shows that at the time of arrest, the grounds and reasons for the petitioner's arrest were communicated to him and to a near relative . I am convinced that the grounds of arrest were communicated to the petitioner and his near relatives as required. The petitioner is, therefore, not entitled to be released on bail on this ground.

Ground (b)

39.4. The learned counsel for the petitioner submitted that accused No.1 was granted bail by the learned Special Judge for the reason that grounds and reasons of arrest were not communicated to him. The learned counsel for the petitioner submitted that, on the principle of parity, the



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petitioner is entitled to be released on bail. The learned counsel relied on **Manikandan N.P. v. State of Kerala** (supra) and **Nijamu** (supra) in support of his contention.

39.5. I have already concluded that the grounds and reasons for the arrest were communicated to the petitioner at the time of his arrest as required. The Case Diary reveals that accused No.1 was not served with the grounds and reasons of arrest at the time of arrest, which weighed with the learned Sessions Judge in granting him bail, following the principles declared by this Court in **Shahina** (supra). In **Manikandan** (supra) and **Nijamu** (supra), this Court held that, if the bail application of one of the accused is allowed, and if any bail application is filed by the co-accused in the same crime, unless there are sufficient reasons, the bail application of the co-accused shall not be dismissed. Is the petitioner entitled to the principle of parity, as urged by the learned counsel for the petitioner? The petitioner is entitled to the principle of parity only when the prosecution fails to establish that grounds and



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reasons of arrest were communicated to the other accused at the time of arrest. The petitioner and accused No.1 are not on the same footing, and therefore, he is not entitled to the benefit of the principle of parity.

Ground (c)

39.6. The learned counsel for the petitioner relying on **Anuraj v. State of Kerala and Ors.** (2024 (4) KHC 68) submitted that the prosecution has a statutory responsibility to ensure that the chemical analysis of the sample collected from the contraband is conducted at the earliest. The learned counsel submitted that expeditious testing of the contraband as per Rule 14 of the NDPS Rules has not been complied with. It is submitted that the delay in the examination of the contraband substance has affected his statutory and fundamental rights.

39.7. The learned Public Prosecutor submitted that examination of the contraband substance would be completed within a short time. The learned Public Prosecutor further



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submitted that, as far as the date of detention of the petitioner is concerned, there cannot be any inordinate delay in the examination, which is currently being conducted in the Forensic Science Laboratory. This too does not constitute a ground for the petitioner to be granted regular bail at this stage.

Grounds (d) & (e)

39.8. It is the specific case of the petitioner that no contraband has been seized from his possession. The prosecution case is that on 27.08.2025, the detecting officer seized the contraband substance from the bag and cupboard in the ownership and possession of accused No.1. The remand report dated 28.08.2025 and the arrest card in respect of the petitioner would show that the bag and cupboard were in the possession of accused No.1. The role of the petitioner as alleged in the remand report is that he was in the control of the firm from where the recovery was effected.

39.9. The learned Public Prosecutor submitted that the



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bar contained in Section 37 of the NDPS Act is applicable insofar as the allegation against the petitioner is concerned.

39.10. I am of the considered view that the petitioner has *prima facie* established a case to get over the rider contained in Section 37 of the NDPS Act and, therefore is entitled to be released on bail subject to conditions.

B.A.No.12603/2025

40. The petitioner is the accused in Crime No. 697/2025 of Thamarassery Police Station, Kozhikode. The offence alleged against the petitioner is punishable under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985.

40.1. The prosecution case is that on 12.7.2025, the petitioner was found in possession of 52.45 grams of MDMA in a footpath in front of the Suzuki Showroom at Chunkam, Thamarassery.

40.2. The learned counsel for the petitioner submitted that the grounds and reasons of arrest were not communicated to the petitioner.



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40.3. The learned Public Prosecutor produced “the grounds and reasons”, served on the petitioner and the grounds of arrest intimated to the near relative. The notice served on the petitioner under Section 47 of the BNSS shows that at the time of arrest the specific grounds and reasons of arrest were communicated to the petitioner. In the intimation to his father also, the specific grounds of arrest were communicated. Therefore, the petitioner is not entitled to be released on bail.

In the result, B.A.No. 12603 of 2025 is dismissed. B.A Nos.12287, 12289 and 12376 2025 are allowed as follows:-

- (i) The petitioners shall be released on bail on their executing bond for Rs.5,00,000/- (Rupees Five Lakhs only) each with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.
- (ii) The petitioners shall cooperate with the trial.
- (iii) The petitioners shall not threaten or attempt to influence any witnesses



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- (iv) The petitioners shall not commit any similar offence, while on bail.
- (v) The petitioners shall not leave the State of Kerala without the permission of the jurisdictional Court.
- (vi) The petitioners shall surrender their passport before the jurisdictional Court. If the petitioners do not possess passport, they shall file affidavits to that effect.
- (vii) If any of the bail conditions are violated by the petitioners, the jurisdictional Court shall be at liberty to cancel the bail, in accordance with law, notwithstanding the fact that this Court granted bail to the petitioners.

Sd/-
K.BABU
Judge

TKS/VPK



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APPENDIX OF BAIL APPL. 12603/2025

PETITIONER ANNEXURES

Annexure 1	TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.697/2025 OF THAMARASSERY POLICE STATION, KOZHIKODE DISTRICT
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APPENDIX OF BAIL APPL. 12287/2025

PETITIONER ANNEXURES

Annexure 1	TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.489 OF 2025 OF NILAMBUR POLICE STATION, MALAPPURAM DISTRICT
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APPENDIX OF BAIL APPL. 12289/2025

PETITIONER ANNEXURES

Annexure 1	TRUE PHOTOCOPY OF THE ORDER DATED 04.07.2025 IN B.A.NO.6366/2025
Annexure 2	TRUE PHOTOCOPY OF THE ORDER DATED 26.05.2025 IN CRL.MC.NO.1389/2025 PASSED BY THE ADDL. SESSIONS JUDGE-I, ERNAKULAM
Annexure 3	TRUE PHOTOCOPY OF THE ORDER DATED 18.06.2025 IN CRL.MC.NO.1650/2025 PASSED BY THE ADDL. SESSIONS JUDGE-I, ERNAKULAM
Annexure 4	ORDER DATED 01-08-2025 IN BAIL APPL.8712/2025 ON HIGH COURT
Annexure 5	TRUE PHOTO COPY OF THE ORDER DATED 18.09.2025 IN B.A NO. 10639/2025 PASSED BY THIS HON'BLE COURT



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APPENDIX OF BAIL APPL. 12376/2025

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF THE FIR IN CRIME NO. 1925/2025 REGISTERED BY THE ALUVA POLICE STATION, ERNAKULAM RURAL
Annexure A2	TRUE COPY OF THE ORDER OF THE ADDITIONAL DISTRICT COURT 2, ERNAKULAM IN CRL MC 2607/2025 DISMISSING THE BAIL APPLICATION OF THE PETITIONER
Annexure A3	TRUE COPY OF THE ORDER OF THE SESSIONS COURT, ERNAKULAM IN CRL.MP NO. 4224/2025 IN CRL.MC NO. 2607/2025 DTD.15/09/2025