

BA No.14759/2025

-:1:-



2026:KER:24424

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 19TH DAY OF MARCH 2026 / 28TH PHALGUNA, 1947

BAIL APPL. NO. 14759 OF 2025

CRIME NO.1075/2024 OF Kunnankulam Police Station, Thrissur
AGAINST THE ORDER DATED 16.10.2025 IN Bail Appl.
NO.12185 OF 2025 OF HIGH COURT OF KERALA

PETITIONER/5th ACCUSED:

ABDUL HAMID MAKAME
AGED 26 YEARS
S/O ABDILLAH, VWELEZOMAGHARINBA, ZANZIBAR,
ZANZIBAR CITY, TANZANIA, RESIDING IN INDIA AT NO.
82 SURVEY NO 77/3B SOLADEVANAHALLI,
BANGALORE, KARNATAKA, PIN - 560107

BY ADVS.
SHRI.SHIBIN K.F.
SHRI.KIRAN MURALI

RESPONDENTS/STATE:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
COCHIN, ERNAKULAM, PIN - 682031
- 2 THE STATION HOUSE OFFICER,
KUNNAMKULAM POLICE STATION,
THRISSUR, KERALA, PIN - 680503

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-:2:-



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*3 UNION OF INDIA
REPRESENTED BY THE FOREIGNERS REGIONAL
REGISTRATION OFFICER, KOCHI - *SUO MOTU IMPLEADED
AS R3 VIDE ORDER DATED 4-2-26

BY ADV O.M.SHALINA,
DEPUTY SOLICITOR GENERAL OF INDIA
SMT.SREEJA V. SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.03.2026, THE COURT ON 19.03.2026 DELIVERED THE
FOLLOWING:



O R D E R

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

2. The applicant, a Tanzanian citizen who came to India to pursue his higher studies, is the accused No.5 in Crime No.1075/2024 of Kunnamkulam Police Station, Thrissur District. The offences alleged are punishable under Sections 22(c), 20(b) (ii)(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 09/08/2024 at 12:45 p.m., the police party stopped the car bearing No. KL-46 T 8808, travelling from Erumappetty to Kunnamkulam and found accused Nos. 1 and 2 with 66.5 grams of MDMA and 2 kilograms of hashish oil. It is alleged that the applicant supplied the contraband to the accused Nos. 3 and 4, and they in turn sold it to the accused Nos. 1 and 2.



4. I have heard Sri. Shibin K.F., the learned counsel for the applicant and Smt.Sreeja V., the learned Senior Public Prosecutor. Perused the case diary.

5. The learned counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in the present case. The learned counsel further submitted that there is total absence of any material to connect the applicant with the crime. The learned counsel also submitted that the constitutional right to be informed of the grounds for arrest under Article 22(1) of the Constitution of India was not complied with, and therefore, the applicant ought to be released forthwith. It was further submitted that the applicant was detained in custody beyond the period of twenty four hours from the time of his detention in violation of the constitutional and statutory prescriptions.

6. On the other hand, the learned Senior Public Prosecutor submitted that the applicant is involved in a serious offence involving a commercial quantity of narcotic drug, and therefore, the rigour under Section 37 of the NDPS Act applies. It was also submitted that the materials collected during the



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investigation clearly point to the guilt of the applicant and, therefore, there is no reason to release him on bail. As regards the contention based on the mandate of Article 22(1) of the Constitution and Sections 47 and 48 of the BNSS that the grounds of arrest must be informed to the arrestee and his near relatives, it was pointed out that the said requirement has been complied with scrupulously. It was further submitted that the applicant was produced before the Magistrate well within twenty four hours from the time of his detention/arrest, and hence the contention based on non-compliance of Article 22(2) of the Constitution is unsustainable.

7. On consideration of the rival contentions, the following three issues arise for consideration:

(i) Whether the grounds for arrest were communicated as mandated under Article 22(1) of the Constitution and Sections 47 and 48 of the BNSS?

(ii) Whether the applicant was produced before the Magistrate beyond the period of 24 hours from the time of his



effective detention?

(iii) Whether, on facts, the rigour of Section 37 of the NDPS Act is attracted?

Point No.(i)

8. It is now well settled that the requirement to inform a person of the grounds for arrest is a mandatory requirement of Article 22(1) of the Constitution and Section 47 of BNSS, and absence of the same would render the arrest illegal [See. *Pankaj Bansal v. Union of India and Others*, (2024) 7 SCC 576, *Prabir Purkayastha v. State (NCT of Delhi)*, (2024) 8 SCC 254, *Vihaan Kumar v. State of Haryana and Others* (2025 SCC OnLine SC 269)]. 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 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 the grounds of arrest in writing to the arrestee before or



immediately after the arrest would not vitiate such arrest, provided said grounds are supplied in writing within a reasonable time and in any case two hours before the production of the arrestee before the Magistrate. However, it was clarified that the requirement to communicate the written grounds of arrest to the arrestee would only operate prospectively.

9. The Supreme Court in *Kasireddy Upender Reddy v. State of Andhra Pradesh* (2025 SCC OnLine SC 1228) has held that the grounds of arrest should not only be provided to the arrestee but also to his family members and relatives so that necessary arrangements are made to secure the release of the person arrested at the earliest possible opportunity to make the mandate of Art.22(1) meaningful and effective, failing which, such arrest would be rendered illegal. A learned Single Judge of this Court in *Alvin Riby v. State of Kerala* (2025 KER 67079), following *Kasireddy Upender Reddy* (supra), held that failure to communicate the grounds of arrest to the near relatives renders the arrest illegal.



10. I reviewed the case diary. It indicates that the grounds for arrest were communicated to the applicant and all formalities in accordance with Chapter V of the BNSS were followed. Notice served on the applicant under Section 47 of the BNSS shows that, at the time of his arrest, the specific grounds, reasons for arrest, and the quantity of contraband seized were conveyed to him. Indeed, the grounds for arrest were not communicated to the relative or friend of the applicant. However, records also show that the grounds for arrest were properly communicated to the Foreign Regional Registration Officer (FRRO), Kochi, with explicit instructions to inform the Tanzanian Embassy/Consulate about the arrest. In cases where the accused is a foreign national, compliance with Section 48 of the BNSS is fulfilled if the arrest and its grounds are communicated to the FRRO or the foreign national's Embassy/Consulate. Therefore, there has been adequate compliance with Sections 47 and 48 of the BNSS as well as Article 22(1) of the Constitution of India.



Point No.(ii)

11. Article 22(2) of the Constitution states that 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 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. The applicant was detained at Bangalore International Airport on 15/4/2025 at 1.00 a.m. He was produced before the jurisdictional Magistrate on 16/4/2025 at 4.00 p.m. According to the learned counsel for the applicant, the applicant was produced before the Magistrate beyond the period of twenty four hours from the time of his effective detention, and thus, there is an infraction of Article 22(2) of the Constitution of India. I cannot subscribe to the said argument.

12. Admittedly, the Look Out Circular (LOC) was issued against the applicant. By executing the LOC, the Bureau of Immigration detained the applicant at Bangalore International



Airport on 15/4/2025 at 1.00 a.m. He was transferred to Kempegowda International Airport Police Station. The investigation officer filed an application before the IIIrd Additional Sessions Court, Thrissur, as CrI. M.P. No.2060/2025 seeking permission to arrest the applicant and to conduct further investigation under Section 193 of the BNSS. It was allowed, and the 2nd respondent went to Kempegowda International Airport Police Station, took custody of the applicant on 16/4/2025 at 12.30 a.m. He was brought to the Kunnamkulam Police Station, and his arrest was recorded at 2.00 p.m. on 16/4/2025. Thereafter, after complying with the requirement under Section 47 of the BNSS, he was produced before the Magistrate at 4.00 p.m. Thus, the applicant was produced before the Magistrate within twenty four hours of his actual detention by the Kunnamkulam police. Therefore, there is absolutely no violation of Article 22(2) of the Constitution of India.

Point No.(iii)

13. As per the prosecution version, the contraband was



seized from the possession of accused Nos. 1 and 2 while they were travelling in a car. It is alleged that the applicant supplied the contraband to the accused Nos. 3 and 4, and they in turn sold it to accused Nos. 1 and 2. The applicant was arrayed as accused based on the confession statement of the accused No.1. It is settled that the confession recorded under Section 67 of the NDPS Act is inadmissible in evidence against the accused [See *Tofan Singh v. State of Tamil Nadu* (2021) 4 SCC 1]. In the final report, the only material relied on by the prosecution to connect the applicant with the crime is the single money transaction of ₹15,000/- alleged to have reached into his account from the account of the accused No.1. The solitary financial transaction by a co-accused with the main accused from whom the contraband was seized without any other material to show the complicity of the co accused in the crime cannot be a reason to implicate him in the crime under the NDPS Act. As stated already, apart from a solitary financial transaction between the accused No. 1 and the applicant, there is absolutely nothing on record to suggest the



involvement of the applicant in the crime. Therefore, the rigour of Section 37 of the NDPS Act cannot be attributed to the applicant. The applicant is in custody for the last more than eleven months. The final report has already been filed. For all these reasons, I am of the view that the applicant is entitled to bail.

14. The applicant is a foreign national. Under Section 3 of the Foreigners Act, 1946, the Central Government is empowered to issue an order making provisions either generally or concerning any particular foreigner or class of foreigners, prohibiting, regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence. Under clause (g) of Section 3(2) of the Foreigners Act, a power has been conferred on the Central Government to issue an order directing that a foreigner shall be arrested and detained or confined. In exercise of the powers conferred by Section 3 of the Foreigners Act, 1946, the Foreigners Order, 1948 has been issued. Clause 2(2) of the Order provides for appointing a Civil Authority by the Central Government. Clause 5 of the Order deals



with the power to grant permission to depart from India. As per Clause 5(1)(b) of the Order, no foreigner shall leave India without the leave of the Civil Authority having jurisdiction. As per Clause 5(2)(b) of the Order, the foreigner's presence is required in India to answer a criminal charge and permission to leave India must be refused. Therefore, once a foreigner is released on bail, he cannot leave India without the permission of the Civil Authority, as provided in Clause 5 of the Order. Under Clause 11 of the Order, the Civil Authority can impose restrictions on the movements of a foreigner. The said power is wholly independent of the power to grant bail. Notwithstanding the bail granted by a criminal court, the power to arrest and detain a foreigner can be exercised, provided the Central Government makes an order in terms of clause (g) of Section 3(2) of the Foreigners Act.

15. The Supreme Court in *Frank Vitus v. Narcotics Control Bureau* (AIR 2025 SC 546), held that while releasing a foreigner on bail, the court should direct the Investigating Agency or the State, as the case may be, to immediately inform the Registration



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Officer concerned appointed under Rule 3 of the Registration of Foreigners Rules, 1992, about the grant of bail so that the Registration Officer can bring the fact of the grant of bail to the notice of the Civil Authority concerned. It was further held that if such information was furnished, it would enable the authorities under the Act, the Rules and the Order to take appropriate steps in accordance with law. This Court also recently in *Apple Barua v. State of Kerala* [2025 KHC OnLine 1359] took the same view. The Foreigners Regional Registration Officer (FRRO), Kochi, has already been impleaded as additional respondent No.3.

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

(i) The applicant is granted 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 respondent No.3 shall pass appropriate orders in accordance with law, after hearing the applicant or his counsel,



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within a period of one month. The applicant shall be released only subject to the orders passed by the respondent No.3.

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

(iv) 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.

(v) The applicant shall not leave India without the permission of the trial Court.

(vi) 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

Rp

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APPENDIX OF BAIL APPL. NO. 14759 OF 2025

PETITIONER ANNEXURES

- Annexure-A1 A TRUE COPY OF THE FIR NO. 1075/2024, DATED 09-08-2024, IN THE RECORDS OF THE KUNNAMKULAM POLICE STATION
- Annexure-A2 A TRUE COPY OF THE FINAL REPORT, DATED 27-01-2025, IN FIR NO. 1075/2024 IN THE RECORDS OF THE KUNNAMKULAM POLICE STATION
- Annexure-A3 A TRUE COPY OF THE CERTIFICATE, DATED 17-10-2023, ISSUED BY THE BANGLORE UNIVERSITY
- Annexure-A4 A TRUE COPY OF THE EXIT PERMIT DATED 07-04-2025 ISSUED BY THE FOREIGNERS REGIONAL REGISTRATION OFFICE, BANGALORE
- Annexure-A5 A TRUE COPY OF THE ORDER DATED 16-10-2025 IN BA NO. 12185/2025 ON THE FILES OF THE HONOURABLE HIGH COURT OF KERALA