

B.A.No. 807 of 2026

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 4TH DAY OF MARCH 2026 / 13TH PHALGUNA, 1947

BAIL APPL. NO. 807 OF 2026

CRIME NO.75/2025 OF PALLURUTHY POLICE STATION, ERNAKULAM

IN SC NO.1061 OF 2025 OF I ADDITIONAL SESSIONS COURT,
ERNAKULAM

PETITIONER/ACCUSED NO.6:

ASHIQUE,
AGED 25 YEARS, S/O UMMER,
MULLANMADAKKAL HOUSE,
CHIRAYIL, KONDOTTY,
MALAPPURAM, KERALA, PIN - 673638

BY ADVS.
SHRI.FRANCIS ASSISI
SMT.AMRUTHA P S
SMT.MANJU LUCKOSE
SHRI.VINAYAK P.S.

RESPONDENT/COMPLAINANT:

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

SRI.K.A. NOUSHAD, SR. PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
04.03.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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"C.R."

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.6 in Crime No.75/2025 of Palluruthy Police Station, Ernakulam District. The offences alleged are punishable under Section 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 the applicant and accused Nos. 1 to 5 entered into a conspiracy and smuggled narcotic drugs with the help of accused Nos. 3 and 5. The police seized 108.9378 grams of MDMA packed in 5 zip-lock covers. The accused No.1 is alleged to have stored these drugs for sale inside a bag in the cupboard of a rented house and thereby committed the offences.

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4. I have heard Sri.Francis Assisi, the learned counsel for the applicant and Sri.K.A.Noushad, the learned Senior Public Prosecutor. Perused the case diary.

5. The learned counsel for the applicant submitted that the applicant has been in custody since 25.03.2025, and the grounds of arrest were not communicated in accordance with the law at the time of his arrest. The learned Senior Public Prosecutor, on the other hand, opposed the bail application and submitted that the grounds of arrest were duly communicated.

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

7. It is now well settled that the requirement of informing 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**

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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] and ***Mihir Rajesh Shah v. State of Maharashtra and Another*** (2025 SCC OnLine SC 2356). 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 so as 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.

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8. In this case, the applicant, who was in judicial custody in connection with another case, was produced on a production warrant pursuant to an application filed by the investigating officer to record his arrest. Accordingly, he was produced, and his arrest was recorded. The learned Senior Public Prosecutor, relying on the dictum laid down in ***Mihir Rajesh Shah*** (supra) and ***Kasireddy Upender Reddy*** (supra), submitted that if a person is arrested on a warrant, if the warrant is read over to him, that is sufficient compliance with the requirement that he should be informed of the grounds of his arrest. It was further submitted that in such circumstances, the communication of the grounds for arrest in writing separately to the accused or his relative is not necessary.

9. ***In Mihir Rajesh Shah*** (supra) and ***Kasireddy Upender Reddy*** (supra), the warrant referred to was the warrant issued under Section 70 of Cr.P.C. (Section 72 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS'))

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in Form No.3 of Schedule II. However, in this case, the warrant issued was not under Section 72 of BNSS in Form No.3. In fact, it is an order issued under Section 302 of BNSS (Section 267 of Cr.P.C.) in Form No.37 of Schedule II. I see no reason not to extend the finding concerning the warrant issued under Section 72 of BNSS in **Mihir Rajesh Shah** (supra) and **Kasireddy Upender Reddy** (supra) to the order issued under Section 302 of BNSS in Form No.37 as well. The order in Form No.37 is addressed to the officer in charge of the jail where the applicant is lodged. In paragraph No.3 of Form No.37, there is a specific direction to the officer-in-charge of the jail to inform the accused of the contents of the order and to deliver him the attached copy thereof. Therefore, I hold that when the formal arrest of an accused is recorded pursuant to an order/production warrant issued under Section 302 of BNSS, there is no requirement to inform him of the grounds for his arrest separately. The order/warrant in Form No.37 itself is sufficient to comply with the

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requirement. However, even in such cases, the communication of the grounds for arrest to the relative of the accused is mandatory. In this case, since the grounds for arrest were not communicated to the relatives of the applicant in accordance with the law, the arrest stands vitiated, and the applicant 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

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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**

APA

