

BA No.2856/2026

-:1:-



2026:KER:43659

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 17TH DAY OF JUNE 2026 / 27TH JYAISHTA, 1948

BAIL APPL. NO. 2856 OF 2026

CRIME NO.133/2026 OF Walayar Police Station, Palakkad

PETITIONER/3RD ACCUSED:

SUDIN BABU,
AGED 20 YEARS
S/O SURESH, SASTA COLONY, MANTHAKKAD,
PALAKKAD, KERALA, PIN - 678651

BY ADVS.
SRI.P.S.ANISHAD
SMT.SREEPARVATHI G.V.

RESPONDENT/STATE:

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

SMT.SREEJA V., SR. PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
17.06.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

BA No.2856/2026

-:2:-



2026:KER:43659

“C.R.”

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 is the accused No.3 in Crime No.133/2026 of Walayar Police Station, Palakkad District. The offences alleged are punishable under Sections 22(c) and 8(c) r/w 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act).

3. The prosecution case, in short, is that on 10/2/2026 at 4.00 hours, near Pampampallam Toll Plaza at Walayar, the accused Nos. 1 and 2 were found transporting 56.68 grams of MDMA in an Yamaha MT-15 motorcycle bearing Regn. No. KL-09-AZ-9446, for which the applicant and the accused Nos. 4 and 5 have escorted in an Alto car bearing Regn. No. KL-51-B-2535 and thereby the applicant committed the offences.



4. I have heard Sri.P.S.Anishad, the learned counsel for the applicant and Smt. Sreeja V., the learned Senior Public Prosecutor. Perused the case diary.

5. It is not in dispute that the seizure was from the accused No. 1, who was travelling in a private vehicle, at midnight, based on prior information. The main contention of the learned counsel for the applicant is that since the vehicle in question was a private vehicle and the recovery was made between sunrise and sunset based on prior information, the case would be governed by the provisions of Section 42 and not Section 43 of the NDPS Act. Since the mandatory requirement of the proviso to Section 42(1) of the NDPS Act has not been complied with, the seizure and arrest are vitiated, and the applicant is entitled to bail, submitted the learned counsel. Reliance was placed on the decisions of the Supreme Court in *State of Rajasthan v. Jagraj Singh Alias Hansa* [(2016) 11 SCC 687] and *Boota Singh and Others v. State of Haryana* [(2021) 19 SCC 606] in support of his submission. On the other hand, the submission of the learned Senior Public Prosecutor is that since



the recovery is made at a public place, the relevant section to be applied is Section 43 of the NDPS Act and hence the requirement under the proviso to Section 42(1) need not be followed. The learned Senior Public Prosecutor further submitted that the issue whether there was compliance of the procedure laid down under Section 42 of the NDPS Act is a question of fact and it need not be considered while considering the bail application. Reliance was placed on the order of this Court in *Muneer v. State of Kerala* (2026 KHC OnLine 1700)

6. Sections 42 and 43 of the NDPS Act outline the powers of the authorised officers to conduct search, seizure and arrest without a warrant. Section 42 applies to search of enclosed spaces (buildings/conveyances), while Section 43 applies to seizure in public places and in transit.

7. Section 42 authorises an officer of the departments enumerated therein, who is duly empowered in that behalf, to enter into and search any building, conveyance or place, if he has reason to believe from personal knowledge or information given by any person and taken down in writing that any narcotic drug,



psychotropic substance, etc. is kept or concealed in any building, conveyance or enclosed place. This power can be exercised freely between sunrise and sunset. But, if such an officer proposes to enter and search such a building, a conveyance or enclosed place between sunset and sunrise, he must record the grounds for his belief that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender. Section 43 provides that any officer of any of the departments mentioned in Section 42 may seize in any public place or in transit, any narcotic drug, psychotropic substance, etc., in respect of which he has reason to believe that an offence punishable under the Act has been committed. He is also authorised to detain and search any person whom he has reason to believe to have committed an offence punishable under the Act. Explanation to Section 43 lays down that for the purposes of the said section, the expression “public place” includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to the public.

8. Sections 42 and 43 of the NDPS Act, therefore,



contemplate two different situations. Section 42 contemplates entry into and search of any building, conveyance or enclosed place, while Section 43 contemplates a seizure made in any public place or in transit. If the seizure is made under Section 42 between sunset and sunrise, the requirement of the proviso thereto has to be complied with. There is no such provision in Section 43, and, therefore, it is obvious that if the public search is conducted in a public place, the officer making the search is not required to record his satisfaction as contemplated by the proviso to Section 42 of the NDPS Act for searching the vehicle between sunset and sunrise. Conversely, if a private conveyance is searched in a public place, the officer making the search is required to record his satisfaction as contemplated by the proviso to Section 42 for searching the vehicle between sunset and sunrise. In other words, if a private vehicle is searched in a public place based on prior information, Section 43 is not attracted and compliance with Section 42 is mandatory.

9. Coming to the facts of the case, Annexure 7 seizure mahazar would show that the detecting officer received



information on 10/2/2026 at 1.52 a.m. that contraband was transported in a bike bearing Regn. No. KL-09 AZ 9446 and a car bearing Regn. No. KL-51 B 2535, and accordingly, they intercepted those vehicles at 4.00 a.m., and the contraband was seized from the possession of the accused No.1, who was riding the bike. There is no case for the prosecution that the bike or car driven by the accused is a public conveyance. The Supreme Court in *Jagraj Singh* (supra) has held that if search and seizure are conducted in a private vehicle at a public place between sunset and sunrise, compliance with the proviso to Section 42(1) is mandatory. Again, in *Boota Singh* (supra), the Supreme Court took the view that a private vehicle would not come within the expression 'public place' as explained in Section 43 and held that when the seizure and arrest were made while the accused was sitting in a private vehicle parked in a public place, the proviso to Section 42(1) would get attracted. However, a Single Bench of this Court in *Basil v. State of Kerala* (2023 KHC OnLine 858) held that if a conveyance, whether private or public, in transit is intercepted in a public place, then the provisions of Section 43



would be attracted, and Section 42 will have no application. While arriving at such a conclusion, the learned Single Judge distinguished the dictum laid down in *Boota Singh* (supra) on the ground that the vehicle involved therein was in a parked condition on a kacha road, and not in transit. It is pertinent to note that *Boota Singh* (supra) relied on *Jagraj Singh* (supra), wherein the vehicle involved was a private vehicle in transit on a public road. The judgment in *Jagraj Singh* (supra) was not brought to the notice of the Court or referred to in *Basil* (supra). That apart, in *Basil* (supra), the recovery was absolutely a chance recovery without any prior information. Hence, the dictum laid down in *Basil* (supra) cannot be applied to the facts of this case.

10. Since the seizure in this case was effected from a person travelling in a private vehicle in a public place upon receipt of information, the provisions of Section 42(1) and not Section 43 would be applicable. There is no case for the prosecution, and there is nothing in Annexure 7 to show that the detecting officer has recorded the ground for belief as contemplated under the proviso to Section 42(1). Therefore, there



is total non-compliance with Section 42. It is settled that the provisions of Section 42(1), which require recording of reasons for belief before effecting a search between sunset and sunrise, are mandatory and non-compliance thereof would vitiate the entire proceedings. It is equally settled that while considering the bail application, compliance with Section 42 is mandatory and is a relevant factor to be taken into account [See. *Sarija Banu Alias Janarthani Alias Janani and Another v. State Through Inspector of Police* (2004 KHC 1683)]. In *Muneer* (supra), this Court took the view that the question whether there was compliance of Section 42 or not is a question of fact and need not be considered while considering a bail application. In that case, there was substantial compliance of Section 42. There cannot be any doubt that total non-compliance of Section 42 of the NDPS act can be taken into account even at the time of considering the bail application. When there is total non-compliance of the provisions of Section 42 of the NDPS Act, the rigour of Section 37 of the NDPS Act cannot be attributed against the accused. In case of search of a private vehicle on a public road on receipt of information,



provisions of Section 42(1) and not 43 would be applicable. On failure to comply with the said provision, the accused is entitled to be released on bail.

11. As stated already, here is a case where there is total non-compliance of Section 42 of the NDPS Act. Hence, the seizure stands vitiated, and the applicant is entitled to be released on bail. It is made clear that the observation regarding non-compliance of Section 42 of the NDPS Act made above is for the limited purpose of considering this bail application.

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

BA No.2856/2026

-:11:-



2026:KER:43659

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

Rp

BA No.2856/2026

-:12:-



2026:KER:43659

APPENDIX OF BAIL APPL. NO. 2856 OF 2026

PETITIONER ANNEXURES

Annexure-1	TRUE COPY OF THE FIR IN CRIME NO.133/2026 OF WALAYAR POLICE STATION DATED 10.02.2026
Annexure-2	TRUE COPY OF THE ARREST MEMO IN CRIME NO.133/2026 OF WALAYAR POLICE STATION
Annexure-3	TRUE COPY OF THE ARREST INTIMATION TO RELATIVE IN CRIME NO.133/2026 OF WALAYAR POLICE STATION DATED 10.02.2026 TRUE COPY OF THE ARREST INTIMATION TO RELATIVE IN CRIME NO.133/2026 OF WALAYAR POLICE STATION DATED 10.02.2026
Annexure-4	TRUE COPY OF THE GROUNDS AND REASON FOR THE ARREST OF THE ACCUSED IN CRIME NO.133/2026 OF WALAYAR POLICE STATION DATED 10.02.2026
Annexure-5	TRUE COPY OF THE ORDER IN BA NO.194/2026 SESSIONS JUDGE AT PALAKKAD DATED 12.03.2026
Annexure-6	TRUE COPY OF THE ORDER IN BAIL APPLICATION NO.1983/2026 HON'BLE COURT ON 08.04.2026
Annexure-7	TRUE COPY OF THE SEIZURE MAHAZAR IN CRIME NO.133/2026 OF WALAYAR POLICE STATION DATED 10.02.2026