



2025:KER:30501

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 7TH DAY OF APRIL 2025 / 17TH CHAITHRA, 1947

WP(CRL.) NO. 240 OF 2025

CRIME NO.1498/2024 OF TIRUR POLICE STATION, MALAPPURAM

PETITIONER:

BABU M
AGED 59 YEARS
S/O DHARMAN, MACHALIL, MANGATTIRI,
TALAKKAD, MALAPPURAM, KERALA, PIN - 676105

BY ADVS.
SRI. P. SREEKUMAR, SENIOR COUNSEL
R.ANAS MUHAMMED SHAMNAD
S.RAJEEV
M.S.ANEER
T.U.SUJITH KUMAR
JUDE JAMES
MOHANAN PILLAI M.B.
SALEEK.C.A.
THAREEK T.S.
HAMDAN MANSOOR K.

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
HOME DEPARTMENT, SECRETARIAT,
THIRUVANANTHAPURAM DISTRICT, PIN - 695001
- 2 STATION HOUSE OFFICER
TIRUR POLICE STATION, MALAPPURAM DISTRICT.,



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PIN - 676101

BY ADVS.

SHRI.P.NARAYANAN, SPL. G.P. TO DGP AND ADDL. P.P.

SHRI.SAJJU.S., SENIOR G.P.

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 07.04.2025, ALONG WITH WP(CRL.).247/2025, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 7TH DAY OF APRIL 2025 / 17TH CHAITHRA, 1947

WP(CRL.) NO. 247 OF 2025

CRIME NO.447/2024 OF KOIPURAM POLICE STATION,

PATHANAMTHITTA

AGAINST THE ORDER DATED 17.02.2025 IN CMP NO.715 OF 2025 OF

ADDITIONAL DISTRICT COURT & SESSIONS COURT - III,

PATHANAMTHITTA / III ADDITIONAL MACT

PETITIONER:

J VIJAYALAKSHMI
AGED 80 YEARS
M/O. SINDHU NAIR, CHEGAZAHVALIL,
PULLANPADA, PALLIPADU P.O., VTC PALLIPPAD,
ALAPPUZHA DISTRICT., PIN - 690512

BY ADVS.
BINNY THOMAS
SUNEETHI S.
HELEN P.A.
ATHUL ROY
INDRAJITH DILEEP
AMALA ANNA THOTTUPURAM
ABHILASH T.

RESPONDENTS:

1 DEPUTY SUPERINTENDENT OF POLICE
CRIME BRANCH, CRIME BRANCH POLICE STATION,
KOLLAM, PIN - 691002



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

BY ADVS.
SHRI.P.NARAYANAN, SPL. G.P. TO DGP AND ADDL. P.P.

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 07.04.2025, ALONG WITH WP(Cr1.).240/2025, THE
COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

The common issue in these writ petitions concerns the consequence of non-compliance with the requirement of informing the grounds of arrest under Article 22(1) of the Constitution of India and Section 47(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS).

2. The petitioner in WP(Crl). No.240/2025 is the father of the accused in Crime No.1498/2024 of Tirur Police Station, Malappuram. The offence alleged is punishable under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985. The petitioner's son was arrested on 02.10.2024. Though he moved a bail application before the trial Court, it was dismissed. He is, at present, in judicial custody.

3. The petitioner in WP(Crl). No. 247/2025 is the mother of the 2nd accused in Crime No.447/2024 of Koipuram Police Station, Pathanamthitta. The crime has been transferred to the Crime Branch and re-registered as



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CB Crime No.715/2024 of CBCID, Kollam. The offences alleged are punishable under Sections 420, 409 and 120B read with Section 34 of the Indian Penal Code, 1860 and Sections 3, 21, 5 and 23 of the Banning of Unregulated Deposit Schemes Act, 2019 (BUDS Act'). The petitioner's daughter was arrested on 06.02.2025. Though she moved a bail application before the Designated Court to try the offences under the BUDS Act, it was dismissed. She is, at present, in judicial custody.

4. According to the petitioners, the accused in both crimes were arrested without furnishing the grounds of arrest and therefore, their arrest was in violation of Article 22(1) of the Constitution of India. It is in these circumstances; the petitioners have approached this Court to declare the arrest of the accused in both cases without serving the grounds of arrest as illegal and to order their release from custody forthwith.

5. I have heard Sri. P. Sreekumar, the learned Senior Counsel for the petitioner in WP(Crl) No.247/2025,



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Sri. S. Rajeev, the learned counsel for the petitioner in WP(Crl) No.240/2025, and Sri. P. Narayanan, the learned Special Public Prosecutor.

6. The counsel appearing for the petitioners 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 inasmuch as the accused were not furnished with the grounds of arrest, their arrests were illegal and are liable to be set aside. Reliance was placed on the following decisions of the Supreme Court in support of their arguments: ***Pankaj Bansal v. Union of India and Others*** [(2024) 7 SCC 576], ***Prabir Purkayastha v. State (NCT of Delhi)*** [(2024) 8 SCC 254] and ***Vihaan Kumar v. State of Haryana and Others*** [2025 SCC OnLine SC 269].

7. On the other hand, the learned 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 accused and that the trial court had already



dismissed the bail applications filed by the accused.

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 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.



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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** (supra), 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** (supra), 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. Recently, in **Vihaan Kumar** (supra), 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. The petitioners in both cases have specifically taken up a plea that the grounds of arrest were not furnished to the accused. In the statement filed by the 2nd respondent in WP(Crl) No.240/2025, it was simply stated that the accused was informed of the charges levelled against him and the grounds of arrest. In the statement filed by the 1st respondent in WP(Crl) No.247/2025, it was simply stated that, at the time of arrest, all legal formalities were duly complied with in accordance with Chapter V of the BNSS and the grounds of arrest were communicated to the accused. However, there is absolutely no material to substantiate the said plea in both cases. Admittedly, the grounds of arrest were not furnished to the accused in writing. Absolutely no material has been furnished by the respondents to prove that the grounds of arrest were communicated orally. As already stated, when the accused



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alleges non-compliance with the requirement of Article 22(1) of the Constitution, the burden is always on the arresting officer/investigating officer, to prove compliance of the same.

12. For all these reasons, I hold that the arrest of the accused in Crime No.1498/2024 of Tirur Police Station, Malappuram and the arrest of the 2nd accused in Crime No.447/2024 of Koipuram Police Station, Pathanamthitta, re-registered as CB Crime No.715/2024 of CBCID, Kollam were in violation of Article 22(1) of the Constitution of India and Section 47 of the BNSS. On the failure to comply with the requirement of informing grounds of arrest, as mandated under Article 22(1) of the Constitution, the arrest is vitiated and the person arrested cannot remain in custody even for a second [See **Vihaan Kumar** (supra)]. Hence both the accused have to be released forthwith.

13. For the aforementioned reasons, the respective trial court is directed to issue a release order to the jail



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authorities to release the accused in Crime No.1498/2024 of Tirur Police Station, Malappuram, and the second accused in Crime No.447/2024 of Koipuram Police Station, Pathanamthitta, re-registered as CB Crime No.715/2024 of CBCID, Kollam, forthwith. However, it is made clear that this judgment will not prevent the investigating agency from arresting the accused again in accordance with the law.

The writ petitions are disposed of as above.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

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APPENDIX OF WP(CRL.) 240/2025

PETITIONER'S EXHIBITS

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|------------|--|
| Exhibit P1 | TRUE COPY OF THE JUDGEMENT DATED
08.01.2025 OF THE HIGH COURT OF KERALA
IN B.A NO. 10923 OF 2024 |
| Exhibit P2 | TRUE COPY OF THE JUDGMENT DATED
25.01.2025 IN CMP NO. 77/2025 BEFORE THE
HON'BLE SPECIAL COURT FOR SC/ST (POA)
ACT & NDPS ACT CASES |



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APPENDIX OF WP(CRL.) 247/2025

PETITIONER'S EXHIBITS

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|-------------|---|
| Exhibit P1 | A TRUE COPY OF THE FIR IN CRIME NO 447 OF KOIPURAM POLICE STATION, PATHANAMTHITTA DATED 10.03.2024 |
| Exhibit P2 | A TRUE COPY OF THE FIR IN CBCID CRIME NO 715 OF 2024 OF THE CBCID KOLLAM DATED 22.06.2024 |
| Exhibit P3 | A TRUE COPY OF THE LETTER DATED 6.2.2020 ISSUED BY THE RESERVE BANK OF INDIA |
| Exhibit P4 | A TRUE COPY OF THE CERTIFICATE DATED 20.4.2020 ISSUED BY THE REGISTRAR OF COMPANIES |
| Exhibit P5 | A TRUE COPY OF THE MASTER DATA RELATING TO THE DIRECTORSHIP OF THE PETITIONER'S DAUGHTER |
| Exhibit P6 | A TRUE COPY OF THE REPORT OF THE DIRECTOR OF PULLAD FINANCE PVT LTD FOR THE FINANCIAL YEAR ENDING WITH 31.3.2022 |
| Exhibit P7 | A TRUE COY OF THE NOTICE ISSUED BY THE MANAGEMENT OF G AND G FINANCIERS |
| Exhibit P8 | A TRUE COPY OF THE ARGUMENT NOTES FILED BEFORE THE ADDITIONAL SESSIONS COURT NO III, PATHANAMTHITTA IN CRL M P NO 715 OF 2025 |
| Exhibit P9 | A TRUE COPY OF THE ORDER PASSED IN CRL M P NO 715 OF 2025 BY THE ADDITIONAL SESSIONS COURT NO III, PATHANAMTHITTA |
| Exhibit P10 | A TRUE COPY OF THE REMAND REPORT SUBMITTED IN THE ADDITIONAL SESSIONS COURT NO III, PATHANAMTHITTA DATED 07.02.2025 |