



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 10TH DAY OF JULY 2025 / 19TH ASHADHA, 1947

BAIL APPL. NO. 6388 OF 2025

CRIME NO.75/2025 OF Palluruthy Police Station, Ernakulam

AGAINST THE ORDER DATED 08.04.2025 IN CRMC NO.920 OF 2025 OF

I ADDITIONAL DISTRICT COURT, ERNAKULAM

PETITIONER/ACCUSED:

BADUSHA
AGED 30 YEARS
13/925, AMBALATHU HOUSE,
KULACHI PARAMBU, HI TECH CENTRE,
KARUVELIPADY, KOCHI, PIN - 682002

BY ADVS.
SHRI.ARJUN S.
SMT.CHITHRA MOL R.
SMT.ANJU P.V.

RESPONDENT/STATE:

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

SRI.NOUSHAD K.A., PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
01.07.2025, THE COURT ON 10.07.2025 DELIVERED THE FOLLOWING:

**"C.R."****BECHU KURIAN THOMAS, J.****B.A. No. 6388 of 2025**Dated this the 10th day of July, 2025**ORDER**

Petitioner seeks regular bail under section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. Petitioner is the accused in Crime No.75 of 2025 of Palluruthy Police Station, Ernakulam registered alleging offences punishable under section 22(c) and section 29(1) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act').

3. The prosecution alleges that on 30.01.2025, pursuant to an anonymous information received by the detecting officer, petitioner was found to be in possession of 108.938 grams of MDMA during a search of his residence kept in five zip lock pouches and thereby the accused committed the offences alleged.

4. Sri. Arjun S., the learned counsel for the petitioner, contended that the prosecution allegations are false and that the petitioner has been roped in as an accused without any legal basis. The learned counsel further pointed out that the entire proceedings resulting in the search and seizure of the contraband from the petitioner's possession is vitiated due to violation of section 42(2) of the NDPS Act. According to the learned counsel, the said



provision stipulates that a copy of the information taken down in writing be sent to the immediate superior. In the instant case, the information received by the Sub Inspector of Police was informed only to the City Police Commissioner, who is not the immediate superior. The learned counsel also submitted that a reading of the seizure mahazar will indicate that the prosecution allegations are false since there are various inconsistencies and incongruities in the prosecution case and in the seizure mahazar and hence there are no reasonable grounds to assume that the petitioner is guilty.

5. Sri. K.A. Noushad, the learned Public Prosecutor on the other hand contended that there are no statutory violations at all and the entire contentions of the petitioner are misplaced. It was also submitted that, even if it is assumed that there are some non-compliances, the same is a matter to be considered only at the time of trial. The learned Public Prosecutor further pointed out that the contentions urged on the basis of inconsistencies in the seizure mahazar and the prosecution case, are without any basis and also that the said contention has also to be considered during trial. The prosecutor further submitted that the detection was carried out by District Anti-Narcotic Special Action Force (for short 'DANSAF'), and the superior of the officers of the said squad is the City Police Commissioner in cities and the District Police Chief in districts and hence there is no violation of the statutory requirements as well.

6. I have considered the rival contentions.

7. A reading of the F.I.R indicates that at 2.30 P.M on 30.1.2025, information was received regarding contraband kept for sale in the house of



the accused. The Sub Inspector of Police, who is the detecting officer and a member of the DANSAF after preparing the report and informing the Police Commissioner of Kochi City, proceeded to the house of the petitioner.

8. The Kerala Anti Narcotic Special Action Force (KANSAF) was constituted by an order dated 27.07.2007 to act as a unified agency to enforce the NDPS Act in the State, with jurisdiction all over the State. Subsequently, in the year 2015, the State Police Chief constituted a smaller team known as the Anti Narcotic Squad (for short 'ANS') within the Special Investigation Supporting Team (for short 'SIST') to assist the local police in prevention and detection of increasing abuse of narcotic drugs and psychotropic substances in Kerala. Since the performance of the ANS was outstanding, it was decided in 2016, to integrate the ANS with KANSAF. By the same order, a District Anti-Narcotic Special Action Force (DANSAF) was also constituted, headed by the District Police Chief and one DYSP/Assistant Commissioner of Police was also designated as the district team leader. Each DANSAF was to have not more than 15 police personnel of different ranks. The Executive Directive No.31/2017 dated 16.10.2017 issued by the State Police Chief, revamped the KANSAF and created the DANSAF. It is thus evident that in the DANSAF in a district, the District Police Chief is the head.

9. The term 'immediate official superior' in section 42(2) of NDPS Act cannot be interpreted in a manner that destroys the purpose of the provision. The term 'immediate official superior' is not to be interpreted in the eyes of bureaucratic hierarchy of officers, but must be interpreted in a manner that has relation to the context. Reference to the decision in **Manoj @ Lakha**



Laxman Gavai v. The State of Maharashtra (2006 SCC Online Bom 219) is relevant.

10. The intention behind the requirement of the information to be given to the 'immediate official superior' is to prevent abuse of the powers of search, seizure and arrest. In the instant case, the Detecting Officer, who was a team member of the DANSAF, gave information, taken down by him in writing, to the City Police Commissioner. Under the DANSAF, though the Assistant Police Commissioner is a team leader, the City Police Commissioner is its head and is also the official superior of the Detecting Officer in the City. The City Police Commissioner oversees the entire operation of the DANSAF in the city under his jurisdiction. In the context of DANSAF, certainly, the City Police Commissioner is an 'immediate official superior'.

11. Apart from the above, it has to be borne in mind that, in 2001, section 42(2) of NDPS Act was amended and '*shall forthwith send a copy thereof to his immediate official superior*' was changed to '*shall within seventy two hours send a copy thereof to his immediate official superior*'. The amendment indicates the legislative intention. From a mandatory requirement, it has become a discretionary measure. The requirement to intimate the immediate official superior now needs to be carried out only within 72 hours, indicating that delay in intimating, by itself, is not crucial. Therefore, strictly speaking, substantial compliance of section 42(2) of the NDPS Act will suffice.

12. In this context, it is relevant to refer to the decision in **Karnail Singh v. State of Haryana** [(2009) 8 SCC 539], wherein it was observed that if the statutory requirement under S.41(2) and S.42(2) of the Act of writing



down the information is interpreted as a mandatory provision, it will disable the haste of an emergency situation and may turn out to be in vain with regard to the criminal search and seizure. After noting that these provisions should not be misused by the offenders as a major ground for acquittal, the Court observed that these provisions should be taken as discretionary measures which should check the misuse of the Act rather than providing an escape to the hardened drug peddlers. Notwithstanding the above, the Supreme Court held that while total non-compliance of requirements of S.42(2) of the NDPS Act is impermissible, as in a case where the police officer does not record the information at all, and does not inform the official superior at all, the question whether there has been adequate or substantial compliance with S.42 or not is a question of fact to be decided in each case.

13. Viewed in the light of the above decision of the Constitution Bench of the Supreme Court, substantial compliance of section 42(2) of the NDPS Act alone is necessary. Sending a copy of the information taken down by the Detecting Officer, who is a member of the DANSAF, to the City Police Commissioner is in substantial compliance with the requirement.

14. Even otherwise, if it is assumed that the Assistant Commissioner of Police in a city, being a team leader of DANSAF is regarded as the immediate official superior to a member of the DANSAF team, still the requirement of section 42(2) of the NDPS Act will stand satisfied by intimation to the Commissioner of the City, as he is the official superior of the team leader and also heads the DANSAF. Since the petitioner has informed the superior officer of the city, who is the head of the DANSAF team of the city, I find no merit in



the contentions advanced by the petitioner. The question whether there was a proper compliance or substantial compliance of the requirements, is a matter to be considered at the time of trial.

15. In the decision in **Union of India through Narcotics Control Bureau, Lucknow vs. Md. Nawaz Khan** [(2021) 10 SCC 100] the Supreme Court has observed that the contention regarding non-compliance with section 42 of the NDPS Act has to be raised in the course of the trial. A learned Single Judge of this Court had also observed in **Jomon vs. State of Kerala** [2025 (2) KLT 421] following the decision in **Md. Nawaz Khan's** case (supra) that violation of the requirements of section 42 is a matter to be raised in the course of trial.

16. As far as the inconsistencies and incongruities pointed out in the seizure mahazar, those are not significant at least at this stage and hence all those matters have to be decided after trial.

17. On a consideration of the entire circumstances arising in the case, this Court is of the view that the application is without merit.

Accordingly, this bail application is dismissed.

Sd/-
BECHU KURIAN THOMAS
JUDGE

vps



APPENDIX OF BAIL APPL. 6388/2025

PETITIONER'S/S' ANNEXURES

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| Annexure 1 | TRUE COPY OF CR.NO.75 OF 2025 OF PALLURUTHY
KASABA POLICE STATION ERNAKULAM DISTRICT DTD
31.01.2025 |
| Annexure 2 | TRUE COPY OF THE SEIZURE MAHAZAR DTD
30.01.2025 |
| Annexure 3 | TRUE COPY OF THE REPORT SUBMITTED BY THE
SUPERINTENDENT - MATTACHERY SUB JAIL BEFORE
THE HON'BLE 1ST ADDITIONAL SESSIONS COURT
ERNAKULAM DTD 02.04.2025 |
| Annexure 4 | TRUE COPY OF THE ORDER OF THE HON'BLE 1ST
ADDITIONAL SESSIONS COURT-ERNAKULAM IN
CRL.MC.NO.920/2025 DTD 08.04.2025 |