



2025:KER:10727

BAIL APPL. NO. 910 OF 2025

1

C.R.

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 10TH DAY OF FEBRUARY 2025 / 21ST MAGHA, 1946

BAIL APPL. NO. 910 OF 2025

CRIME NO.398/2024 OF Kadavanthra Police Station, Ernakulam

PETITIONER/S:

MOHAMMED SAJJID
AGED 25 YEARS
S/O ABDUL GAFOOR, BA HOUSE, MARA 4TH MILE,
CHENGALA, KASARGODE, KASARGODE, KERALA, PIN -
671541

BY ADVS.
FRANCIS ASSISI
AJEESH S.BRITE
AMRUTHA P S
MANJU LUCKOSE

RESPONDENT/S:

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

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
10.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



2025:KER:10727

BAIL APPL. NO. 910 OF 2025

2

C.R.

P.V.KUNHIKRISHNAN, J.

B.A.No.910 of 2025

Dated this the 10th day of February, 2025

ORDER

This Bail Application is filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita (for short, BNSS).

2. Petitioner is an accused in Crime No.398/2024 Kadavanthra Police Station. The above case is registered against the petitioner alleging offences punishable under Section 22(b) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, NDPS Act).

3. The prosecution case is that, on 11/11/2024 at about 11.00 P.M, the Police party, on secret information, conducted a raid at Noa's Arch Hotel at Vyttila and seized 2.28 grams of MDMA from Room No.304. The petitioner was present there and he was arrested on 12/11/2024.



Hence it is alleged that the accused committed the offence.

4. Heard counsel for the petitioner and the Public Prosecutor.

5. The counsel for the petitioner submitted that the petitioner is entitled to statutory bail under Section 187(3) of BNSS. According to the counsel for the petitioner, the petitioner was arrested on 12.11.2024. He moved an application before the First Additional Sessions Judge, Ernakulam under Section 187(3) of BNSS for bail. The same was not considered by the Sessions Judge is the submission. According to the petitioner, he is entitled to statutory bail under Section 187(3) of BNSS. The counsel for the petitioner relied on the judgment of the Apex Court in **Rakesh Kumar Paul v. State of Assam** [2017 (4) KHC 470] and the decision of the Karnataka High Court in the **State of Karnataka by Kavour Police Station v. Kalandar Shafi** [2024 KHC Online 5417]. The counsel submitted that the offence alleged against the petitioner is



under Section 22(b) of the NDPS Act, in which the maximum punishment that can be imposed is ten years. Therefore he is entitled to the benefit of Section 187(3) of BNSS.

6. The Public Prosecutor opposed the bail application and submitted that the petitioner is not entitled to statutory bail under Section 187(3) of BNSS. The Public Prosecutor took me through Section 187(3) of BNSS and also Section 167(2) of the Code of Criminal Procedure (For short, Cr.P.C.). The Public Prosecutor submitted that there is a slight difference between Section 167(2) Cr.P.C. and the corresponding Section 187(3) of BNSS. The counsel relied on an article of a former Judge of this Court (Justice R. Narayana Pisharadi [2025 (1) KHC J-33]) and submitted that as per BNSS, the words used in Section 187(3) of BNSS are different from the words used in Section 167(2) Cr.P.C. and therefore the decisions cited by the petitioners are not applicable and petitioner is not entitled to the



benefit of Section 187(3) of BNSS.

7. This Court considered the contentions of the petitioner and the Public Prosecutor. The offence alleged against the petitioner is under Section 22(b) of the NDPS Act. Section 22(b) of the NDPS Act is extracted hereunder:

"22. Punishment for contravention in relation to psychotropic substances- Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any psychotropic substance shall be punishable, -

(a) xxxxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxx

(b) where the contravention involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years and with fine which may extend to one lakh rupees;

(c) xxxxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxx"



From the above provision, it is clear that the maximum punishment that can be imposed for an offence under Section 22(b) of the NDPS Act is ten years. Section 36A of the NDPS Act is extracted hereunder:

36A. Offences triable by Special Courts.--

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973,

(a) all offences under this Act which are punishable with imprisonment for a term of more than three years shall be triable only by the Special Court constituted for the area in which the offence has been committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the Government;

(b) where a person accused of or suspected of the commission of an offence under this Act is forwarded to a Magistrate under sub-section (2) or sub-section (2A) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate



and seven days in the whole where such Magistrate is an Executive Magistrate:

Provided that in cases which are triable by the Special Court where such Magistrate considers

—

- (i) when such person is forwarded to him as aforesaid; or
- (ii) upon or at any time before the expiry of the period of detention authorised by him, that the detention of such person is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction;
- (c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 (2 of 1974), in relation to an accused person in such case who has been forwarded to him under that section;
- (d) a Special Court may, upon perusal of police report of the facts constituting an offence under this Act or upon complaint made by an officer of the Central Government or a State Government authorised in his behalf, take cognizance of that offence without the accused



being committed to it for trial.

(2) When trying an offence under this Act, a Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974), and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section included also a reference to a "Special Court" constituted under section 36.

(4) In respect of persons accused of an offence punishable under section 19 or section 24 or section 27A or for offences involving commercial quantity the references in sub-section (2) of section 167 of the Code of Criminal Procedure, 1973 (2 of 1974) thereof to "ninety days", where they occur, shall be construed as reference to "one hundred and eighty days":

Provided that, if it is not possible to complete the investigation within the said period of one hundred and eighty days, the Special Court may extend the said period up to one year on the report of the Public Prosecutor indicating the progress of the



investigation and the specific reasons for the detention of the accused beyond the said period of one hundred and eighty days.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the offences punishable under this Act with imprisonment for a term of not more than three years may be tried summarily.”

8. Section 36A of the NDPS Act in effect modifies the application of Section 167 Cr.P.C. in cases involving offences punishable under Sections 19, 24 and 27A or for the offences of commercial quantity under the Act. It permits the investigation in the cases involving the above offences to be completed within a period of 180 days with the further proviso that the Special Court is empowered to extend that period up to one year if it is satisfied that, it is not possible to complete the investigation within the said period of 180 days based on the report of the Public Prosecutor detailing the progress of the investigation and the specific reasons for the detention of the accused



beyond the said period of 180 days.

9. But, as far as the other offences are concerned, in which commercial quantity is not involved, the provision of Section 167 of Cr.P.C is applicable. Admittedly in this case the quantity seized is not a commercial quantity.

10. Section 167 Cr.P.C deals with procedure when an investigation cannot be completed in 24 hours. It will be better to extract Section 167 of Cr.P.C.

167. Procedure when investigation cannot be completed in twenty-four hours

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused



person is forwarded under this section may, whether he has or has no jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

PROVIDED that,-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or **imprisonment for a term of not less than ten years;**

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this subsection shall be deemed to be so released under the provisions of Chapter XXXIII for



the purposes of that Chapter;

(b) no Magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

(c) no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I: For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II: If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be.

PROVIDED FURTHER that in case of women under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution.

(2A) xxxxxxxxxxxxxxxx

(3) xxxxxxxxxxxxxxxx

(4) xxxxxxxxxxxxxxxx



(5) xxxxxxxxxxxxxxxx

(6) xxxxxxxxxxxxxxxx

11. As per Section 167(2)(a)(i) of Cr.P.C, the Magistrate may authorise the detention of the accused person, otherwise than in custody of police, beyond the period of 15 days, if he is satisfied that adequate ground exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment **for a term of not less than 10 years.** Here the words used are 'for a term of not less than 10 years.' As per Section 167(2)(a)(ii), the Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding 60 days, where the investigation relates to any other offence. The section also says that on the expiry of the said 90 days or 60 days as the case may be, the



accused person shall be released on bail, if he is prepared to and does furnish bail and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purpose of that chapter.

12. The corresponding Section of Section 167 of Cr.PC in BNSS is Section 187. It will be better to extract Section 187 of BNSS:-

187. Procedure when investigation cannot be completed in twenty-four hours.

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 58, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter specified relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, irrespective of whether he has or has no jurisdiction to try the case, after taking into consideration whether such person has



not been released on bail or his bail has been cancelled, authorise, from time to time, the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole, or in parts, at any time during the initial forty days or sixty days out of detention period of sixty days or ninety days, as the case may be, as provided in sub-section (3), and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

(3) The Magistrate may authorise the detention of the accused person, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or **imprisonment for a term of ten years or more;**

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXV for the purposes of that Chapter.

(4) No Magistrate shall authorise detention of the accused in custody of the police under this section



unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the audio-video electronic means.

(5) No Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.

Explanation I - For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in sub-section (3), the accused shall be detained in custody so long as he does not furnish bail.

Explanation II - If any question arises whether an accused person was produced before the Magistrate as required under sub-section (4), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the audio-video electronic means, as the case may be:

Provided that in case of a woman under eighteen years of age, the detention shall be authorised to be in the custody of a remand home or recognised social institution:

Provided further that no person shall be detained otherwise than in police station under police custody or in prison under judicial custody or a place declared as prison by the Central Government or the State Government.

(6) xxxxxxxxxxxxxx

(7) xxxxxxxxxxxxxx



- (8) xxxxxxxxxxxxxx
- (9) xxxxxxxxxxxxxx
- (10) xxxxxxxxxxxxxx

13. As per Section 187 of BNSS, the Magistrate may authorise the detention of the accused persons beyond the period of 15 days, if he is satisfied that adequate ground exists for doing so, but no magistrate shall authorise the detention of the accused person in custody under this sub-section for a total period exceeding 90 days, where the investigation relates to an offence punishable with death, imprisonment for life or **imprisonment for a term of 10 years or more.**

14. As per Section 187(3)(ii), the Magistrate may authorise the detention of the accused person in custody under this sub-section for a total period exceeding 60 days, where the investigation relates to any other offence.

15. A comparative study of Section 167(2)(a)(i) of Cr.P.C and 187(3)(i) of BNSS would show that the words used are 'for a term of not less than 10 years' and 'for a



term of 10 years or more'. It is true that there is a slight difference between the words in BNSS and Cr.P.C. The words in Section 167(2)(a)(i) Cr.P.C are interpreted by the Hon'ble Apex Court in **Rakesh Kumar Paul (supra)**. It will be better to extract the relevant portion of the above judgment:-

24. "In the context of the word "punishable" occurring in Clause (i) and the meaning attached to this word taken from several dictionaries, this Court held in Bhupinder Singh that where a minimum and maximum sentence is prescribed, both are imposable depending upon the facts of the case. Therefore, if an offence is punishable with imprisonment that may extend upto or beyond or including 10 years, then the period available for completing investigations would be 90 days before the provision for 'default bail' kicks in. It was said in paragraph 15 of the Report:

"Where minimum and maximum sentences are prescribed, both are imposable depending on the facts of the cases. It is for the court, after recording conviction, to impose appropriate sentence. It cannot, therefore, be accepted that only the minimum sentence is imposable and not the maximum sentence. Merely because minimum sentence is



provided that does not mean that the sentence imposable is only the minimum sentence."

25. While it is true that merely because a minimum sentence is provided for in the statute it does not mean that only the minimum sentence is imposable. Equally, there is also nothing to suggest that only the maximum sentence is imposable. Either punishment can be imposed and even something in between. Where does one strike a balance? It was held that it is eventually for the court to decide what sentence should be imposed given the range available. Undoubtedly, the Legislature can bind the sentencing court by laying down the minimum sentence (not less than) and it can also lay down the maximum sentence. If the minimum is laid down, the sentencing judge has no option but to give a sentence "not less than" that sentence provided for. Therefore, the words "not less than" occurring in Clause (i) to proviso (a) of Section 167(2) of the Cr.P.C. (and in other provisions) must be given their natural and obvious meaning which is to say, not below a minimum threshold and in the case of Section 167 of the Cr.P.C. these words must relate to an offence punishable with a minimum of 10 years imprisonment.

26. Of the two views expressed by this Court, we accept the view in **Rajeev Chaudhary**.

27. It is true that an offence punishable with a sentence of death or imprisonment for life or imprisonment for a term that may extend to 10 years is a serious offence entailing intensive and



perhaps extensive investigation. It would therefore appear that given the seriousness of the offence, the extended period of 90 days should be available to the investigating officer in such cases. In other words, the period of investigation should be relatable to the gravity of the offence - understandably so. This could be contrasted with an offence where the maximum punishment under the IPC or any other penal statute is (say) 7 years, the offence being not serious or grave enough to warrant an extended period of 90 days of investigation. This is certainly a possible view and indeed the Cr.P.C. makes a distinction in the period of investigation for the purposes of 'default bail' depending on the gravity of the offence. Nevertheless, to avoid any uncertainty or ambiguity in interpretation, the law was enacted with two compartments. Offences punishable with imprisonment of not less than ten years have been kept in one compartment equating them with offences punishable with death or imprisonment for life. This category of offences undoubtedly calls for deeper investigation since the minimum punishment is pretty stiff. All other offences have been placed in a separate compartment, since they provide for a lesser minimum sentence, even though the maximum punishment could be more than ten years imprisonment. While such offences might also require deeper investigation (since the maximum is quite high) they have been kept in a different compartment because of the lower minimum imposable by the sentencing court, and thereby reducing the period of incarceration during



investigations which must be concluded expeditiously. The cut-off, whether one likes it or not, is based on the wisdom of the Legislature and must be respected.

XXXX XXXX XXXX

100. A bare reading of S.167 of the Code clearly indicates that if the offence is punishable with death or life imprisonment or with a minimum sentence of 10 years, then S.167(2)(a)(i) will apply and the accused can apply for 'default bail' only if the investigating agency does not file charge - sheet within 90 days. However, in all cases where the minimum sentence is less than 10 years but the maximum sentence is not death or life imprisonment then S.167(2) (a) (ii) will apply and the accused will be entitled to grant of 'default bail' after 60 days in case charge - sheet is not filed.

101. Even if I were to assume that two views are possible and third category envisaged in S.167(2) (a)(ii) is ambiguous, as suggested by learned brother Pant, J., then also I have no doubt in my mind that a Statute which curtails the liberty of a person must be read strictly. When any human right; a Constitutional fundamental right of a person is curtailed, then the Statute which curtails such right must be read strictly. S.167 of the Code lays down the procedure established by law by which a person can be deprived of his personal liberty, guaranteed to him under Art.21 of the



Constitution of India. If two meanings could be attributed to such a provision then the Courts must lean towards liberty and accept that interpretation of the Statute, which upholds the liberty of the citizen and which keeps the eternal flame of liberty alive. If words are ambiguous then also the Court should be reluctant to accept that interpretation which curtails the right of a human being of being free."

16. From the above decision, it is clear that the Hon'ble Apex Court interpreted the word "not less than" and observed that, it means imprisonment should be 10 years or more and would cover only those offences for which punishment could be imprisonment for a clear period of 10 years or more.

17. The petitioner relied on this and submitted that almost the same words are used in Section 187(3)(i) of BNSS as - 'for a term of 10 years or more'. The Public Prosecutor relied on an Article of a Former Judge of this Court, which is reported in Kerala High Court cases [2025 (1) KHC J-33]. This Court perused the Article. The learned Judge only observed that in the light of the amendment in



BNSS as far as 187(3)(ii) compared to Section 167(2)(a)(i) of Cr.P.C an authoritative judgment is necessary from the Hon'ble Apex Court in the light of the dictum in **Rakesh Kumar Paul's** Case.

18. I am of the considered opinion that as long as the dictum in **Rakesh Kumar Paul's** case (supra) is in force, this Court need not further interpret Sec.187(3)(i) of the BNSS. The words used in Sec. 167(2)(a)(i) Cr.P.C.is "not less than 10 years". The Apex Court observed that this phrase indicates that, for Sec. 167(2)(a) (i) Cr.P.C. to apply, the minimum sentence that can be imposed for an offence should be 10 years. But in Sec. 187(3)(i), it is clearly stated that "for a term of 10 years or more". There is no much difference between the words "for a term of 10 years or more" mentioned in BNSS and "not less than 10 years" mentioned in Sec. 167(2)(a) (i) Cr.P.C. While interpreting a statute, in case of ambiguity, whether actual or assumed, the ambiguity must be resolved in favour of



the accused persons since liberty is at stake. The Apex Court in ***Enforcement Directorate, Government of India v. Kapil Wadhawan*** [2023 (2) KHC 663] observed like this :

"40. In construction of a penal statute in case of ambiguity, whether actual or assumed, in order to, fulfill the legislative intent underlying S.167(2) CrPC, the ambiguity must be resolved in favour of the accused person since liberty is at stake. This was the opinion expressed in M. Ravindran (supra) where the following was pronounced: "whenever there is any ambiguity in the construction of a penal statute, the Courts must favour the interpretation which leans towards protecting the rights of the accused, given the ubiquitous power disparity between an individual and the State."

41. Similarly, In Rakesh Paul (supra), a three - judge bench of this court, in context of, S.167, held that where, on reading the statute, two views are possible, then the provision that curtails individual liberty should be read strictly. It was observed that since Art.21 rights are involved, the Court should lean in favour of the interpretation that upholds and protects personal liberty (Rakesh Kumar Paul vs.



State of Assam, 2017 (15) SCC (109) para 72-73, (per Lokur J.)). This interpretation is also supported by the idea that Constitutional law is logically, morally and legally superior to the statutory law (VM Bachal, The Indian Journal of Political Science, Vol. 25, No. 3/4, Conference Number For XXVI Indian Political Science Conference 1964: Annamalainagat (July - Sept. - December, 1964), pp. 231-240). Therefore, any statutory provision, must be in conformity with the constitutional law. Further, In the specific context of the right to default Bail, under the first proviso to S.167 (2) of the CrPC, this court in Gautam Navlakha (supra) held that, right to default bail is a fundamental right and in case a remand order is passed mechanically or in violation of law or be afflicted with vice of lack of jurisdiction, a writ of habeas corpus would lie."

19. The Division Bench of the Allahabad High Court in ***Shyam Lal v. State*** [1968 KHC 4079] observed like this

"12. It seems to us clear that the true rule of construction of a penal statute is that where the legislature evinces its intention to modify the law, in favour of the accused, so as to reduce the rigour of the law in the light of past experience and changed



social conditions, so long as prosecution of the accused has not concluded by a judgment of conviction, the proceedings against him are regarded as inchoate and the law applicable to him would be the law as amended by the legislature. The Court trying an accused person has to take into consideration the law as it exists on the date of the judgment. It seems reasonable that an accused person cannot render himself liable to a higher punishment under a statute which has ceased to exist and has been substituted by a new law which favours him. Where the question as to the interpretation of a penal statute is concerned, the Court must construe its provisions beneficially in regard to their applicability to the accused. It would be violating the spirit of the law and the will of the Legislature as expressed in the amending statute to sentence an accused person on the basis of the original Act which has been considered by the Legislature to be harmful and harsh against public interest.” (emphasis supplied)

20. The Delhi High Court in **Varun Goyal v. State NCT of Delhi** [2024 KHC Online 2864] observed like this :

“59. Provision of S.167(2), CrPC is in the nature of beneficial provision. It is settled law that in case of any ambiguity or doubt, the benefit has to go in



favor of the accused.

60. *Needless to say that in a matter of personal liberty, the statute has to be interpreted strictly and no leverage or benefit can be extended to the prosecution and an interpretation in favour of the accused is to be accepted. Failure of the prosecution cannot be at the detriment of the accused."*

21. I respectfully agree with the dictum laid down by the Delhi High Court and Allahabad High Court. I am of the considered opinion that while interpreting Sec. 187(3), the interpretation which will favour the accused's liberty should be adopted by a court of law. Moreover, the Karnataka High Court took the same stand in a similar situation in the ***State of Karnataka by Kavoore Police Station v. Kalandar Shafi*** [2024 KHC Online 5417].

"14. If the offences now alleged are taken note of against these accused, the maximum punishment is that can be extended up to ten years. It is not ten years or more. Therefore, the police custody should be within forty days of investigation and final report is filed within 60 days of investigation. It is brought to the notice of the Court that the prosecution filed the



application invoking Section 140 of BNS. If that has been invoked, it is for the concerned Court to pass orders by regulating its procedure. The interpretation that fell to the hands of the Court is interpreted as aforesaid.

SUMMARY OF FINDINGS:

(i) A slight tweak in the new regime qua 187(3) of BNSS in juxtaposition to Section 167(2) of the earlier regime -the Cr.P.C. has not changed the purpose of the provision.

(ii) The phraseology of the words 'ten years or more' found in sub-clause (i) of Section 187(3) of the BNSS would mean, the minimum threshold punishment imposable on an offence under the BNS should be ten years

(iii) The offence in the case at hand, does not bear a minimum threshold sentence of ten years, but is extendable or to an extent of ten years, which would mean, discretion available to the concerned Court to impose punishment up to ten years. Therefore, the minimum threshold is not ten years.

(iv) Completion of investigation in a punishment which is up to ten years is undoubtedly 60 days. Rest



of the other offences, be it death, life imprisonment of ten years and more, would be 90 days.

(v) If the investigation is to complete within 60 days, the period of police custody would run from day one day forty of registration of the crime. If it is 90 days, it would run from day one to day 60, maximum period in both the cases is 15 days of police custody.

(vi) In the case at hand, the offence is punishable up to ten years, Therefore, the police custody is only from day one to day forty."

22. I fully agree with the decision of the Karnataka High Court. The contention of the Public Prosecutor is that a different meaning is given in Sec. 187(3) of the BNSS in place of Sec.167(2)(a)(i) Cr.P.C. cannot be accepted. The dictum laid down by the Apex Court in **Rakesh Kumar Paul's case** (supra) is equally applicable to Sec. 187(3) of the BNSS also. Therefore, I am of the considered opinion that the petitioner in this case is entitled to statutory bail under sec. 187(3) BNSS.

23. The counsel for the petitioner took me through



the Annexure-A1 order passed by the 1st Addl. Sessions Judge, Ernakulam. The counsel submitted that, the application was filed under Sec. 187(3) of the BNSS before the sessions judge. Even then, the learned Sessions Judge did not consider the same. When an application is filed under Sec. 187(3) of the BNSS, it is the duty of the court to consider that contention. The learned Sessions Judge dismissed the application mainly for the reason that the petitioner has antecedents. Simply because the petitioner has antecedents or he is an habitual offender, an application for statutory bail under Sec. 187(3) of the BNSS cannot be rejected. Therefore, I am of the considered opinion that the petitioner is entitled to statutory bail under Sec. 187(3) of the BNSS.

Therefore, this bail application is allowed with the following directions.

1. The petitioner shall be released on bail on executing a bond for Rs.50,000/- (Rupees



Fifty Thousand only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

2. The petitioner shall appear before the Investigating Officer for interrogation as and when required. The petitioner shall cooperate with the investigation and shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer.

3. Petitioner shall not leave India without permission of the jurisdictional Court.

4. Petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.



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5. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance with the law, even though the bail is granted by this Court. The prosecution is at liberty to approach the jurisdictional court to cancel the bail, if there is any violation of the above conditions.

**Sd/-
P.V.KUNHIKRISHNAN
JUDGE**

JV/AMR/SKS