



2026:KER:12815

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 12TH DAY OF FEBRUARY 2026 / 23RD MAGHA, 1947

BAIL APPL. NO. 723 OF 2026

CRIME NO.1578/2025 OF SULTHAN BATHERY POLICE STATION,
WAYANAD

PETITIONER/ACCUSED:

SHAMEEM,
AGED 33 YEARS
KAITHAVALAPPIL HOUSE, WEST VILLOOR, INDIAN00R,
KOTTAKKAL, MALAPPURAM DISTRICT, PIN - 676503

SRI.P.MOHAMED SABAH
SRI.LIBIN STANLEY
SMT.SAIPOOJA
SRI.SADIK ISMAYIL
SMT.R.GAYATHRI
SRI.M.MAHIN HAMZA
SRI.ALWIN JOSEPH
SRI.BENSON AMBROSE

RESPONDENTS/STATE & COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM DISTRICT, PIN - 682031
- 2 THE STATION HOUSE OFFICER,
SULTHAN BATHERY POLICE STATION,
WAYANAD DISTRICT, PIN - 673592

SRI.M.C. ASHI, SR. PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
12.02.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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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 sole accused in Crime No.1578/2025 of Sulthan Bathery Police Station, Wayanad District. The offence alleged is punishable under Section 22 (c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short 'the NDPS Act').

3. The prosecution case, in short, is that on 22.11.2025 at about 10.15 a.m., the applicant was found in possession and transportation of 95.93 grams of MDMA in a car bearing registration no.KL-65N-6229 near Muthanga Police Check Post at Noolpuzha Amsom in contravention of the NDPS Act and Rules and thereby committed the aforementioned offence.

4. I have heard Sri.P.Mohamed Sabah, the learned counsel for the applicant and Sri.M.C.Ashi, the learned Senior Public Prosecutor. Perused the case diary.

5. The learned counsel appearing for the applicant 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 Section 47 of the BNSS and inasmuch as the applicant was not furnished with the grounds of arrest, his arrest was illegal and is liable to be released on bail. On the other hand, the learned Senior 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 applicant. It is further submitted that the alleged incident occurred as part of the intentional criminal acts of the applicant and hence he is not entitled to bail at this stage.

6. The applicant was arrested on 22.11.2025 and since then he is in judicial custody.

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

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 of BNSS 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 of the Constitution.

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 v. Union of India and Others*** [(2024) 7 SCC 576], 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 v. State (NCT of Delhi) [(2024) 8 SCC 254], 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. In ***Vihaan Kumar v. State of Haryana and Others*** (2025 SCC OnLine SC 269], 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. In ***Kasireddy Upender Reddy v. State of Andhra Pradesh*** (2025 SCC OnLine SC 1228), the Supreme Court held that reading out the grounds of arrest stated in the arrest warrant would tantamount to compliance of Art.22 of the Constitution. It was further held that when an accused person is arrested on warrant and it contains the reason for arrest, there is no requirement to furnish the grounds for arrest separately and a reading of the warrant to him itself is sufficient compliance with the requirement of informing the grounds of his arrest. In ***State of Karnataka v. Sri Darshan*** (2025 SCC OnLine SC 1702), it was held that neither the Constitution nor the relevant statute prescribes a specific form or insists upon a written communication in every case. Substantial compliance of the same is sufficient



unless demonstrable prejudice is shown. It was further held that individualised grounds are not an inflexible requirement post Bansal and absence of written grounds does not *ipso facto* render the arrest illegal unless it results in demonstrable prejudice or denial of an opportunity to defend. However, in **Ahmed Mansoor v. State** (2025 SCC OnLine SC 2650), another two Judge Bench of the Supreme Court distinguished the principles declared in **Sri Darshan** (supra) and observed that in **Sri Darshan** (supra), the facts governing are quite different in the sense that it was a case dealing with the cancellation of bail where the chargesheet had been filed and the grounds of detention were served immediately. Recently, in **Mihir Rajesh Shah v. State of Maharashtra and Another** (2025 SCC OnLine SC 2356), the three Judge Bench of the Supreme Court held that grounds of arrest must be informed to the arrested person in each and every case without exception and the mode of communication of such grounds must be in writing in the language he understands. It was further held that non supply of grounds of arrest in writing to the arrestee prior to or immediately after arrest would not vitiate such arrest provided said grounds are supplied in writing within a reasonable time and in any case two hours prior to the production of arrestee before



the Magistrate.

12. A Single Bench of this Court in ***Yazin S. v. State of Kerala*** (2025 KHC OnLine 2383) and in ***Rayees R.M. v. State of Kerala*** (2025 KHC 2086) held that in NDPS cases, since the quantity of contraband determines whether the offence is bailable or non bailable, specification of quantity is mandatory for effective communication of grounds. It was further held that burden is on the police to establish proper communication of the arrest. In ***Vishnu N.P. v. State of Kerala*** (2025 KHC OnLine 1262), another Single Judge of this Court relying on all the decisions of the Supreme Court mentioned above specifically observed that the arrest intimation must mention not only the penal section but also the quantity of contraband allegedly seized.

13. The following principles of law emerge from the above mentioned binding precedents.

(i) The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC/BNS.

(ii) The grounds of arrest must be communicated in writing to the arrestee in the language he understands.

(iii) In cases where the arresting officer/person is unable to



communicate the grounds of arrest in writing soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case at least two hours prior to the production of the arrestee for the remand proceedings before the Magistrate.

(iv) In NDPS cases, specification of quantity of the contraband seized is mandatory for effective communication of grounds of arrest.

(v) In case of non compliance of the above, the arrest and the subsequent remand would be rendered illegal and the arrestee should be set free forthwith.

(vi) The burden is on the police to establish the proper communication of grounds of arrest.

(vii) The filing of charge sheet and cognizance of the order cannot validate unconstitutional arrest.

14. I went through the case diary. The learned counsel for the applicant submitted that the grounds of arrest were not intimated to the relative in writing and since the arrest was after the decision of **Mihir Rajesh Shah** (supra), the arrest is vitiated. However, the learned Senior Public Prosecutor invited my attention to the remand report. It would show that even though



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the relative was asked over the phone to appear before the arresting officer, he expressed his unwillingness to appear. Accordingly, the grounds of arrest were intimated to him through a WhatsApp message. Hence, I am of the view that there is substantial compliance. Therefore, the applicant is not entitled to be released on bail.

The bail application is, accordingly, dismissed.

**Sd/-
DR. KAUSER EDAPPAGATH
JUDGE**

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APPENDIX OF BAIL APPL. NO. 723 OF 2026

PETITIONER ANNEXURES

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| Annexure 1 | TRUE COPY OF THE REMAND REPORT DATED 22.11.2025 OF THE PETITIONER IN CRIME NO. 1578/2025 OF SULTHAN BATHERY POLICE STATION, WAYANAD DISTRICT |
| Annexure 2 | TRUE COPY OF THE SEIZURE MAHAZAR DATED 22.11.2025 OF THE PETITIONER IN CRIME NO. 1578/2025 OF SULTHAN BATHERY POLICE STATION, WAYANAD DISTRICT |
| Annexure 3 | TRUE COPY OF THE ARREST MEMO OF THE PETITIONER IN CRIME NO. 1578/2025 OF SULTHAN BATHERY POLICE STATION, WAYANAD DISTRICT |
| Annexure 4 | TRUE COPY OF THE NOTICE UNDER SECTION 47 (1) OF BNSS GIVEN TO THE PETITIONER IN CRIME NO. 1578/2025 OF SULTHAN BATHERY POLICE STATION, WAYANAD DISTRICT |
| Annexure 5 | TRUE COPY OF THE ORDER DATED 08.01.2026 IN CRL.M.C NO.981/2025 PASSED BY THE HONOURABLE SPECIAL COURT FOR NDPS ACT CASES, KALPETTA, WAYANAD |