2026:KER:10342

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 4TH DAY OF FEBRUARY 2026 / 15TH MAGHA, 1947

BAIL APPL. NO. 13355 OF 2025

CRIME NO.101/2024 OF Sulthanbathery Excise Range Office, Wayanad
AGAINST THE JUDGMENT DATED 25.09.2025 IN Bail Appl. NO.11452 OF 2025 OF HIGH COURT OF KERALA

PETITIONER/ACCUSED NO.1 (IN CUSTODY FROM 16.7.2024):

ABID
AGED 36 YEARS, SON OF KUNHAHAMMAD
PALLIYALI HOUSE, MOOCHIKKAL, PARAMBILPEEDIKA P.O,
PERUVALLUR VILLAGE,
MALAPPURAM DISTRICT, PIN - 676317

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

RESPONDENTS/STATE AND COMPLAINANT:

1 **STATE OF KERALA**
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM DISTRICT, PIN - 682031

2026:KER:10342

2 THE EXCISE INSPECTOR
EXCISE RANGE OFFICE, SULTHAN BATHERY, SULTHAN BATHERY P.O, WAYANAD DISTRICT, PIN - 673592

OTHER PRESENT:

SRI.K.A. NOUSHAD, SR. PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 02.02.2026, THE COURT ON 04.02.2026 DELIVERED THE FOLLOWING:

2026:KER:10342

"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.1 in Crime No.101/2024 of Excise Range Office, Sulthan Bathery, Wayanad [ECB-25/2024 of Excise Crime Branch (Northern Region), Kozhikode], now pending as SC No.65/2025 on the files of Second Additional Sessions Court (ADHOC-II), Kalpetta, Wayanad District. The offences alleged are punishable under Sections 22(c), 27A and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, 'the NDPS Act').

3. The prosecution case, in short, is that on 16/7/2024 at about 11.40 a.m., the excise team, which was conducting the routine vehicle inspections, found the applicant in possession of 48.032 grams and 31.45 grams of methamphetamine in two separate covers at Muthanga Excise Check Post. After the enquiry which followed the detection, the Excise Crime Branch

concluded that the applicant and the accused No.2 had conspired to purchase the drug from the accused No.3. Then, upon payment of a total amount of ₹1,03,400/- by transfer through various accounts, the accused No.3 sold the seized methamphetamine to the applicant and thereby the applicant committed the offences alleged.

4. I have heard Sri.P.Mohamed Sabah, the learned counsel for the applicant and Sri.K.A.Noushad, the learned Senior Public Prosecutor. Perused the case diary.

5. The learned counsel for the applicant submitted that the applicant is entitled to be released on bail since he has been in custody for more than one and a half years and there is no possibility of concluding the trial within a reasonable time. On the other hand, the learned Senior Public Prosecutor submitted that the offence under the NDPS Act would fall under the category of “grave offence” and long incarceration alone should not be the criterion while considering the bail application. The learned Senior Public Prosecutor further submitted that the bail application filed by the applicant on an earlier occasion, as BA No.11452/2025, on the ground of non-communication of the

grounds of arrest, was dismissed by this court as per Annexure 2 order.

6. The question that arises for consideration is whether an accused facing an indictment for an offence punishable under Section 22(c) of the NDPS Act for possessing a commercial quantity of a narcotic drug is entitled to be released on bail due to long incarceration.

7. There are a series of decisions of the Supreme Court starting from *Union of India v. K.A Najeeb* [(2021) 3 SCC 713], which held that stringent provisions in the special statutes for the grant of bail do not take away the power of the constitutional courts to grant bail on grounds of violation of Part III of the Constitution. In *V.Senthil Balaji v. Deputy Director, Directorate of Enforcement* [2024 SCC OnLine SC 2626], the Supreme Court, while considering the question of bail in PMLA proceedings, held that when a trial of a complaint under PMLA is prolonged beyond reasonable limits, the Constitutional Courts can always exercise its jurisdiction to grant bail. However, in *Narcotics Control Bureau v. Mohit Aggarwal* [(2022) 18 SCC 374], the three Judge Bench of the Supreme Court held that length of the period of custody or

that the charge-sheet had been filed or even that the trial has not commenced by themselves are not considerations that can be treated as persuasive grounds to grant bail under Section 37 of the NDPS Act. Later, in ***Ankur Chaudhary v. State of Madhya Pradesh*** [2024 SCC OnLine SC 2730], a two Judge Bench of the Supreme Court had observed that failure to conclude the trial within a reasonable time resulting in prolonged incarceration violates the fundamental right guaranteed under Article 21 of the Constitution of India and in such cases, the constitutional liberty overrides the statutory embargo created under Section 37(1)(b) of the NDPS Act. The decision in ***Mohit Aggarwal*** (supra) was not brought to the notice of the Court that rendered the decision in ***Ankur Chaudhary*** (supra). The decision in ***Mohit Aggarwal*** (supra) was rendered by a bench of three Judges and hence the said decision is binding by the law of the precedents (*See* ***Shahina v. State of Kerala***, 2025 (4) KLT 314).

8. In ***State of Karnataka v. Sri Darshan*** (2025 SCC Online SC 1702), the Supreme Court had observed that the mere prospect of a prolonged trial cannot, by itself, outweigh the gravity of the offence, the incriminating material gathered during

investigation or the likelihood of tampering with witnesses. Quite recently, in ***Union of India v. Vigin K.Varghese*** [2025 SCC OnLine SC 2440], the Hon'ble Supreme Court while setting aside two orders of the Bombay High Court that had granted bail to accused in a major cocaine and methamphetamine seizures held that delay in trial or prolonged incarceration cannot by itself justify the grant of bail in cases involving commercial quantity of narcotic drugs when the mandatory twin conditions under Section 37 of the NDPS Act remain unmet. In ***Senthil Balaji*** (supra), it was clarified that in a case where the accused has criminal antecedents, the Constitutional Court can refuse to exercise jurisdiction to grant bail on the ground of long incarceration. Thus, the law is settled that the period of incarceration has no bearing in the matter of bail involving commercial quantities of narcotic drugs under the NDPS Act in a case where the embargo under Section 37(1)(b) of the NDPS Act is attracted, or the accused has criminal antecedents.

9. In this case, the contraband was seized from the direct possession of the applicant. The applicant has not been able to point out the existence of any facts or circumstances that are

2026:KER:10342

sufficient to justify recording a finding that he is not guilty of the offences charged, and hence the rigour under Section 37 of the NDPS Act is not diluted. It is also reported that the applicant has criminal antecedents. He is involved in another crime under Section 22(c) of the NDPS Act.

For the aforementioned reasons, I have no hesitation in holding that the applicant cannot be released on bail on the ground of prolonged incarceration. The bail application fails, and it is accordingly dismissed.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

Rp

2026:KER:10342

APPENDIX OF BAIL APPL. NO. 13355 OF 2025

PETITIONER ANNEXURES

Annexure 1	**TRUE COPY OF THE CRIME AND OCCURRENCE REPORT IN CRIME NO.101/2024 OF EXCISE RANGE OFFICE, SULTHAN BATHERY, WAYANAD DISTRICT**
Annexure 2	**TRUE COPY OF THE ORDER DATED 25.09.2025 IN BAIL APPL.11452/2025 OF HIGH COURT**
Annexure 3	**TRUE COPY OF THE ORDER DATED 31.07.2025 IN BA NO. 8813 OF 2025 PASSED BY THIS HON'BLE COURT**