



2026:KER:7240

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

THURSDAY, THE 29TH DAY OF JANUARY 2026 / 9TH MAGHA, 1947

BAIL APPL. NO. 14491 OF 2025

CRIME NO.8/2025 OF THRISSUR EXCISE RANGE OFFICE, THRISSUR

AGAINST THE ORDER DATED 15.09.2025 IN Bail Appl.
NO.10762 OF 2025 OF HIGH COURT OF KERALA

PETITIONER/ACCUSED:

KAMAL KUMAR MANDAL
AGED 25 YEARS
S/O. SUNIL MANDAL, KHAYARTHALA, JLANKI, SIB NAGAR,
MURSHIDABAD, WEST BENGAL, PIN - 742149

SRI.SAM ISAAC POTHYIL
SMT.S.SURAJA
SRI.MUHAMMED SUHAIR C.A
SMT.AKSHAYA N.K.

RESPONDENTS/RESPONDENTS/COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 EXCISE RANGE OFFICE THRISSUR
THRISSUR DISTRICT, PIN - 680001

SRI.M.C.ASHI, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
29.01.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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“C.R.”

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.8/2025 of Thrissur Excise Range Office, Thrissur District. The offences alleged are punishable under Sections 22(b)(ii)(C) and 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘the NDPS Act’).

3. The prosecution case, in short, is that on 28.01.2025, the applicant was found in possession of 23.400 kilograms of Ganja in violation of the NDPS Act and thereby committed the above offences.

4. I have heard Sri.Sam Isaac Pothiyil, 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 in the language known to him, 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 28.01.2025, and since then, he has been 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 the 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 a 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. It was further observed that the grounds of arrest must be communicated not only to the arrestee but also to the family members. 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 with the same is sufficient unless demonstrable prejudice is shown. It was further held that individualised grounds are not an inflexible requirement post **Bansal** (supra), 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 the arrestee before the Magistrate. However, it was clarified that the requirement to communicate the written grounds of arrest to the arrestee would only operate prospectively.

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 the 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 requirement of informing the arrestee of 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 shall be so done orally. The said grounds shall be communicated in writing within a reasonable time and in any case at least two hours before the production of the arrestee for the remand proceedings before the Magistrate.

(iv) In NDPS cases, specification of the quantity of the contraband seized is mandatory for effective communication of the 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 grounds of arrest in respect of a person arrested on a warrant are not required to be furnished to him separately.

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

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



14. The applicant sought bail before this Court on the ground of non-communication of the grounds of arrest to him and his relative in B.A. No.10762/2025. As per Annexure A1 order, this Court dismissed the bail application, holding that the grounds of arrest have been specifically intimated to the applicant as well as to his relative. The learned counsel for the applicant, relying on the decision of this Court in ***Mihir Rajesh Shah*** (*supra*), which was pronounced after the Annexure A1 order, submitted that since the grounds of arrest were not communicated to the applicant in writing in the language he understands, the arrest is vitiated. The applicant is a native of West Bengal. Annexure A2 is the arrest memo given to the applicant, and Annexure A3 is the arrest intimation given to the relative. Annexure A2 is in English and Malayalam, and Annexure A3 is in Malayalam. There is nothing in Annexures A2 and A3 to show that the grounds of arrest were communicated in writing to the arrestee in the language he knows.

15. It is true that in ***Mihir Rajesh Shah*** (*supra*), it was specifically held by the Supreme Court that the grounds of arrest must be communicated in writing to the arrestee in the language he or she understands. However, the dictum laid down in ***Mihir***



Rajesh Shah (supra), that the grounds of arrest must be communicated in writing to the arrestee in the language he or she understands, could operate only prospectively and cannot be applied to an arrest made prior to the date of judgment. The arrest in this case was prior to the decision rendered in **Mihir Rajesh Shah** (supra). A perusal of the seizure mahazar shows a clear statement that the grounds of arrest were communicated to the arrestee at the time of arrest, and accordingly, an arrest memo was prepared. It is also stated in the seizure mahazar that there was telephonic communication regarding the arrest to the applicant's father. Therefore, I am of the view that there is compliance with Sections 47 and 48 of the BNSS and Article 22(1) of the Constitution of India.

The bail application is, accordingly, dismissed.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE



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APPENDIX OF BAIL APPL. NO. 14491 OF 2025

PETITIONER ANNEXURES

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| Annexure A1 | THE TRUE COPY OF ORDER PASSED BY THIS
HON'BLE COURT DATED 15.09.2025 IN BA NO.
10762/2025 |
| Annexure A2 | THE TRUE COPY OF THE ARREST MEMO OF THE
PETITIONER IN CRIME NO. 08/2025 OF
EXCISE RANGE OFFICE THRISSUR, THRISSUR
DISTRICT |
| Annexure A3 | THE TRUE COPY OF THE ARREST INTIMATION
OF THE PETITIONER IN CRIME NO. 08/2025
OF EXCISE RANGE OFFICE THRISSUR,
THRISSUR DISTRICT |