



2025:KER:75660

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

MONDAY, THE 13TH DAY OF OCTOBER 2025 / 21ST ASWINA, 1947

BAIL APPL. NO. 12213 OF 2025

CRIME NO.147/2025 OF AIR CUSTOMS, CALICUT
INTERNATIONAL AIRPORT, KOZHIKODE AGAINST THE ORDER/JUDGMENT
DATED 22.08.2025 IN BAIL APPL. NO.9792 OF 2025 OF HIGH COURT
OF KERALA.

PETITIONER:

RABIATH SAIDU SAINUDHEEN.,
AGED 40 YEARS,
W/O. JAYANTHIRAM, NO. 16, THALAYARI STREET,
SAIDAPET, WEST MAMBALAM, CHENNAI, TAMIL NADU,
PIN - 600 015.

BY ADVS.
SHRI.GOUTHAM KRISHNA U.B.
SMT.SUBI S BINU

RESPONDENT:

UNION OF INDIA REPRESENTED BY INSPECTOR,
AIR CUSTOMS , CALICUT INTERNATIONAL AIRPORT
CALICUT INTERNATIONAL AIRPORT, AIRPORT P.O,
AIRPORT RD, KARIPUR, MALAPPURAM, KERALA,
PIN - 673 647.

BY ADV SREELAL N. WARRIER, SC, CENTRAL BOARD OF
EXCISE



**THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
13.10.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**



BECHU KURIAN THOMAS., J

Bail Appl. No.12213 of 2025

Dated this the 13th day of October, 2025

ORDER

This bail application is filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS').

2. Petitioner is the first accused in O.R. No.147 of 2025 of Air Customs, Calicut International Airport, Kozhikode, registered for the offences punishable under Sections 20(b) (ii)(C), 22(c), 23(c), 28 and 29 r/w Section 8(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 [for brevity, 'NDPS Act'].

3. According to the prosecution, on 13.05.2025 at about 11.45 pm, at the Customs Baggage Hall of Calicut International Airport, suspecting possession of contraband with accused Nos. 1 to 3, concealed in the checked-in baggages while arriving at Calicut International Airport on Air Asia flight AK 33, contraband of 11.047 kilograms of Hydroponic ganja and chocolate and other edible items laced with Amphetamine weighing 4.922 kilograms were recovered from the possession of the first accused, 11.178 kilograms of Hydroponic ganja and 4.70 kilograms of chocolate and other edible items laced with Amphetamine narcotic was seized from the possession of the second accused, 11.504 kilograms of Hydroponic ganja and 4.195 kilograms of



chocolate and other edible items laced with Amphetamine from the possession of the third accused, and thereby the accused committed the offences alleged.

4. Heard Sri. Goutham Krishna U B., the learned Counsel for the petitioner, Sri. Sreelal N. Warriar, the learned Special Public Prosecutor.

5. The learned Counsel for the petitioner submitted that the accused was taken into custody on 13.05.2025 at 11.45 pm, while the arrest was recorded at 10.00 am on 15.05.2025. It was also submitted that the accused was produced before the Magistrate at 05.30 pm on the same day. The learned counsel also pointed out that the accused had been detained beyond 24 hours in violation of the constitutional provisions. Referring to the decision in **Biswajit Mandal vs. Inspector, Narcotic Control Bureau** [2025 KER 60624], it was submitted that the accused are entitled to be released on bail in view of the illegality in the arrest.

6. The learned Special Public Prosecutor, on behalf of the respondent, submitted that the contentions raised by the petitioner are without any basis, and the accused has been legally arrested, and there is no reason to enlarge her on bail.

7. On a consideration of the rival contentions, it is noticed that the case of the prosecution itself is that the accused arrived at Calicut International Airport at 11.45 pm on 13.05.2025, and on suspicion that



they were carrying contraband, their checked-in baggages were seized and subjected to examination. In the objection filed by the respondent, it is mentioned that the baggages were seized on suspicion, which could only have been on 13.05.2025 or in the early hours of the next day. The statement in paragraph 3 extracted earlier indicates that the examination of petitioner's baggage was completed at 3.00 pm on 14.05.2025, and thereafter, a summons was issued to her for giving her statement. The accused was later arrested at 10.00 hrs on 15.05.2025. However, there is nothing evident from the objection of the respondent that from 11.45 pm on 13.05.2025 till 10.00 am on 15.05.2025, the accused was at liberty. Since the accused landed at 11.45 pm and their baggages were being subjected to verification, obviously they would have been under detention or under the custody of the respondent. Hence from 11.45 pm on 13.05.2025 or soon thereafter till their arrest was recorded at 10.00 am on 15.05.2025, petitioners were under custody until they were produced before the Magistrate at 05.30 pm. As observed by this Court in **Biswajit Mandal** (Supra), the date and time of detention has to be reckoned from the time when an accused was initially taken into custody. In the instant case, it has to be treated as 11.45 pm on 13.05.2025 immediately after.

8. In view of the above, I am satisfied that petitioner was kept in detention beyond a period of 24 hours without any authority. Hence, the arrest of the accused being illegal, she is entitled to be released on



bail.

In the result, this application is allowed on the following conditions:-

- (a) Petitioner shall be released on bail on him executing a bond for Rs.1,00,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the court having jurisdiction.
- (b) Petitioner shall appear before the Investigating Officer as and when required.
- (c) Petitioner shall not intimidate or attempt to influence the witnesses; nor shall she tamper with the evidence.
- (d) Petitioner shall not commit any similar offences while she is on bail.
- (e) Petitioner shall not leave India without the permission of the Court having jurisdiction.

In case of violation of any of the above conditions or if any modification or deletion of the conditions are required, the jurisdictional Court shall be empowered to consider such applications, if any, and pass appropriate orders in accordance with law, notwithstanding the bail having been granted by this Court.

Sd/-

BECHU KURIAN THOMAS
JUDGE

ADS



APPENDIX OF BAIL APPL. 12213/2025

PETITIONER ANNEXURES

- Annexure A1** **A TRUE COPY OF SUMMONS UNDER S.67 OF THE NDPS ACT DATED 14.05.2025 ISSUED BY THE RESPONDENT.**
- Annexure A2** **A TRUE COPY OF THE ARREST MEMO DATED 15.05.2025.**
- Annexure A3** **A TRUE COPY OF THE COMMON ORDER DATED 17.07.2025 IN CRL.M.P. NO. 786/2025 AND CONNECTED 2 BAIL APPLICATIONS BY THE HON'BLE SPECIAL COURT FOR SC/ST (POA) ACT & NDPS ACT CASES, MANJERI.**



-: 1 :-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE K. BABU

THURSDAY, THE 4TH DAY OF DECEMBER 2025 / 13TH AGRAHAYANA, 1947

BAIL APPL. NO. 12138 OF 2025

CRIME NO.OS 178/2025 OF AIR CUSTOMS, CALICUT INTERNATIONAL

AIRPORT, Kozhikode

AGAINST THE ORDER DATED 12.09.2025 IN CRMP NO.2994 OF
2024 OF SPECIAL COURT (ATROCITIES AGAINST SC/ST), MANJERI

PETITIONER/ACCUSED:

MASHOODA M.T.P
AGED 30 YEARS
D/O ABDUL HAMEED, M.T.P HOUSE, THAYINERI PO,
PAYYANNOOR, KANNUR DISTRICT, PIN - 670307

BY ADVS.
SRI.DEEPAK RAJ
SMT.ASWATHY K.S.

RESPONDENTS/COMPLAINANT:

- 1 THE COMMISSIONER
OFFICE OF THE COMMISSIONER OF CUSTOMS (PREVENTIVE),
5TH FLOOR, CATHOLIC CENTRE, BROADWAY, ERNAKULAM,
COCHI, REPRESENTED BY ITS PROSECUTOR, PIN - 682031
- 2 INSPECTOR
AIR CUSTOMS, CALICUT INTERNATIONAL AIRPORT, KARIPUR,
MALAPPURAM DISTRICT, PIN - 673647

BY ADV SREELAL N. WARRIER, SC, CENTRAL BOARD OF
EXCISE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
04.12.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



-: 2 :-

K.BABU, J.

B.A. No.12138 of 2025

Dated this the 4th day of December, 2025

O R D E R

This is an application filed under Section 483 of the Bharatiya
Nagarik Suraksha Sanhita (BNSS), 2023.

2. The petitioner is the accused in O.S. No.178/2025 of Air
Customs, Calicut International Airport. The offences alleged against
the petitioner are punishable under Sections 20(b)(ii)(C), 22(c), 23(c),
28 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985
(NDPS Act).

3. The prosecution case, as narrated in Annexure A6 order,
reads thus:-

“The petitioner was a passenger in the Etihad Flight EY362
which arrived at Calicut International Airport at about 02.45
a.m., on 24.07.2025. When the Detecting Officer inspected the
baggage brought by the petitioner, it found containing 23.429
kilograms of Hydroponic Ganja.”[SIC]

4. The petitioner was arrested on 24.07.2025 and he has
been in judicial custody since then.

5. Heard the learned counsel for the petitioner and the
learned Special Public Prosecutor.



-: 3 :-

6. The learned counsel for the petitioner submitted that the officer who arrested the petitioner/accused had not complied with the mandate of Article 22(1) of the Constitution of India and Section 47 of the BNSS in the sense that the grounds of arrest were not communicated.

7. The learned Public Prosecutor submitted that there is substantial compliance of the requirement regarding the communication of the grounds of arrest.

8. The fundamental object sought to be subserved by Article 22 (1) are the following:

- (a) To apprise the arrested person of why he is being arrested.
- (b) To enable the arrestee to frame his defence against possible detention and to seek appropriate legal aid.

9. The mode of communication of grounds of arrest is to be in such a manner that the effectiveness of the same deserves to be tested on the touchstone whether the mode of communication subserves the fundamental object mentioned above.

10. The mode of conveying information of the grounds of arrest must be meaningful so as to serve the objects sought to be



-: 4 :-

achieved. The requirement to communicate the grounds of arrest to an arrested person is sacrosanct and the same must not be breached under any situation. The grounds should be effectively and fully communicated in the language that the arrestee understands. The grounds of arrest are to be effectively communicated not only to the arrestee but also to his friends, relatives or any other nominated person as envisaged under Section 48 of the BNSS. Non-compliance of this constitutional requirement and the statutory mandate would lead to the custody or the detention of the arrestee or detainee being rendered illegal, as it would amount to violation of the fundamental right of the arrestee or detainee. Filing a chargesheet and order of cognizance will not validate the arrest which is *per se* unconstitutional. The burden is on the police to establish that the grounds of arrest were properly communicated to the arrestee. {Vide : **Pankaj Bansal v. Union of India** [(2024) 7 SCC 576], **Prabir Purkayastha v. State (NCT of Delhi)** [(2024) 8 SCC 254], **Kasireddy Upender Reddy v. State of Andhra Pradesh** [2025 SCC OnLine SC 1228], **Vihaan Kumar v. State of Haryana** [(2025) 5 SCC 799], **Mihir Rajesh Shah v. State of Maharashtra and Another** [2025 SCC OnLine SC 2356], **Shahina v. State of Kerala** [2025 (5) KHC 203] and **Vishnu N.P. v. State of Kerala** [2025 KHC OnLine 1262]}.



-: 5 :-

11. The learned Special Public Prosecutor submitted that arrest intimation had been served to a friend of the petitioner through phone.

12. I have gone through the Case Diary. The arrest memo served to the petitioner contains the grounds of arrest. The Case Diary does not contain anything to show that the required grounds of arrest were communicated as provided under Section 48 of the BNSS. The Air Customs Inspector filed an affidavit stating that at the time of arrest the petitioner had informed them that he did not remember the contact number of close relatives and that he requested to communicate the arrest details to her close friend Sri.Sabir. The said statement in the affidavit does not find a place in the arrest memo or any of the contemporaneous documents placed before the court for perusal.

13. Therefore, I am of the considered view that the prosecution has not complied with the mandate of Article 22(1) of the Constitution of India and Section 48 of the BNSS and therefore the petitioner is entitled to be released on bail on conditions.

In the result, the Bail Application is allowed as follows:

- (a) The petitioner is ordered to be released on bail on his executing bond for Rs.1,00,000/- (Rupees One Lakh only) with two solvent sureties each for the like sum



-: 6 :-

to the satisfaction of the jurisdictional court.

- (b) The petitioner shall appear before the Investigating Officer on all Mondays and Fridays between 10 A.M. and 11 A.M., until further orders.
- (c) The petitioner shall surrender his passport before the jurisdictional court. If he has no passport, the petitioner shall file an affidavit to that effect.
- (d) The petitioner shall co-operate with the investigation.
- (e) The petitioner shall not try to influence the prosecution witnesses or attempt to tamper with the evidence.
- (f) The petitioner shall not commit any similar offence while on bail.
- (g) If any of the bail conditions are violated by the petitioner, the jurisdictional Court will be at liberty to cancel the bail, in accordance with law.

Sd/-
K.BABU
JUDGE



APPENDIX OF BAIL APPL. NO. 12138 OF 2025

PETITIONER ANNEXURES

- Annexure A1 A TRUE COPY OF THE BIRTH CERTIFICATE OF AIRA SUHAIB, AGED 11 YEARS, ISSUED BY PAYYANNUR MUNICIPALITY
- Annexure A2 A TRUE COPY OF THE BIRTH CERTIFICATE OF AYAN SUHAIB, AGED 6 YEARS, ISSUED BY PAYYANNUR MUNICIPALITY
- Annexure A3 A TRUE COPY OF THE CERTIFICATE ISSUED BY THE BHARAT SEVAK SAMAJ IN THE GLOBAL INSTITUTE OF TEXTILE DESIGN (GITD) TO THE APPLICANT
- Annexure A4 A TRUE COPY OF THE CERTIFICATE ISSUED BY MEMOC, MAKEOVER STUDIO & ACADEMY, IN HD BRIDAL MAKEUP ARTIST TO THE APPLICANT
- Annexure AS. A TRUE COPY OF THE CERTIFICATE ISSUED BY SDMS COUNCIL IN DIPLOMA IN HOSPITAL ADMINISTRATION TO THE APPLICANT
- Annexure A6 A TRUE COPY OF THE ORDER DATED 12.09.2025 PASSED BY THE HON'BLE SPECIAL COURT FOR SC/ST (POA) ACT & NDPS CASES ACT, MANJERI IN CRL. MP NO. 2994/2025 IN O.S NO. 178/2025, NDPS OF AIR CUSTOMS, CALICUT INTERNATIONAL AIRPORT
- Annexure A7 A TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY BABY MEMORIAL HOSPITAL, KANNUR
- Annexure A8 A TRUE COPY OF THE ARREST MEMO DATED 24.07.2025, PREPARED BY THE 2ND RESPONDENT
- Annexure A9 A TRUE COPY OF THE APPLICATION FOR REMAND FILED BY THE 2ND RESPONDENT IN OS NO. 178/2025- NDPS OF AIR CUSTOMS, CALICUT INTERNATIONAL AIRPORT, BEFORE THE HON'BLE JUDICIAL FIRST-CLASS MAGISTRATE COURT, MANJERI, DATED 24.07.2025
- Annexure A10 A TRUE COPY OF THE PERSONAL SEARCH MEMO DATED 24.07.2025, PREPARED BY THE 2ND RESPONDENT
- Annexure A11 A TRUE COPY OF THE NOTICE DATED 24.07.2025 ISSUED BY THE 2ND RESPONDENT UNDER SECTION 50 OF THE NDPS ACT