



2026:KER:45819

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 22ND DAY OF JUNE 2026 / 1ST ASHADHA, 1948

BAIL APPL. NO. 2849 OF 2026

CRIME NO.60/2025 OF MALAPPURAM EXCISE RANGE OFFICE, MALAPPURAM

PETITIONER/ACCUSED:

MUHAMMED SAHAL,
AGED 30 YEARS
PALLIYALI HOUSE, VELIMUKKU DESOM , MOONNIYUR (CT)
VILLAGE, TIRURANGADI TALUK, 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 & COMPLAINANT:

- 1 STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM DISTRICT, PIN - 682031.
- 2 EXCISE INSPECTOR,
EXCISE RANGE OFFICE MALAPPURAM, MALAPPURAM DISTRICT,
PIN - 679578.

SMT.SREEJA V., SR. PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
22.06.2026, ALONG WITH Bail Appl.2650/2026, THE COURT ON THE
SAME DAY PASSED THE FOLLOWING:



2026:KER:45819

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 22ND DAY OF JUNE 2026 / 1ST ASHADHA, 1948

BAIL APPL. NO. 2650 OF 2026

CRIME NO.111/2026 OF PEECHI POLICE STATION, THRISSUR

PETITIONERS/ACCUSED NOS.1 & 2:

- 1 AKSHAY SAJU
AGED 24 YEARS
MANGALASSERY HOUSE, ADUPPUTTI DESOM, KUNNAMKULAM
VILLAGE, THRISSUR DISTRICT, PIN - 680503.
- 2 REVINS RAJ
AGED 24 YEARS
CHERUVATHUR HOUSE, SENIOR GROUND KUNNAMKULAM,
KUNNAMKULAM VILLAGE, THRISSUR DISTRICT,
PIN - 680503.

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/COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM DISTRICT, PIN - 682031.
- 2 THE STATION HOUSE OFFICER
PEECHI POLICE STATION, PANANCHERY P.O., THRISSUR
DISTRICT, PIN - 680652.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
22.06.2026, ALONG WITH Bail Appl.2849/2026, THE COURT ON THE SAME
DAY PASSED THE FOLLOWING:



‘C.R.’

ORDER

These regular bail applications filed under Section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, BNSS), are disposed of together since the question involved is similar.

2. The applicants in B.A. No.2650 of 2026 are the accused Nos. 1 and 2 in Crime No.111 of 2026 of Peechi Police Station, Thrissur and the applicant in B.A. No.2849 of 2026 is the sole accused in Crime No.60 of 2025 of the Malappuram Excise Range Office, Malappuram District. The offence involved in both crimes, *inter alia*, is under Section 22(c) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act). The applicants are alleged to have possessed the narcotic drugs in commercial quantities. The applicants in B.A. No.2650 of 2026 have been in judicial custody since 08.02.2026, and the applicant in B.A. No.2849 of 2026 has been in custody since 02.10.2025.

3. I have heard Sri. Sadik Ismayil, the learned counsel for the applicants in both the bail applications and Smt.Sreeja V., the learned Senior Public Prosecutor. Perused the case diary.



4. The contraband involved in both crimes was seized between sunset and sunrise from private vehicles running through public roads. The main contention canvassed in both the bail applications is that since the alleged search and seizure in both crimes were conducted based on prior information, in private vehicles, between sunset and sunrise, without obtaining a warrant from the jurisdictional Magistrate and without recording or forwarding any grounds of belief as mandated under Section 42 of the NDPS Act, the search and seizure are vitiated and the applicants are entitled to bail. In support of the contention, the learned counsel for the applicants relied on the decisions of the Supreme Court in ***Karnail Singh v. State of Haryana*** [(2009) 8 SCC 539], ***State of Rajasthan v. Jagraj Singh alias Hansa***, [(2016) 11 SCC 687], ***Boota Singh & Others v. State of Haryana***, [(2021) 19 SCC 606] and that of this Court in ***Kannoth Abdul Rahiman @ Kunhootty v. Sub Inspector of Police***, [2018 Supreme (Online)(KER) 61650]. On the other hand, the submission of the learned Public Prosecutor is that since the recovery was made at a public place, the relevant provision to be applied is Section 43 of the NDPS Act, and hence the requirements under Section 42 of the NDPS Act need not be followed. The learned Public Prosecutor further submitted that the question



whether there was compliance with the procedure laid down under Section 42 of the NDPS Act is a question of fact and need not be considered while considering the bail application.

5. Sections 42 and 43 of the NDPS Act deal with the powers of authorised officers to conduct search, seizure, and arrest without a warrant. Sub-section(1) of Section 42 lays down that the empowered officer, if has a prior information given by any person, should necessarily take it down in writing and where he has reason to believe from his personal knowledge that offences under Chapter IV have been committed or that materials which may furnish evidence of commission of such offences are concealed in any building etc. he may carry out the arrest or search, without warrant between sunrise and sunset and he may do so without recording his reasons of belief. The proviso to sub-section (1) of Section 42 lays down that if the empowered officer has reason to believe that a search warrant or authorisation cannot be obtained without affording opportunity for the concealment of evidence or facility for the escape of an offender, he may enter and search such building, conveyance or enclosed place, at any time between sunset and sunrise, after recording the grounds of his belief. Sub-section (2) of Section 42 mandates that the empowered officer who has taken down information in writing



or records the grounds for his belief under the proviso to sub-section (1), should send a copy of the same to his immediate official superior within seventy two hours. Section 43 deals with the power to seize and arrest a suspect in a public place. Section 43 provides that any officer of any of the departments mentioned in Section 42 may seize in any public place or in transit, any narcotic drug, psychotropic substance, etc., in respect of which he has reason to believe that an offence punishable under the Act has been committed. He is also authorised to detain and search any person whom he has reason to believe to have committed an offence punishable under the Act. Explanation to Section 43 lays down that for the purposes of the said section, the expression "public place" includes any public conveyance, hotel, shop, or other place intended for use by, or accessible to the public.

6. Sections 42 and 43 of the NDPS Act, therefore, contemplate two different situations. Section 42 contemplates entry into and search of any building, conveyance or enclosed place, while Section 43 contemplates a seizure made in any public place or in transit. If the seizure is made under Section 42 between sunset and sunrise, the requirement of the proviso thereto has to be complied with. There is no such provision in Section 43, and, therefore, it is obvious that if the public search is



conducted in a public place, the officer making the search is not required to record his satisfaction as contemplated by the proviso to Section 42(1) of the NDPS Act for searching the vehicle between sunset and sunrise. Conversely, if a private conveyance is searched in a public place, the officer making the search is required to record his satisfaction as contemplated by the proviso to Section 42(1) for searching the vehicle between sunset and sunrise.

7. Section 42 of the NDPS Act itself makes clear that the said provision applies to conveyances. In ***Boota Singh*** (supra), the Supreme Court has categorically settled the law that a private vehicle at a public place can be treated as only a private place, and hence the mandatory requirement under Section 42 of the NDPS Act has to be complied with. In such cases, the procedure under Section 43 of the NDPS Act cannot be applied. In ***Jagraj Singh*** (supra), the Supreme Court has held that if search and seizure are conducted in a private vehicle at a public place between sunset and sunrise, compliance with the proviso to Section 42(1) is mandatory. Recently, this Court in ***Sudin Babu v. State of Kerala*** (2026 KHC OnLine 480) has held that if a private vehicle is searched in a public place based on prior information, Section 43 is not attracted and compliance with



Section 42 is mandatory.

8. As stated already, an authorised officer who conducts search in the conveyance without a warrant between sunset and sunrise, upon prior information, has to prepare a ground of belief and send a copy of the same to his immediate superior officer within seventy two hours. In both crimes, the detecting officer has no case that he obtained a warrant from the Magistrate concerned before the search and seizure. Annexure 3 in B.A. No.2849/2026 and Annexure 7 in B.A. No.2650/2026 are the true copies of the grounds of belief prepared by the detecting officers in the respective crimes. A reading of the same would show that they do not contain any grounds of belief as contemplated under the proviso to Section 42(1). Proviso to Section 42(1) says about the circumstances when the detecting officer can justify not obtaining a search warrant or authorisation. He can avoid doing so when he has an apprehension that evidence is likely to be concealed or that, in the circumstances existing then, there is a likelihood for the offender to escape within the time taken by him to procure a search warrant. Only in those twin situations mentioned in the proviso to Section 42(1) of the NDPS Act can the procurement of the search warrant or authorisation be dispensed with (See **Kannoth Abdul Rahiman**



(supra). Thus, the “grounds of belief” mentioned in the proviso to Section 42(1) must contain the statutory satisfaction that obtaining a warrant or authorisation would have resulted in concealment of evidence or escape of offenders. Annexures 3 and 7 documents mentioned above, although prepared in the nomenclature “grounds of belief”, they cannot be treated as grounds of belief under Section 42 of the NDPS Act since they do not contain any reasons recorded by the detecting officer for conducting the search in a conveyance without obtaining a warrant so as to avoid concealment of evidence or escape by the offender. Hence, there is total non-compliance with the second limb of Section 42 of the NDPS Act. It is settled by the Constitutional Bench of the Apex Court in **Karnail Singh** (supra) that non-compliance with the procedure under Section 42 or failure of proper compliance therewith will vitiate the trial. It is equally settled that while considering a bail application, compliance with Section 42 is mandatory and is a relevant factor to be taken into account [See **Sarija Banu Alias Janarthani Alias Janani and Another v. State through Inspector of Police** [(2004) 12 SCC 266].

9. Since there is a total non-compliance with Section 42 of the NDPS Act, the applicants are entitled to be



released on bail. It is made clear that the observation regarding non-compliance of Section 42 of the NDPS Act made above is for the limited purpose of considering these bail applications.

In the result, these applications are allowed on the following conditions: -

(i) The applicants shall be released on bail on executing a bond for Rs.1,00,000/- (Rupees One lakh only) each with two solvent sureties for the like sum each to the satisfaction of the jurisdictional Magistrate/Court.

(ii) The applicants shall fully co-operate with the investigation.

(iii) The applicants shall appear before the investigating officer between 10.00 a.m and 11.00 a.m every Saturday until further orders. They shall also appear before the investigating officer as and when required.

(iv) The applicants shall not commit any offence of a like nature while on bail.

(v) The applicants shall not attempt to contact any of the prosecution witnesses, directly or through any other person, or in any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation.



(vi) The applicants shall not leave the State of Kerala without the permission of the trial Court.

(vii) The application, if any, for deletion/modification of the bail conditions or cancellation of bail on the grounds of violating the bail conditions shall be filed at the jurisdictional court.

Sd/-
DR. KAUSER EDAPPAGATH
JUDGE

mea/NP



APPENDIX OF BAIL APPL. NO. 2849 OF 2026

PETITIONER ANNEXURES

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| Annexure 1 | TRUE COPY OF THE SEIZURE MAHAZAR IN
CRIME NO. 60/2025 OF EXCISE RANGE
OFFICE, MALAPPURAM DISTRICT |
| Annexure 2 | TRUE COPY OF THE INFORMATION IN WRITING
PREPARED BY THE DETECTING OFFICER UNDER
SECTION 42 OF THE NDPS ACT |
| Annexure 3 | TRUE COPY OF THE GROUNDS OF BELIEF
PREPARED BY THE DETECTING OFFICER IN
CRIME NO. 60/2025 OF EXCISE RANGE
OFFICE, MALAPPURAM DISTRICT, |
| Annexure 4 | TRUE COPY OF THE ORDER DATED 19.02.2026
IN B.A NO.09/2026 PASSED BY THE SPECIAL
COURT FOR SC/ST (POA) ACT & NDPS ACT
CASES; MANJERI |



APPENDIX OF BAIL APPL. NO. 2650 OF 2026

PETITIONER ANNEXURES

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|-------------------|--|
| Annexure 1 | TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO. 111/2026 OF PEECHI POLICE STATION |
| Annexure 2 | TRUE COPY OF THE REMAND REPORT IN CRIME NO. 111/2026 OF PEECHI POLICE STATION |
| Annexure 3 | TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 47 OF BNSS TO THE PETITIONER NO.1 |
| Annexure 4 | TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 48 OF BNSS TO THE RELATIVE/FRIENDS OF THE PETITIONER NO.1 |
| Annexure 5 | TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 47 OF BNSS TO THE PETITIONER NO.2 |
| Annexure 6 | TRUE COPY OF THE NOTICE ISSUED UNDER SECTION 48 OF BNSS TO THE RELATIVE/FRIENDS OF THE PETITIONER NO.2 |
| Annexure 7 | TRUE COPY OF THE GROUND OF BELIEF PREPARED BY THE DETECTING OFFICER IN CRIME NO. 111/2026 OF PEECHI POLICE STATION |
| Annexure 8 | TRUE COPY OF THE ORDER DATED 06.03.2026 IN CRL.M.P. NO.03/2026 IN CRIME NO. 111/2026 OF PEECHI POLICE STATION PASSED BY THE COURT OF THE PRINCIPAL SESSIONS JUDGE; THRISSUR |