



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

FRIDAY, THE 21ST DAY OF NOVEMBER 2025 / 30TH KARTHIKA, 1947

CRL.MC NO. 9946 OF 2025

CRIME NO.525/2025 OF Kozhinjampara Police Station, Palakkad

PETITIONER/S:

**MUHAMMED NASHIF U, AGED 39 YEARS
ULLATTIL HOUSE, CHEMMANIYODU, MALAPPURAM DISTRICT,, PIN
- 679325**

**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**

RESPONDENT/S:

- 1 STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM DISTRICT, PIN - 682031**
- 2 THE STATION HOUSE OFFICER, KOZHINJAMPARA POLICE STATION,
PALAKKAD DISTRICT,, PIN - 678555**

OTHER PRESENT:

PP SRI M P PRASANTH

**THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
21.11.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:**

**“C.R”****C.S.DIAS, J.****-----
Crl.M.C. No. 9946 OF 2025
-----****Dated this the 21st day of November, 2025****ORDER**

The petitioner is arraigned as the 2nd accused in Crime No. 525/2025 registered by the Kozhinjampara Police Station, Palakkad, for allegedly committing the offences punishable under Sections 22(c) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

2. The petitioner's grievance is that:

At around 12:45 hours, on 20.07.2025, the petitioner and the 1st accused were arrested at the spot for allegedly being found in conscious possession of 338.16 grams of MDMA. Notwithstanding his arrest at 12.55 hours, the petitioner was produced before the Magistrate only at 14.10 hours on 21.07.2025, well beyond the mandated period of twenty-four hours under Article 22(2) of the Constitution of India. Although the petitioner filed an application for bail



before the Court of Session, Palakkad, by Annexure 2 order, the learned Sessions Judge, after finding that the petitioner was not produced before the jurisdictional Magistrate within 24 hours, only ordered the Superintendent, District Jail, Palakkad, to release the petitioner without enlarging him on bail. However, immediately after his release, the 2nd respondent rearrested the petitioner on the precincts of the prison, produced him before the Court, and he was remanded to judicial custody. The petitioner's rearrest is patently illegal and unjustifiable. The learned Sessions Judge's ought to have enlarged the petitioner on bail, rather than merely ordering his release. Unfortunately, the learned Sessions Judge ratified the illegal arrest by remanding the petitioner to judicial custody.

3. I have heard Sri. Sadik Ismayil, the learned Counsel for the petitioner and Sri. M.P. Prasanth, the learned Public Prosecutor.

4. Sri. Sadik Ismail, placing reliance on the decision of the Hon'ble Supreme Court in *Directorate of Enforcement v. Subhash Sharma* (2025 (2) KHC 45), contends that, once the



learned Sessions Judge entered a finding that the petitioner was produced before the Magistrate after twenty-four hours, the arrest itself stood vitiated. It was then imperative for the learned Sessions Judge to enlarge the petitioner on bail. The mere direction to release the petitioner from jail, without granting him bail, has emboldened the Police to re-arrest the petitioner and made a mockery of Annexure 2 order, and circumvented the constitutional safeguard. Hence, Annexure 3 remand report deserves to be set aside, and the petitioner may be ordered to be enlarged on bail.

5. Conversely, Sri. M.P. Prasanth vehemently opposes the Criminal Miscellaneous Case (for short, 'Crl.M.C'). He contends that Section 483 (3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity, 'BNSS'), empowers the Police to re-arrest the petitioner. It is invoking the said power and considering the rigour under Section 37 of the NDPS Act that the petitioner was rearrested and remanded to judicial custody. Now the petitioner can be enlarged on bail, only if he satisfies the twin conditions under Section 37 of the NDPS Act. Therefore, this Court may not interfere with Annexure 3



remand report, especially since the petitioner has not challenged Annexure 2 order. The Crl. M.C. is meritless and hence may be dismissed.

6. The learned Sessions Judge, by Annexure 2 order, has unequivocally found that the petitioner was not produced before the Magistrate within twenty-four hours of his arrest as per the mandate under Article 22(2) of the Constitution of India. Undisputedly, the State has not challenged the finding in Annexure 2 order.

7. Article 22 (1) and (2) of the Constitution reads as under:

“Article 22. Protection against arrest and detention in certain cases: (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced

before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate”.

8. Article 22 (2) expressly guarantees that no arrested person shall be detained beyond twenty-four hours without being produced before the nearest magistrate and that such



person shall not be detained in custody beyond such period without the authority of a magistrate. The above protection is not merely a procedural safeguard but a fundamental bulwark against police excess, to ensure that the personal liberty guaranteed under Article 21 has not rendered a mirage.

9. In *Khatri and others (11) v. State of Bihar and others* [(1981) 1 SCC 627], the Hon'ble Supreme Court, speaking through Justice P.N. Bhagwati (as he then was), raised the questions whether the court can injunct the State from depriving a person of his life or personal liberty; that the court was helpless to grant relief to the person who has suffered such deprivation; and that why the courts shouldn't be prepared to forge new tools and devise new remedies for the purpose of vindicating the most precious of the precious fundamental right to life and personal liberty? The Court answered the above questions by explicitly directing the State and its police authorities to scrupulously observe the constitutional and legal requirement to produce an arrested person before a Judicial Magistrate within twenty-four hours of the arrest.



10. In *Directorate of Enforcement v. Subhash Sharma* (*supra*), the Hon'ble Supreme Court, while considering a matter under the Prevention of Money Laundering Act, 2002, has held thus:

"6. This argument cannot be accepted. Admittedly, the LOC was issued at the instance of the appellant - Directorate of Enforcement. By executing the LOC, the Bureau of Immigration detained the respondent at IGI Airport from 4th March 2022 on behalf of the Appellant. The finding of fact recorded in paragraph 10 is that, undisputedly, the physical custody of the respondent was taken over by the appellant from the Bureau of Immigration at 11.00 hours on 5th March, 2022. Thereafter, at 1.15 hours on 6th March 2022, an arrest memo was prepared by ED at Raipur. He was produced before the Court at 3 p.m. on 6th March, 2024. The perusal of the arrest order (Annexure p-1) shows that the typed order was kept ready. The date and time of arrest were kept blank which appear to have been filled in by hand. Admittedly, the respondent was not produced before the nearest learned Magistrate within 24 hours from 11.00 a.m. on 5th March, 2022. Therefore, the arrest of the respondent is rendered completely illegal as a result of the violation of clause 2 of Article 22 of the Constitution of India. Thus, the continuation of the respondent in custody without producing him before the nearest Magistrate within the stipulated time of 24 hours is completely illegal and it infringes fundamental rights under clause 2 of Article 22 of the Constitution of India. Therefore, his arrest gets vitiated on completion of 24 hours in custody. Since there is a violation of Article 22(2) of the Constitution, even his fundamental right to liberty guaranteed under Article 21 has been violated.

7. The requirement of clause 2 of Article 22 has been incorporated in Section 57 of the Code of Criminal Procedure, 1973 (for short 'the Cr.P.C'). There is no inconsistency between the provisions of the PMLA and Section 57 of Cr.P.C. Hence, by virtue of Section 65 of the PMLA, Section 57 of the Cr.P.C applies to the proceedings under the PMLA.

8. Once a Court, while dealing with a bail application, finds that the fundamental rights of the accused under Articles 21 and 22 of the Constitution of India have been violated while arresting the accused or after arresting him, it is the duty of the Court dealing with the bail application to release the accused on bail. The reason is that the arrest in such cases stands vitiated. It is the duty of every Court



to uphold the fundamental rights guaranteed under Articles 21 and 22 of the Constitution.

9. Therefore, when arrest is illegal or is vitiated, bail cannot be denied on the grounds of non-fulfillment of twin tests under clause (ii) of sub-section 1 of Section 45 of PMLA”.

11. From the admitted facts, the petitioner was produced before the Magistrate beyond the twenty-four-hour deadline, which is peremptory and sacrosanct. Although the learned Sessions Judge found this breach, he erred by not enlarging the petitioner on bail. This enabled the Police to subvert the constitutional safeguard by arresting the petitioner from the precincts of the prison, rendering Annexure 2 order nugatory. The above action warrants interference to undo the consequences of an arrest that stands vitiated.

In light of the constitutional violation of Article 22(2) and the findings rendered above, this is a fit case to exercise the inherent powers of this Court under Section 528 of the BNSS and set aside Annexure 3 remand order, and order the petitioner to be enlarged on bail. Accordingly, I allow the Crl. M.C in the following manner:



- (i) Annexure 3 remand order is set aside.
- (ii) Annexure A 2 order is modified, and the petitioner is enlarged on bail, subject to the following conditions:
 - (a) The petitioner is ordered to be released on bail on him executing a bond for Rs.1,00,000/- (Rupees One lakh only) with two solvent sureties each for the like sum, to the satisfaction of the jurisdictional Court, which shall be subject to the following conditions:
 - (b) The petitioner shall appear before the Investigating Officer on every Saturday between 9 a.m. and 11 a.m. till the complaint is filed. He shall also appear before the Investigating Officer as and when required;
 - (c) The petitioner shall not directly or indirectly make any inducement, threat or procure to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any Police Officer or tamper with the evidence in any manner, whatsoever;



- (d) The petitioner shall not commit any similar offence while he is on bail;
- (e) The petitioner shall not leave the territorial jurisdiction of the jurisdictional court without its permission;
- (f) In case of violation of any of the conditions mentioned above, the jurisdictional court shall be empowered to consider the application for cancellation of bail, if any filed, and pass orders on the same, in accordance with law;
- (g) Applications for deletion/modification of the bail conditions shall be moved and entertained by the jurisdictional court.

sd/-
C.S.DIAS, JUDGE

rkc/21.11.25



APPENDIX OF CRL.MC 9946/2025

PETITIONER ANNEXURES

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| Annexure 1 | TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NO.525/25 OF KOZHINJAMPARA POLICE STATION |
| Annexure 2 | TRUE COPY OF THE ORDER DATED 19.09.2025 IN CRL. MC NO. 4469/2025 PASSED BY THIS HON'BLE SESSIONS COURT PALAKKAD |
| Annexure 3 | TRUE COPY OF THE REMAND REPORT DATED 20.09.2025 PREPARED BY RESPONDENT NO. 2 IN CRIME NO.525/25, WHICH CONTAINS THE REMAND ORDER PASSED BY THE HON'BLE SESSIONS COURT, PALAKKAD, AND ITS TYPED COPY |