



2025:KER:60624

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 12TH DAY OF AUGUST 2025 / 21ST SRAVANA, 1947

BAIL APPL. NO. 8581 OF 2025

CRIME NO.2/2025 OF NARCOTICS CONTROL BUREAU, KOCHI, ERNAKULAM

AGAINST THE ORDER DATED 16.06.2025 IN Bail Appl. NO.7056 OF

2025 OF HIGH COURT OF KERALA

PETITIONER/ACCUSED:

BISWAJIT MANDAL,
AGED 28 YEARS, S/O BHABESH MANDAL,
BILAKANDI (DAKSHIN), JIAGANJ,
AMAIPARA PO, MURSHIDABAD,
WEST BENGAL, PIN - 742123

BY ADV SMT.N.B.FATHIMA SULFATH

RESPONDENT/COMPLAINANT:

INSPECTOR,
NARCOTIC CONTROL BUREAU,
COCHIN ZONAL UNIT, PIN - 682042

BY ADVS.
SHRI.R.VINU RAJ, SPL. PUBLIC PROSECUTOR, NARCOTICS
CONTROL BUREAU
SHRI.K.K.SUBEESH
MS.NIKHINA THOMAS, AMICUS CURIAE
MS.NEHA BABU, AMICUS CURIAE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
01.08.2025, THE COURT ON 12.08.2025 PASSED THE FOLLOWING:



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“C.R.”**BECHU KURIAN THOMAS, J.****B.A. No.8581 of 2025**Dated this the 12th day of August, 2025**ORDER**

When does the twenty four hour period to produce an accused before the Magistrate commence? Does it start from the time of arrest as recorded by the police or from the time when the accused was detained? These questions are addressed in this application seeking regular bail filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

2. Petitioner is the accused in Crime No.2 of 2025 of the Narcotics Control Bureau, Cochin Zonal Unit, alleging offences punishable under section 8(c) r/w section 20(b)(ii)(C), 28 and section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short ‘NDPS Act’).

3. Prosecution alleges that on 25.01.2025, the accused was found in possession of 26.92 Kg of ganja from platform No.3 of Ernakulam Junction Railway Station and thereby committed the offences alleged. Petitioner has been in custody since 26.01.2025.

4. I have heard Adv. Fathima Sulfath N.B., on behalf of the petitioner and Sri. R. Vinu Raj, the learned Special Public Prosecutor on behalf of the



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respondents. Considering the importance of the question involved, and on noticing the commitment with which two law interns were watching the proceedings, this Court deemed it fit to seek their assistance. The two interns who were present in Court expressed their willingness and hence this Court appointed Ms. Nikhina Thomas and Ms. Neha Babu, second year students of Ramaiah College, Bengaluru, as Amici Curiae to assist the Court.

5. Smt. Fathima Sulfath N.B., the learned counsel for the petitioner, contended that petitioner's arrest, pursuant to the alleged detection of possession of contraband, is vitiated on account of the failure to communicate the grounds for arrest as contemplated by law. Apart from the above, the learned counsel submitted that petitioner was detained in custody beyond the period of twenty-four hours in violation of the constitutional and statutory prescriptions and hence he ought to be released on bail. Relying upon the circumstances of the case where the petitioner was taken into custody at 3 pm on 25.01.2025 while his arrest was recorded at 2.00 pm on 26.01.2025 and produced before the Magistrate only at 8.00 pm on 26.01.2025, it was submitted that the arrest was in violation of Article 22(2) of the Constitution and hence petitioner ought to be released on bail.

6. Sri. R. Vinu Raj, the learned Special Public Prosecutor, on the other hand, contended that the seizure was completed by 7.00 pm on 25.01.2025, and the petitioner was arrested at 2.00 pm on 26.01.2025, and he was



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produced before the Magistrate by 8.00 pm, all having been done within twenty-four hours, there is nothing illegal in the arrest.

7. Ms. Nikhina Thomas and Ms. Neha Babu, the Amici Curiae, argued in their well articulated address supported by an equally thorough argument note, that the twenty-four hour clock for production of a person before the Magistrate begins from the moment of effective curtailment of liberty and not from the formal recording of arrest. Referring to the sequence of events in the instant case, it was submitted that the mahazar dated 25.01.2025 indicates that petitioner was produced before the Magistrate beyond the period of twenty-four hours and hence there has been an unrecorded period of custody, which indicates illegal detention. The Amici curiae invited the attention of this Court to the decisions in **D.K. Basu v. State of W. B.** [(1997) 1 SCC 416] and **Joginder Kumar v. State of U.P. and Others** [(1994) 4 SCC 260] and submitted that the delay in formally recording the arrest within time and production before the Magistrate rendered the petitioner's arrest in violation of the procedure established by law. The Amici Curiae also submitted that the delay in formally recording the arrest, despite the accused being in custody from 25.01.2025, constitutes an unrecorded period of custody, and the time for production of the accused before the Magistrate must commence from the moment his liberty is curtailed and not when the formal arrest was recorded.



8. The question to be considered has already been referred to in the proemial part of this order and is hence not repeated. Courts are often called upon to resolve the complex issue of the need to balance the individual liberties with the requirement of criminal investigation. Law has to apply equally for all. No man is above the law and none are below it either. Even the most notorious criminal is entitled to be treated with fairness and justice. Fundamental rights have been regarded as the pride of our Constitution and Article 21 as its soul. Equal protection of laws is so embedded in our system of criminal jurisprudence that whenever there is an infraction of the law leading to deprivation or curtailment of liberty, courts have stepped in to the aid of the deprived, much to the chagrin of those wielding power.

9. In **Joginder Kumar v. State of U.P. and Others** [(1994) 4 SCC 260], the Supreme Court noted that the quality of a nation's civilization can be largely measured by the methods it uses in the enforcement of criminal law. After referring to the Third Report of the National Police Commission, the Court observed that the power of arrest has been identified as one of the chief sources of corruption in the police and further that the existence of power to arrest is one thing while the justification for its exercise is quite another and the arrest should not be made in a routine manner as denying a person of his liberty is a serious matter.

10. Noticing the perennial problem of striking a balance between the



needs of law enforcement on the one hand and protection of the citizens from injustice at the hands of the law enforcement machinery on the other, the Supreme Court had in **Nandini Satpathy v. P. L. Dani and Another** [AIR 1978 SC 1025] observed that while producing humane justice, the constitutional perspective cannot be ignored. Almost two decades later, the Supreme Court in **D.K. Basu v. State of W.B.** [(1997) 1 SCC 416] observed that; *“Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation.”* (emphasis supplied). Thereafter, the Court laid down requirements for compliance in all cases of arrest or detention till legal provisions to that effect were made. Since the requirements laid down are not relevant in the instant case, they are avoided from being reproduced.

11. The technique of not recording the arrest under one pretext or the other is often resorted to under the guise of investigation. Brutalities of police generally occur during these periods of uncontrolled authority. Unless there is a check, such unrecorded periods of custody can be the source of human rights violations.

12. Article 22(2) of the Constitution states that ‘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 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.' The term 'arrested and detained' is a phrase which is often misused by the police authorities to assert that the time starts only from the actual time of arrest. But is it so? Is that the legal interpretation to be adopted for the said phrase? Answers to these questions are no longer res integra.

13. In **Niranjan Singh and Another v. Prabhakar Rajaram Kharote and Others** [(1980) 2 SCC 559], the Supreme Court while considering the question as to when is a person in custody within the meaning of S. 439 Cr.P.C., had noted that a person can be said to be in custody "When he is in duress either because he is held by the investigating agency or other police or allied authority or is under the control of the court having been remanded by judicial order, or having offered himself to the court's jurisdiction and submitted to its orders by physical presence." The Court held that he who is in the physical hold of an officer with coercive power is in custody for the purpose of S.439 as the law has taken control of the person. The observations of the Court being illuminating are worth reproduction and is as follows: "The equivocatory quibblings and hide and seek niceties sometimes



heard in court that the police have taken a man into informal custody but not arrested him, have detained him for interrogation but not taken him into formal custody and other like terminological dubieties are unfair evasions of the straightforwardness of the law.” .

14. Earlier, in **State of Uttar Pradesh v. Deoman Upadhyaya** [AIR 1960 SC 1125], a Constitution Bench of the Supreme Court had observed, in the context of Section 27 of the Indian Evidence Act 1868 that *“When a person not in custody approaches a police officer investigating an offence and offers to give information leading to the discovery of a fact, having a bearing on the charge which may be made against him, he may appropriately be deemed to have surrendered himself to the police. Section 46 of the Code of Criminal Procedure does not contemplate any formality before a person can be said to be taken in custody: submission to the custody by word or action by a person is sufficient.”*

15. The above legal principles govern the criminal jurisprudence of this country in the matter of arrest of a person. The issue is made complex by the absence of any definition for the term arrest in any statute. However, it is discernible from section 43 of BNSS that an arrest is made by actually touching or confining the body of the person to be arrested, unless there is a submission to the custody by word or action. The erstwhile Section 46 of Cr.P.C. was considered by the Supreme Court in **State of Haryana and**



Others v. Dinesh Kumar [(2008) 3 SCC 222] and after referring to an earlier decision, observed that *“the word 'arrest' when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go where he pleases.”*

16. In an earlier decision in **Directorate of Enforcement v. Deepak Mahajan and Another** [(1994) 3 SCC 440], the Supreme Court had observed that “the word 'arrest' when used in its ordinary and natural sense, means the apprehension or restraint or the deprivation of one's personal liberty. The question whether the person is under arrest or not, depends not on the legality of the arrest, but on whether he has been deprived of his personal liberty to go wherever he pleases. When used in the legal sense in connection with criminal offences, an 'arrest' consists in the taking into custody of another person under authority empowered by law, for the purpose of holding or detaining him to answer a criminal charge or of preventing the commission of a criminal offence. The essential elements to constitute an arrest in the above sense are that there must be an intent to arrest under the authority, accompanied by seizure or detention of the person in the manner known to law, which is so understood by the person arrested.”



17. The etymological derivation of the word 'arrest' is from the French term 'Arreter' meaning 'to stop or stay'. The term denotes a restraint of the person. Thus, whenever there is a complete restraint on the freedom of movement or a person is held against his interests in curtailment of his liberty by a person in authority, it can be said that the said person is under arrest. Actual restraint either by word or action or conduct would suffice. When a person is prevented by a person in authority from engaging in his activities at his free will the former can be said to have been arrested. The failure, refusal or omission to record an arrest or continuation of an interrogation for prolonged periods without recording arrest, shall not preclude those periods of curtailed liberty as constituting arrest.

18. The Constitution mandates that the person arrested be produced before the nearest Magistrate within twenty-four hours of the arrest and other than the time necessary to reach the court of the Magistrate from the place of arrest, there is a peremptory prohibition that the person arrested shall not be detained beyond the said period without the authority of the Magistrate.

19. The above views are fortified by the decisions of the Bombay High Court in **Hanumant Jagganath Nazirkar v. State of Maharashtra** [2025 SCC Online 2508] and in **Ashak Hussain Allah Detha @ Siddique and Another v. Assistant Collector of Customs** [1990 SCC OnLine Bom 3] and



that of the Telengana High Court in **Smt. T Ramadevi v. The State of Telengana** [W.P No. 21912/2024]..

20. Hence the period of twenty-four hours to produce an accused before the Magistrate commences not when the actual time of arrest is recorded by the police, but runs from the time when the accused was effectively detained or his liberty was curtailed.

21. Adverting to the facts of the case, the mahazar reveals that petitioner was taken into custody at 3.00 pm on 25.01.2025, while his arrest was recorded at 2.00 pm on 26.01.2025, but produced before the Magistrate only at 8.00 pm on 26.01.2025. The liberty of the petitioner was effectively curtailed from 3.00 pm on 25.01.2025, from which period onwards, he was under the control of the NCB officers. Though the notice for giving the statement under section 67 of the Act was given to the petitioner, even before and after service of notice, petitioner was under the custody of the NCB Officers. There was not a moment after 3.00 pm on 25.01.2025 till his arrest, when he could have been regarded as being free. However, the petitioner was produced before the Magistrate only at 8.00 pm on 26.01.2025. Therefore, there has been an unrecorded period of custody, which indicates illegal detention. Petitioner is hence required to be enlarged on bail.

22. In the result, the petitioner is released on bail on the following conditions:



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- (a) Petitioner shall execute 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 court having jurisdiction.
- (b) Petitioner shall co-operate with the trial of the case and shall also appear before the investigating officer as and when required.
- (c) Petitioner shall not intimidate or attempt to influence the witnesses; nor shall he attempt to tamper with the evidence.
- (d) Petitioner shall not commit any similar offences while he is on bail.
- (e) Petitioner shall not leave the State of Kerala without the permission of the jurisdictional Court.

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.

Before concluding, this Court places on record, its appreciation for the assistance rendered by Ms. Nikhina Thomas and Ms. Neha Babu, the Amici Curiae - the growing buds of the noble profession.

Sd/-
BECHU KURIAN THOMAS
JUDGE

vps



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APPENDIX OF BAIL APPL. 8581/2025

PETITIONER'S/S' ANNEXURES

Annexure A1	TRUE COPY OF SEIZURE MAHAZAR DATED 25/01/2025
Annexure A2	TRUE COPY OF THE OCCURRENCE REPORT IN CRIME NO. 2/2025 OF NCB KOCHIN ZONAL UNIT
Annexure A3	TRUE COPY OF ARREST MEMO DATED 26.01.2025