"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 4TH DAY OF NOVEMBER 2025 / 13TH KARTHIKA, 1947

CRL.MC NO. 8469 OF 2025

CRIME NO.13/2025 OF EXCISE ENFORCEMENT AND ANTI NARCOTIC SPECIAL SQUAD, THIRUVANANTHAPURAM, Thiruvananthapuram

AGAINST THE ORDER/JUDGMENT DATED IN SC NO.1710 OF 2025 OF I ADDITIONAL DISTRICT COURT/ RENT CONTROL APPELLATE AUTHORITY, THIRUVANANTHAPURAM

PETITIONER/ACCUSED:

JATIN,S/O.KARTAR SINGH,
AGED 28 YEARS
KOORA-46, KOOTAMVILA ROAD, VATTIYOORKAVU. P.O.,
THIRUVANANTHAPURAM, PIN - 695013

BY ADVS.
SRI.SUMAN CHAKRAVARTHY
SMT.K.R.RIJA
SMT.BREJITHA UNNIKRISHNAN
SMT.SURYA R.
SHRI.SUDEESH K.E.
SHRI.PRAHLADH S.P.

RESPONDENT/STATE:

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

OTHER PRESENT:

SR PP SRI C S HRITHWIK

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04.11.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

“C.R.”

C.S.DIAS,J.

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Crl. M.C.No.8469 of 2025

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Dated this the 4th day of November, 2025

O R D E R

The petitioner is an accused in S.C.No.1710/2025 on the file of the Additional Sessions Court-I, Thiruvananthapuram, which has arisen from Crime No.13/2025, registered by the Excise Enforcement and Anti Narcotic Special Squad, Thiruvananthapuram, alleging the commission of the offences punishable under Section 8(c) read with Sections 20 (a) (i) and 20 (b) (ii) (A) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, ‘ the Act’).

2. The prosecution case, succinctly stated, is that on 17.04.2025, at about 19:10 hours, the excise officials received credible information that the petitioner was cultivating cannabis plants on the terrace of a rented

building situated in T.C No.43/550 (43), KNRA-18, Kairali Residence Association, Muttathara Village, Thiruvananthapuram District. Acting upon the information, the Detecting Officer and party conducted a search of the building, in the presence of the petitioner, and seized two cannabis plants measuring 59 cm each, and three cannabis plants measuring 46, 35 and 29 cms each, all planted in pots. They also seized 5 grams of ganja seeds and dried branches from the petitioner's bedroom.

3. I have heard the Sri. Suman Chakravarthy, the learned counsel for the petitioner and Sri. C.S. Hrithwik, the learned Public Prosecutor.

4. The learned counsel for the petitioner contends that, even if all the allegations in Annexure 1 complaint are taken on their face value, the same will not attract the offences alleged against the petitioner. He draws the attention of this Court to the definitions of 'cannabis' and 'cannabis plant' under Sections 2(iii) (b) and (iv) of the Act,

and argues that to qualify the definition of cannabis plant, there should be flowering or fruiting tops on the plant. As the seized cannabis plants did not have flowering or fruiting tops, the offence under Section 20 (a) (i) is not attracted. He further contends that the word used under Section 20 (a) (i) is ‘cultivates’ and not ‘plant’. Since there is no allegation that the petitioner had cultivated the plants, the above offence is also not attracted. The learned counsel also asserts that, as the 5 grams seized were only seeds and leaves, the same does not attract the offence under Section 20(b)(ii)(A). He also contends that Annexure 8 rental agreement establishes that the petitioner was not residing in the premises from where the alleged cannabis plants, seeds, and leaves were seized. Hence, the prosecution will not lie against the petitioner. The learned counsel relied on the decision of the Hon’ble Supreme Court in **Alakh Ram v. State of U.P** [(2004) 1 SCC 766], the decision of this Court in **Narendran Purakunnel**

Rajakkadu, Udumbanchola v. State of Kerala [2022 KHC 4777], the decision of the Bombay High Court in **Mohammad Jakir Nawab Ali v. State of Maharashtra thr.P.S.O** [2024 SCC OnLine Bom 3198], the decision of the High Court of Andhra Pradesh in **Killo Subbarao and Others v. State of Andhra Pradesh** [2025 SC OnLine AP 2280], the decision of the High Court of Karnataka in **K.K.Rejji and others v. State by Murdeshwar Police Station, Karwar** [2009 SCC OnLine Kar 325] and the unreported common judgment of the Madras High Court (Madurai Bench) in **Ganesan v. The State, rep by Dy. S.P, NIB-CID, Dindigul** (Crl.Appeal (MD) No.212 of 2020) to bolster his contentions.

5. The learned Public Prosecutor vehemently opposes the Crl. M.C. He contends that the allegations in the Annexure 1 complaint, if taken on their face value, obviously prove the petitioner's culpability in the crime. The petitioner was apprehended red-handed with the five

well-grown cannabis plants and 5 grams of ganja from the premises that he had taken on rent. The witnesses and materials relied on by the prosecution in Annexure 1 complaint prove beyond a reasonable doubt that the petitioner has committed the offences. The question of whether the petitioner was not residing in the premises and the 5 grams was not ganja, etc., is a matter that has to be decided by the Trial Court. Considering the heinous nature of the crime, this Court may not exercise its inherent powers and quash Annexure 1 complaint.

6. The principal contentions of the learned counsel for the petitioner are as follows:

(i) For a plant to qualify as a cannabis plant under Section 2 (iv) of the Act, it must have flowering or fruiting tops;

(ii) To attract the offence under Section 20 (a) (i), the cannabis plants have to be cultivated in the earth, and not planted in pots, and

(iii) For the offence to fall within the ambit of Section 20 (b) (ii), the contraband alleged to be ganja must have flowering or fruiting tops of the cannabis plant, excluding the seeds and leaves when not accompanied by the tops.

7. To appreciate and decide the above questions posed, it is apposite to examine the relevant statutory provisions under the Act, namely, Sections 2 (iii), (iv), (viiib), 8, and 20 of the NDPS Act, which are extracted hereinbelow for convenience:

> "2. Definitions—In this Act, unless the context otherwise requires,—
>
> "(iii) "cannabis (hemp)" means--
>
> (a) *charas*, that is, the separated resin, in whatever form, whether crude or purified, obtained from the cannabis plant and also includes concentrated preparation and resin known as hashish oil or liquid hashish;
>
> (b) *ganja*, that is, the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated; and
>
> (c) any mixture, with or without any neutral material, of any of the above forms of cannabis or any drink prepared therefrom;
>
> (iv) "cannabis plant" means any plant of the genus cannabis;
>
> *** *** ***
>
> (viiib) "illicit traffic, in relation to narcotic drugs and psychotropic

substances, means—

*** *** ***

(ii) cultivating the opium poppy or any cannabis plant;

*** *** ***

8. Prohibition of certain operations—No person shall—

(a) cultivate any coca plant or gather any portion of coca plant; or

(b) cultivate the opium poppy or any cannabis plant; or

*** *** ***

20. Punishment for contravention in relation to cannabis plant and cannabis.

Whoever, in contravention of any provision of this Act or any rule or order made or condition of licence granted thereunder,--

(a) cultivates any cannabis plant; or

(b) produces, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses cannabis,

shall be punishable,--

(i) where such contravention relates to clause (a) with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine which may extend to one lakh rupees; and

(ii) where such contravention relates to sub-clause (b),--

(A) and involves small quantity, with rigorous imprisonment for a term which may extend to one year, or with fine which may extend to ten thousand rupees, or with both;

(B) and involves quantity lesser than commercial quantity but greater than small quantity, with rigorous imprisonment for a term which may extend to ten years, and with fine which may extend to one lakh rupees;

(C) and involves commercial quantity, with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees."

8. Section 2 (iv) of the Act defines a 'cannabis plant' as any plant of the genus cannabis. The definition does not

state that a plant assumes the character of a cannabis plant only when it bears flowering or fruiting tops. In contrast, sub-clause (b) of clause (iii) of Section 2 of the Act defines 'ganja' as the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops), by whatever name they may be known or designated. To put it differently, while the flowering or fruiting tops of the cannabis plant are 'ganja', it does not follow that a plant can be identified as a cannabis plant only upon bearing such tops.

9. Furthermore, Section 8(b) of the Act explicitly prohibits the cultivation of a cannabis plant, and Section 20 imposes separate punishments for (a) cultivating cannabis and (b) possessing, selling or purchasing cannabis. Therefore, it stands beyond any pale of doubt that the expressions ‘cannabis plant’ and 'ganja' denote two distinct entities/species within the framework of the Act.

10. In **Kunju and others v. State of Kerala and**

another [1988 (2) KLT 672], a Division Bench of this Court held thus:

> **“** 8. Modi in his medical jurisprudence and Toxicology, 20th Edition at page 710 refers to Bhang, Siddhim Patti or Sabji manufactured out of dried leaves and flowering or fruiting tops of the cannabis plant, used as an infusion in the form of the beverage, which produces intoxication of a sensuous character. Other products made out of cannabis plant referred to are majun, a sort of confection prepared from bhang after treating it with sugar, flour, milk and butter. The author refers to the highly intoxicating effect of majun sold in the bazar in small lozenge-shaped pieces. Charas or hashish is referred to as a concentrated product obtained out of the resin exuding from the leaves and stems of the cannabis plants. The author refers to this product as the most potent intoxicant when smoked with tobacco.
>
> 9. It is, thus clear that cultivation of cannabis plant cannot be assumed to be merely for the production of ganja referred to in the proviso to S. 8 of the Act. The cultivation can as well be for the production or manufacture of any of these highly intoxicant and toxic materials. If the cultivation of cannabis plant by the accused in these cases is only for the production of ganja, it is open to them to raise the plea in defence that in the absence of a notification referred to in the proviso to S. 8 they are not guilty of any offence under S. 20 of the Act.
>
> 10. The cultivation of cannabis plant is also an offence punishable under S. 55 of the Abkari Act”.

11. In view of the foregoing discussions, the first contention advanced by the learned Counsel for the petitioner — that a cannabis plant which does not bear flowering or fruiting tops, would not attract the offence under Section 20(a)(i) of the Act — is held to be devoid of

any merit and hence rejected.

12. The next contention raised is that since the cannabis plants allegedly seized from the petitioner were planted in pots, it will not fall within the meaning of ‘cultivate’ under Sections 8 and 20 (a) of the Act.

13. The expression 'cultivate' has not been defined in the Act. Therefore, it becomes necessary to ascertain the ordinary or the literary meaning of the word. In The Law Lexicon (Fourth Edition, 2017), at page 407, 'cultivate' means “to improve the product of the earth by manual industry; to till or husband the ground to forward the product of the earth by general industry”. In Stroud's Judicial Dictionary of Words and Phrases (Seventh Edition, 2008), at page 610, the word 'cultivate' means “Cultivate ... cannabis” (misuse of Drugs Act, 1971 (c.38), s.6. Growing cannabis plants in pots at a bedroom window was held to be 'cultivating' them for the purposes of this section.”

14. The above literal meanings clearly indicate that the expression 'cultivate any cannabis plant' used in Sections 8 (b) and 20 (a) of the Act encompasses any act of planting, tilling, raising, growing, farming or gardening a cannabis plant with the *mens rea*, whether such cultivation is carried out in the earth or in a pot. The statute does not distinguish between planting in the earth or growing in pots. The essence of the offence lies in the conscious act of planting and nurturing a cannabis plant in contravention of the provisions of the Act. Consequently, the argument of the learned counsel for the petitioner that the cultivation must necessarily be in the earth is unsustainable in law.

15. The remaining contentions are that,- (i) the petitioner was not residing in the premises from which the contraband was seized, and (ii) the 5 grams of seized ganja does not have flowering or fruiting tops of the cannabis plant; therefore, cannot be classified as ganja.

16. The materials on record disclose that the

Detecting Officer and the party seized both the cannabis plants and the cannabis from the conscious possession of the petitioner. The questions whether the petitioner was in actual occupation and possession of the premises, as well as whether the seized cannabis had flowering or fruiting tops, are essentially matters to be adjudicated after trial, rather than in a petition under Section 528 of the BNSS.

17. The precedents relied on by the learned counsel for the petitioner are distinguishable on facts and have no application to the instant case. In **Narendran** (supra), this Court, in a Criminal Appeal, held that there was no material to prove that the appellant was the real occupier of the premises from where the cannabis plants were seized. Likewise, **Alakh Ram** (supra), which was again an appeal of a similar nature to Narendran's case, wherein the Hon'ble Supreme Court held that there was no material to prove that the accused was in possession of the premises. In **Killo Subbarao's** case, the High Court of Andhra

Pradesh had interpreted the definition of 'ganja', and in **K.K.Rejji's case,** the Karnataka High Court has held that stem, leaves and branches of a cannabis plant cannot be treated as ganja. The above decisions do not lend any support to the petitioner's case.

18. It is a well-established principle of law that this Court has wide and plenary powers under Section 482 of the Code of Criminal Procedure, which corresponds to Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to quash criminal proceedings. However, such inherent power, though expansive in nature, is not unbridled or unlimited. They are to be exercised sparingly, with circumspection, and within the parameters delineated by judicial precedents. (Read the decisions in **Central Bureau of Investigation v. Aryan Singh and Others** [(2023) 18 SCC 399], **Daxaben v. State of Gujarat and Others** [(2022) 16 SCC 117] and **Monica Kumar and Another v. State of U.P. and Others** [(2008) 8 SCC

781]).

19. The seminal decision of the Hon'ble Supreme Court in **State of Haryana and others v. Bhajan Lal and others** [(1992) Supp (1) SCC 335], which continues to serve as a cornerstone of the illustrative principles to be followed while exercising the inherent powers under Section 482 of the Code, enunciated at paragraph 102, and it reads as follows:

> "(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under S.156(1) of the Code except under an order of a Magistrate within the purview of S.155(2) of the Code.
>
> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non - cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under S.155(2) of the Code.
>
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient

ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or, where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and / or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

20. At the same time, the Hon’ble Supreme Court has consistently cautioned that High Courts, while exercising jurisdiction under Section 482 of the Code, not to embark upon a "minitrial" or weigh the sufficiency of evidence, which falls within the domain of the Trial Court. The scope of enquiry is confined to whether, on a plain reading of the FIR/complaint and accompanying material, the ingredients of the alleged offence are disclosed. (Read the decisions in **Rajiv Thapar and others v. Madal Lal Kapoor** [(2013) 3 SCC 330] and **HMT Watches Ltd. v. Abida M.A. and another** [(2015) 11 SCC 776]).

21. In **Muskan v. Ishaan Khan (Sataniya)** [2025

KHC 6914], the Hon'ble Supreme Court has held that the inherent power under Section 482 of the Code is extraordinary, but must be exercised sparingly. It is the duty of the High Court to intervene where continuation of criminal proceedings would amount to an abuse of process of law, or where the dispute is purely of a civil nature and criminal colour has been artificially given to it. Conversely, where disputed questions of fact arise requiring adjudication, the matter must ordinarily proceed to trial.

On a careful scrutiny of the allegations in the complaint, the materials on record and the findings rendered hereinabove, this Court is of the considered view that, if the allegations in the complaint are taken on their face value, prima facie, the same disclose the offences alleged against the petitioner. In light of the principles laid down in the afore-cited decisions, I am of the firm view that this is not a case to exercise the inherent powers of this Court under Section 528 of the BNSS for quashing

Annexure 1 complaint. The petitioner will be at liberty to raise all the contentions before the Trial Court, which shall consider and decide the matter untrammelled by any observation made in this order.

Sd/-

C.S.DIAS, JUDGE

NAB/dkr

APPENDIX OF CRL.MC 8469/2025

PETITIONER ANNEXURES

Annexure -1	**A TRUE COPY OF THE COMPLAINT IN CRIME NO. 13/2025 OF THE EXCISE ENFORCEMENT AND ANTI NARCOTIC SQUAD, THIRUVANANTHAPURAM**
Annexure -2	**THE COPY OF THE SUSPENSION ORDER NO.AU.11/ADMN/DISCIPLINARY PROCEEDING/5-4/2025-26/TR.NO.26 DATED 21.04.2025**
Annexure -3	**A TRUE COPY OF THE MARRIAGE CERTIFICATE DATED 16.09.2025 ISSUED BY THE MARRIAGE REGISTRATION OFFICER, MAKDAWA**
Annexure- 4	**A TRUE COPY OF SCREENSHOT OF PAYMENT DATED 10.04.2025 OF RS.5,000/-**
Annexure- 5	**A TRUE COPY OF PAYMENT OF RS.35,000/- ON 11.04.2025**
Annexure-6	**A TRUE COPY OF THE SCREENSHOT OF PAYMENT MADE TO SRI.AJITH SEN C.R ON 14.04.2025**
Annexure-7	**A TRUE COPY OF THE SCREENSHOT OF PAYMENT RS.30,000/- ON 16.04.2025**
Annexure -8	**A TRUE COPY OF THE RENTAL AGREEMENT DATED 14.04.2025**