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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 1ST DAY OF JUNE 2026 / 11TH JYAISHTA, 1948

BAIL APPL. NO. 1503 OF 2026

CRIME NO.789/2025 OF Adhur Police Station, Kasaragod

AGAINST THE ORDER DATED 03.03.2026 IN CRMP NO.7 OF 2026 OF
SESSIONS court, KASARAGOD

PETITIONERS/ACCUSED 1 and 4:

- 1 ABOOBACKER SIDDIQUE,
AGED 32 YEARS,
S/O ABDULLA, RESIDING AT BIYARAM HOUSE,
SIRIBAGILU P.O., KASARAGOD DISTRICT, PIN - 671124

- 2 ABDUL ROUF M.,
AGED 39 YEARS,
S/O MUHAMMED M., BOOD HOUSE,
PATLA, MADHUR VILLAGE, KASARAGOD DISTRICT, PIN - 671124

BY ADVS.

SRI.R.ANAS MUHAMMED SHAMNAD
SHRI.SALEEK.C.A.
SRI.C.C.ANOOP
SRI.T.U.SUJITH KUMAR
SRI.SARUN RAJAN
SHRI.HAMDAN MANSOOR K.
SHRI.P.SREEKUMAR (SR.)
SRI.K.K.DHEERENDRAKRISHNAN

RESPONDENTS/STATE AND COMPLAINANT:

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

- 2 STATION HOUSE OFFICER,
ADHUR POLICE STATION, KASARAGOD DISTRICT, PIN - 671453



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OTHER PRESENT:

SRI.M.C. ASHI, SR. PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
19.05.2026, THE COURT ON 01.06.2026 DELIVERED THE FOLLOWING:



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"C.R."

ORDER

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

2. The applicants are the accused Nos. 1 and 4 in Crime No.789/2025 of Adhur Police Station, Kasaragod District. The offences alleged are punishable under Sections 22(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short, the NDPS Act).

3. The prosecution allegation in short is that on 30/12/2025 at 19.00 hrs, the applicants and the accused No.5 were found in possession of 4.22 grams of MDMA, which was kept for personal use and sale at the building bearing No.X111/302A of Heaven Homestay situated at Koppala in Adhur Panchayat, in violation of the NDPS Act and thereby committed the offences.

4. I have heard Sri.K.K.Dheerendrakrishnan, the learned counsel for the applicants and Sri.M.C.Ashi, the learned Senior Public Prosecutor. Perused the case diary.

5. The applicants sought bail on various grounds. However, at the time of the hearing, the learned counsel for the applicants submitted that the applicants are entitled to default bail since the final report was filed beyond sixty days of the applicants' arrest. The argument was confined to the said point.



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6. The applicants have been in custody since 30/12/2025. The investigation is over, and the final report was electronically filed on 28/2/2026. However, the physical copy of the final report was forwarded to the trial court only on 2/3/2026. The learned counsel for the applicants submitted that since the offence under Section 22(b) of the NDPS Act carries a maximum punishment of ten years with fine, but with no minimum punishment, the investigation should have been completed and the final report should have been filed within a period of sixty days, i.e., on or before 28/2/2026. The learned counsel further submitted that though the final report was submitted by way of e-filing on 28/2/2026, the physical copy was forwarded to the court, and the court acted upon it only on 2/3/2026, which is beyond sixty days of the arrest of the applicants, and hence they are entitled to default bail. On the other hand, the learned Senior Public Prosecutor submitted that the investigation has been completed within sixty days, and the final report has been filed on the sixtieth day, i.e., 28/2/2026, electronically. The learned counsel further submitted that the date of filing of the final report through e-filing mode has to be reckoned for computing the period of limitation under Section 187(3)(ii) of the BNSS and Rule 13 of the Electronic Filing Rules for Courts (Kerala), 2021 (for short, the Electronic Filing Rules). The learned Senior Public Prosecutor also submitted that since the punishment provided for the offence under Section 22(b) of the NDPS Act may extend to ten years, the statutory period prescribed for



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filing the final report is ninety days and not sixty days as per Section 187(3)(ii) of the BNSS.

7. Bail serves as a mechanism to ensure that the liberty guaranteed to a person under Article 21 of the Constitution is not arbitrarily curtailed before conviction. The default bail under Section 187 of BNSS (Section 167 of Cr.PC) is the right every accused holds when the investigating agency fails to complete the investigation within the statutorily prescribed period. It is not merely a statutory right, but a fundamental right granted to an accused person. The Supreme Court has tied it to Article 21 in a line of cases and repeatedly described it as 'indefeasible'.

8. Clause (a) of the first proviso to Section 167(2) of the Cr.P.C, which provided for the release of a person on default bail, now stands replaced by Section 187(3) of the BNSS. As per clause (a)(i) of the first proviso to Section 167(2) of Cr.P.C, when a person is accused of an offence punishable with death, imprisonment for life, or imprisonment for a term of not less than ten years, the investigation of the case must be completed within ninety days to prevent the accused from being released on bail. Significantly, the expression, "imprisonment for a term of not less than ten years" occurring in clause (a)(i) of the first proviso to Section 167(2) of Cr.P.C now stands replaced with "imprisonment for a term of ten years or more" in Section 187(3)(i) of the BNSS. So, the crucial question that arises is whether the effect of new terminology in



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the place of “.....for a term not less than ten years...” to “....for a term of ten years or more” makes any difference in the application of ninety days period to different offences under the BNSS?

9. The expression, “imprisonment for a term of not less than ten years” occurring in clause (a)(i) of the first proviso to Section 167(2) of Cr.P.C had come up for interpretation before the Supreme Court in ***Rakesh Kumar Paul v. State of Assam*** [(2017) 15 SCC 67]. In that case, the offence alleged against the accused was under Section 13(1) of the Prevention of Corruption Act, 1988, which is punishable with “imprisonment for a term which shall be not less than four years but which may extend to ten years” and fine. The final report in that case was filed after the expiry of the period of sixty days, but before completing the period of ninety days of custody by the accused. The majority view of the Supreme Court in ***Rakesh Kumar Paul*** (supra) was that the words “not less than” occurring in clause (i) to proviso (a) of Section 167(2) of Cr.P.C must be given their natural and obvious meaning, which is to say, not below a minimum threshold, and these words must relate to an offence punishable with a minimum of ten years imprisonment. It was held that the words “not less than ten years” obviously meant that the punishment should be ten years or more, and it cannot include offences where the maximum punishment is ten years. It was concluded that, in all cases where the minimum sentence is less than ten years but the maximum sentence is not death or life



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imprisonment, then Section 167(2)(a)(ii) of the Cr.P.C would apply, and the accused would be entitled to a grant of default bail after sixty days in case a charge-sheet is not filed and that Section 167(2)(a)(i) of Cr.P.C would apply only in cases where the offence alleged against the accused is punishable with (i) death and any lower sentence; (ii) with life imprisonment and any lower sentence, or (iii) with a minimum sentence of imprisonment for a period of ten years.

10. A Single Bench of this Court in *Mohammed Sajjid v. State of Kerala* (2025 (2) KLT 73) has examined the effect of substituting the expression “imprisonment for a term of not less than ten years” occurring in clause (a)(i) of the first proviso to Section 167(2) of Cr.P.C as “imprisonment for a term of ten years or more” in Section 187(3)(i) of the BNSS. The learned Single Judge compared the phraseology used in Section 187(3)(i) of BNSS as well as the phraseology used in Section 167(2)(a)(i) of Cr.P.C and concluded that, even for offences punishable up to 10 years, the concept of statutory bail will be available on completion of 60 days, if the final report has not been filed. In coming to the above conclusion, the learned Single Judge observed that the dictum laid down by the Supreme Court in *Rakesh Kumar Paul* (supra) is equally applicable to Section 187(3) of the BNSS also. Another Single Judge in *Athul v. State of Kerala* (2025 KHC 1934) followed *Mohammed Sajjid* (supra) and held that the words 'imprisonment for a term of ten years or more' in Section 187(3)(i) of BNSS do indicate that there must be a



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minimum sentence of imprisonment of ten years and not a period of imprisonment up to ten years. The offence involved in both the above cases was under Section 22(b) of the NDPS Act, which carries a punishment of ten years with a fine. It was concluded in both cases that the statutory bail will accrue for offences under Section 22(b) of the NDPS Act if the accused had been in custody for more than sixty days without the investigation being completed. The Karnataka High Court (*State of Karnataka by Kavour Police Station v. Kalandar Shafi*, 2024 KHC OnLine 5417) also took a similar view and held that the expression “ten years or more” in Section 187(3) of the BNSS only depicts a threshold sentence of ten years.

11. The learned Senior Public Prosecutor, Sri. M.C.Ashi submitted that if there is no difference between the meaning of the expressions “not less than ten years” and “ten years or more”, there was no need for the legislature to replace the words “imprisonment for a term of not less than ten years” in clause (a)(i) of the first proviso to Section 167(2) of Cr.P.C, with the words “imprisonment for a term of ten years or more” in Section 187(3)(i) of the BNSS. According to the learned Prosecutor, though in *Mohammed Sajjia* (supra) and *Athu* (supra), this Court had held that statutory bail will accrue for offence under Section 22(b) of the NDPS Act if the final report is not filed within sixty days from the date of custody, the said dictum requires reconsideration as the wording in Section 187 BNSS 2023, and Section 167 of Cr.P.C are



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different. Reliance was also placed on another Single Bench judgment of this Court in *Sayyad S.A v State of Kerala* (2025 (6) KHC 591) in which it was held that when the offence of dacoity which is punishable with imprisonment for life or with rigorous imprisonment for a term which may extend to ten years under Section 310(2) of BNS, is under investigation, the right to statutory bail accrues as per Section 187(3)(i) of BNSS on completion of ninety days from the date of custody.

12. The distinction between the sixty-day and ninety-day timeframes arises from the recognition that graver offences necessitate a more comprehensive investigation. A longer period enables the investigating agency to gather adequate evidence without the undue pressure of rigid deadlines. Conversely, offences punishable with imprisonment up to ten years are presumed to involve comparatively simpler inquiries, warranting a shorter period for filing the charge-sheet. This classification seeks to balance the liberty of the accused with the State's interest in effective law enforcement—ensuring that detention is not prolonged unnecessarily, while allowing sufficient time for investigation in serious cases.

13. A plain reading of proviso (a)(i) to Section 167(2) of Cr.P.C and Section 187(3)(i) of the BNSS reveals that, under the former, the threshold was offences punishable with imprisonment “for a term not less than ten years,” thereby attracting the ninety-day limit. The newly enacted BNSS retains this concept: Section 187(3)(i) continues to require



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that, for the ninety-day period to apply, the offence must be punishable with imprisonment of ten years or more. In substance, therefore, proviso (a)(i) to Section 167(2) Cr.P.C and Section 187(3)(i) BNSS are aligned, with only minor changes in phraseology. The sixty-day and ninety-day framework remains intact, reflecting legislative adherence to the same rationale. The principle that default bail is linked to the seriousness of the offence stands unchanged. Indeed, the distinction crystallised in *Rakesh Kumar Paul* (supra) has been carried forward into Section 187(3) BNSS.

14. In *Sayyad S.A.* (supra), the Court dealt with an offence under Section 310(2) of the Bharatiya Nyaya Sanhita, 2023, punishable with imprisonment for life or rigorous imprisonment up to ten years. By contrast, Section 22(b) of the NDPS Act prescribes imprisonment up to ten years but does not provide for life imprisonment. Where the punishment includes life imprisonment, the case squarely falls within Section 187(3)(i) BNSS, thereby permitting detention up to ninety days for statutory bail. Hence, the dictum in *Sayyad S.A.* (supra) is inapplicable to the present facts. For these reasons, I find no ground to reconsider the principles laid down in *Mohammed Sajjid* (supra) and *Athul* (supra).

15. The conclusion that emerges is that the ninety-day benchmark for default bail applies only where the offence carries: (a) the death penalty, (b) imprisonment for life, or (c) a minimum sentence of ten years. The offences punishable with imprisonment that may extend up to ten years, but without a minimum threshold, fall within the



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sixty-day category. Inasmuch as the offence under Section 22(b) of the NDPS Act provides for a maximum punishment of ten years with fine, but stipulates no minimum term, the statutory right to bail accrues if the final report is not filed within sixty days from the date of custody.

16. As stated already, the applicants were arrested and remanded to judicial custody on 30/12/2025. The final report was filed electronically on 28/02/2026, which was the sixtieth day. A report was called for from the trial court, wherein it is stated that the final report was e-filed on 28/02/2026 at 6:02 p.m.

17. Rule 13 of the Electronic Filing Rules governs the computation of limitation where filing is effected through electronic mode. Sub-rule (1) stipulates that, wherever limitation under the Limitation Act, 1963 or under any other law in force applies to an "Action," it is the responsibility of the e-filer to electronically file such Action within the prescribed period of limitation. Rule 2(b) defines "Action" broadly to include all proceedings instituted in courts, such as suits, criminal complaints, appeals, revision petitions, writ petitions, writ appeals, contempt petitions, execution petitions, arbitration proceedings, probate cases, caveats, bail applications and interlocutory applications. Sub-rule (2) of Rule 13 further clarifies that, for the purpose of computing limitation, the date of electronic filing shall be reckoned as the date on which the Action is electronically received in the Registry within the prescribed time (Indian Standard Time), as per the relevant Acts, Rules,



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and orders issued from time to time.

18. The Criminal Rules of Practice, Kerala, 1982 (for short, "Criminal Rules of Practice") regulate the procedure in subordinate criminal courts in the State. Rule 4 prescribes the office hours of the courts, which shall remain open on all working days from 10:30 a.m. to 5:00 p.m., or during such other hours as may be notified by the High Court. Rule 5 prescribes the sitting hours of the courts, which are from 11:00 a.m. to 5:00 p.m., with an interval not exceeding one hour.

19. A conjoint reading of Rules 13(1) and 13(2) of the Electronic Filing Rules with Rules 4 and 5 of the Criminal Rules of Practice makes it evident that, for the purpose of computing limitation, electronic filings received up to 5:00 p.m. shall be treated as instituted on that day. While a party may electronically file an Action even after 5:00 p.m., such filing shall, for the purpose of limitation, be deemed to have been instituted only on the next working day.

As already noted, the final report in the present case was e-filed on 28/02/2026 at 6:02 p.m. In terms of the applicable rules, such a filing, having been made after 5:00 p.m., must be reckoned as instituted only on 01/03/2026. Consequently, for the purpose of computing limitation, the filing falls beyond the statutory period of sixty days from the date of remand of the applicants. The applicants are, therefore, entitled to statutory bail. Accordingly, they shall be released on bail subject to the following conditions:-



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(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 not commit any offence of a like nature while on bail.

(iii) 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.

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

(v) 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

Rp



APPENDIX OF BAIL APPL. NO. 1503 OF 2026

PETITIONER ANNEXURES

- Annexure A1 TRUE COPY OF FIRST INFORMATION REPORT IN CRIME NO.789/2025, DATED 31.12.2025 OF THE ADHUR POLICE STATION
- Annexure A2 TRUE COPY OF THE SECTION 57 REPORT, DATED 02.01.2026 SUBMITTED BY THE SUB INSPECTOR OF POLICE, ADHUR POLICE STATION BEFORE THE INSPECTOR OF POLICE, ADHUR POLICE STATION
- Annexure A3 A TRUE COPY THE ORDER DATED 19.01.2026 IN CRL.M.P. NO.01/2026 ON THE FILES OF THE HON'BLE SESSIONS COURT, KASARAGOD
- Annexure A4 TRUE COPY OF THE ORDER DATED 19.01.2026 IN CRL.M.P. NO.02/2026 ON THE FILES OF THE HON'BLE SESSIONS COURT, KASARAGOD
- Annexure A5 TRUE COPY OF THE ORDER DATED 24.01.2026 IN CRL.M.P. NO.03/2026 ON THE FILES OF THE HON'BLE SESSIONS COURT, KASARAGOD
- Annexure A6 A TRUE COPY OF THE ORDER DATED 20.02.2026 IN CRL.M.P. NO.06/2026 ON THE FILES OF THE HON'BLE SESSIONS COURT, KASARAGOD
- Annexure A7 A TRUE COPY OF THE ORDER DATED 03.03.2026 IN CRL.M.P. NO.7/2026 ON THE FILES OF THE HON'BLE SESSIONS COURT, KASARAGOD