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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 17TH DAY OF AUGUST 2026 / 26TH SRAVANA, 1948

BAIL APPL. NO. 4488 OF 2026

CRIME NO.17/2026 OF KASARAGOD EXCISE RANGE OFFICE, KASARGOD

AGAINST THE ORDER DATED 05.08.2026 IN BA NO.394 OF 2026 OF
DISTRICT COURT & SESSIONS & MOTOR ACCIDENT CLAIMS TRIBUNAL/RENT
CONTROL APPELLATE AUTHORITY, KASARAGOD

PETITIONER/ACCUSED NO.1:

- 1 ABDUL RAUF M.
AGED 39 YEARS
S/O MUHAMMED HAJI, BOOD HOUSE, PATLA, KASARAGOD, PIN -
671124

BY ADVS.
SHRI.SALEEK.C.A.
SRI.T.U.SUJITH KUMAR
SHRI.HAMDAN MANSOOR K.

RESPONDENTS/STATE AND COMPLAINANT:

- 1 STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF
KERALA, ERNAKULAM, PIN - 682031
- 2 THE EXCISE INSPECTOR
EXCISE RANGE OFFICE, KASARAGOD, PIN - 671121

SMT.ANEEDA BEEGUM, SR. PUBLIC PROSECUTOR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
17.08.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



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ORDER

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

2. The applicant is the accused No.1 in Crime No.17/2026 of Kasaragod Excise Range Office, Kasaragod District. The offences alleged are punishable under Sections 22(b), 25 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3. The prosecution case, in short, is that on 08.07.2026 at about 8.20 p.m., the Excise Inspector, Kasaragod Excise Range, while conducting inspection near Santhosh Nagar in Chengala Village, intercepted a Maruti Alto Car bearing Registration No.KL-24-B-8692 in which the applicant and another accused were travelling, recovered 1.899 grams of MDMA from the possession of the accused and thereby the applicant committed the offences.

4. The applicant was arrested on 08.07.2026 at 8.20



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p.m. He was produced before the Judicial First Class Magistrate Court – I, Kasargod, on the next day on 09.07.2026. According to the learned counsel for the applicant, the production was at 12 noon on 09.07.2026. The case records would show that the learned Magistrate after realizing that the grounds for arrest were not communicated to the applicant in terms of Article 22(1) of the Constitution and Sections 47 and 48 of the BNSS, released him. However, on the same day, at 4.30 p.m., he was re-arrested, produced before the very same Magistrate and remanded to judicial custody. The applicant, thereafter, filed a bail application before the Sessions Court as B.A. No.394/2026 contending that his subsequent arrest is illegal, against the direction of this Court in ***Ramjith Nayak v. State of Kerala*** [2026 KHC OnLine 539] and therefore, he is to be released on bail. However, the learned Sessions Judge did not accept the plea citing very strange observations and denied the bail. It is, therefore, the applicant is before this Court.

5. I have heard Sri.Saleek C.A., the learned counsel for the applicant and Smt.Aneeda Beegum, the learned Senior



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Public Prosecutor. Perused the case diary.

6. The learned counsel for the applicant submitted that the learned Magistrate remanded the applicant to the judicial custody after his re-arrest and the learned Sessions Judge dismissed the bail application filed by the applicant totally ignoring the specific direction given by this Court in ***Ramjith Nayak*** (supra).

7. The question whether a person who is released consequent to non-supply of grounds for arrest in terms of Article 22(1) of the Constitution and Sections 47 and 48 of the BNSS could be re-arrested came up for consideration before this Court in ***Ramjith Nayak*** (supra). It was held that where an accused challenges his arrest before the Magistrate or Court on the ground that it violates Article 22(1) of the Constitution, the Magistrate or Court may either direct him to be released on bail or declare the arrest illegal and order his immediate release. It was further held that in case if such a person has to be subsequently arrested, the investigating agency must first obtain cancellation of bail or secure permission to arrest, as the



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case may be. It was further held that in a case where the Magistrate or Court directs release simpliciter, without granting bail, the investigating agency must move an application seeking permission of the Magistrate or Court for arrest, remand, or custody. Upon receipt of such an application, the Magistrate or Court shall decide it expeditiously and in any event within one week of its submission, after affording the accused an opportunity of hearing, as held in ***Mihir Rajesh Shah v. State of Maharashtra and Another*** [2025 SCC OnLine SC 2356].

8. The records would show that the applicant was released for non-compliance of Article 22(1) of the Constitution and Sections 47 and 48 of the BNSS on 09.07.2026. On the same day at 4.30 p.m., he was re-arrested totally in violation of the direction given by this Court in ***Ramjith Nayak*** (supra). When an applicant is released for non-supply of grounds for arrest and is subsequently arrested and produced before the Magistrate, the learned Magistrate is obliged to consider whether the re-arrest is in accordance with law and as per the directions of this Court in ***Ramjith Nayak*** (supra). It appears



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that the learned Magistrate did not consider the same and mechanically remanded the applicant to judicial custody. Strangely, when this was brought to the notice of the Sessions Judge, the Sessions Judge turned down the said plea in total disregard to the directions of this Court by giving flimsy reasons.

9. A reading of Annexure A1 order of the learned Sessions Judge would show that the learned Sessions Judge presumed that the Magistrate who was aware of the earlier case of the applicant must be deemed to have permitted his re-arrest. The learned Sessions Judge added that permission of the Magistrate would be implied. When an accused approached the Court of Law alleging that his fundamental right is violated, no Court is supposed to approach the issue in such a light manner. There is no question of implied permission. It was specifically directed in ***Ramjith Nayak*** (supra) that an application in writing should be moved by the investigating agency seeking permission to re-arrest and the learned Magistrate must pass a reasoned order after affording an



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opportunity to the accused. The said direction was not followed in this case. Hence, the subsequent arrest of the applicant is vitiated and he is entitled to be released on bail.

10. In the result, the application is allowed on the following conditions: -

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

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

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

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

(v) The applicant shall not attempt to contact any of the prosecution witnesses, directly or through any other person, or



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in any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation.

(vi) The applicant 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.

The Registry is directed to call for an explanation from the Judicial First Class Magistrate Court -I, Kasargod as well as the Additional Sessions Court, Kasargod Division why the order of this Court in ***Ramjith Nayak*** (supra) has not been followed by the former while remanding the applicant and by the latter while passing Annexure A1 order. The Registry is also directed to forward a copy of the order in ***Ramjith Nayak*** (supra) to all the Courts in the State dealing with criminal cases for strict compliance.

Sd/-

**DR. KAUSER EDAPPAGATH
JUDGE**

SKP



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APPENDIX OF BAIL APPL. NO. 4488 OF 2026

PETITIONER'S ANNEXURES:

Annexure A1 A TRUE COPY OF THE COMMON ORDER DATED
05.08.2026 IN BAIL APPLICATION NO.394 OF
2026 AND CRL.M.P. NO.02 OF 2026 ON THE
FILES OF THE COURT OF SESSION, KASARAGOD

RESPONDENTS' ANNEXURES: NIL

TRUE COPY

P.A. TO JUDGE