

**B.A Nos. 5549, 5686, 5693
and 5957 of 2023**

1

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 21ST DAY OF MAY 2024 / 31ST VAISAKHA, 1946

BAIL APPL. NO. 5549 OF 2023

CRIME NO.291/2023 OF Kattoor Police Station, Thrissur

PETITIONER/S:

ANURAJ,
AGED 25 YEARS
NJATTUVETTI HOUSE, ANANDAPURAM, EDAYATTUMURI DESOM,
ANANTHAPURAM VILLAGE, MUKUNDAPURAM TALUK, THRISSUR, PIN -
680305

BY ADV SARATH BABU KOTTAKKAL

RESPONDENT/S:

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

2 ADDL.R2 THE PRINCIPAL SECRETARY, FINANCE DEPARTMENT,
GOVERNMENT OF KERALA,
IS SUO MOTU IMPLEADED AS ADDL.R2 AS PER ORDER DATED
27/10/2023 IN B.A.NO.5549/2023

BY ADVS.
SRI.C.S HRITHWIK,PUBLIC PROSECUTOR
SRI.GRASHIOUS KURIAKOSE,ADDL.DIRECTOR GENERAL OF
PROSECUTION

SRI.S.RAJEEV, AMICUS CURIAE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14.2.24, THE
COURT ON 21.5.2024 ALONG WITH BA NOS 5686, 5693, 5957 OF 2023 DELIVERED THE
FOLLOWING:

**B.A Nos. 5549, 5686, 5693
and 5957 of 2023**

2

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 21ST DAY OF MAY 2024 / 31ST VAISAKHA, 1946

BAIL APPL. NO. 5686 OF 2023

CRIME NO.291/2023 OF Kattoor Police Station, Thrissur

PETITIONER/S:

NOUFAL,
AGED 30 YEARS
SON OF NOUSHAD, VELLUTHERI HOUSE, PULLUT DESOM,
KODUNGALLUR, THRISSUR, PIN - 680663

BY ADVS.
JITHIN BABU A
ARUN SAMUEL

RESPONDENT/S:

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

2 PRINCIPAL SECRETARY
FINANCE DEPARTMENT, GOVERNMENT OF KERALA IS SUO MOTU
IMPLEADED AS ADDL. R2 AS PER ORDER DATED 27/10/2023 IN
BA.NO.5686/2023

BY ADVS.
SMT.NEEMA.T.V,PUBLIC PROSECUTOR
SRI.GRASHIOUS KURIAKOSE,ADDL.DIRECTOR GENERAL OF
PROSECUTION
SRI.S.RAJEEV, AMICUS CURIAE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14.2.24, THE
COURT ON 21.5.2024 ALONG WITH BA NOS 5549, 5693, 5957 OF 2023 DELIVERED THE
FOLLOWING:

**B.A Nos. 5549, 5686, 5693
and 5957 of 2023**

3

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 21ST DAY OF MAY 2024 / 31ST VAISAKHA, 1946

BAIL APPL. NO. 5693 OF 2023

CRIME NO.291/2023 OF Kattoor Police Station, Thrissur

PETITIONER/S:

SUMESH,
AGED 44 YEARS
SON OF SADANANDAN, PERUMBILLI HOUSE, PULLATHARA DESOM,
KARALAM P O, THRISSUR, PIN - 680711

BY ADVS.
JITHIN BABU A
ARUN SAMUEL

RESPONDENT/S:

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

2 THE PRINCIPAL SECRETARY
FINANCE DEPARTMENT, GOVERNMENT OF KERALA IS SUO MOTU
IMPLEADED AS ADDL. R2 AS PER ORDER DATED 27/10/2023 IN
BA.NO.5693/2023

BY ADVS.
SMT.SEETHA.S,PUBLIC PROSECUTOR
SRI.GRASHIOUS KURIAKOSE,ADDL.DIRECTOR GENERAL OF
PROSECUTION
SRI.S.RAJEEV, AMICUS CURIAE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14.2.24, THE
COURT ON 21.5.2024 ALONG WITH BA NOS 5549, 5686, 5957 OF 2023 DELIVERED THE
FOLLOWING:

**B.A Nos. 5549, 5686, 5693
and 5957 of 2023**

4

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 21ST DAY OF MAY 2024 / 31ST VAISAKHA, 1946

BAIL APPL. NO. 5957 OF 2023

CRIME NO.291/2023 OF Kattoor Police Station, Thrissur

PETITIONER/S:

NIDHIN,
AGED 30 YEARS
SON OF THILAKAN, PERUMBULLY HOUSE, EDATHIRINJI VILLAGE,
THRISSUR., PIN - 680122

BY ADVS.
K.R.ARUN KRISHNAN
DEEPA K.RADHAKRISHNAN
JISSMON A KURIAKOSE
SANAL C.S

RESPONDENT/S:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF KERALA, PIN
- 682031
- 2 THE PRINCIPAL SECRETARY
FINANCE DEPARTMENT, GOVERNMENT OF KERALA IS SUO MOTU
IMPLEADED AS ADDITIONAL RESPONDENT 2 AS PER ORDER DATED 27-
10-23

BY ADVS.
SMT.NEEMA T.V, PUBLIC PROSECUTOR
SRI.GRASHIOUS KURIAKOSE,ADDL.DIRECTOR GENERAL OF
PROSECUTION
SRI.S.RAJEEV, AMICUS CURIAE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 14.2.24, THE COURT ON
21.5.2024 ALONG WITH BA NOS 5549, 5686, 5693 OF 2023 DELIVERED THE FOLLOWING:

"C.R"

C.S.DIAS,J

**=====
Bail Application Nos. 5549, 5686, 5693
and 5957 of 2023**

**-----
Dated this the 21st day of May, 2024**

COMMON ORDER

Does an accused have the right to seek for the expeditious testing of the seized drugs/substances under the Narcotic Drugs and Psychotropic Substances Act, of 1985?

2. The accused 1 to 4 in Crime No.291/2023 of the Kattoor Police Station, Thrissur, have individually filed these applications under Section 439 of the Code of Criminal Procedure, 1973, to enlarge them on bail. The petitioners were arrested on 6.4.2023.

3. The factual matrix of the prosecution case is that: on 6.4.2023, at around 16.20 hours, 14.84 grams of "MDMA" (methylenedioxy methamphetamine) was seized from the

accused 1 to 4 at the residence of the first accused at Pullathara Desom, Karalam Panchayat. The accused were arrested on the spot with the contraband substance and, thereby, they have committed the offences under Sections 20 (b) and 20 (c) of the Narcotic Drugs and Psychotropic Substances Act (in short, 'NDPS Act') read with Section 34 of the Indian Penal Code.

4. When the applications came up for consideration on 25.7.2023, this Court, after analysing Rule 14 of the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022 ('Rules', for brevity), directed the respondent to file a statement indicating the action taken by the State of Kerala to submit chemical analysis reports of the seized contraband drugs and substances (in short contraband) within the time frame stipulated by the Rules.

5. During the subsequent hearing of the applications on 8.8.2023, it was reported that, as per the chemical analysis report, the contraband allegedly seized from the petitioners is

'methamphetamine' and not 'MDMA' and is, therefore, of an intermediate quantity as per the Specification of Small and Commercial Quantity of Narcotic Drug or Psychotropic Substance fixed by the Central Government vide. S.O No.1055(E) dated 19.10.2001. Consequently, this Court enlarged the petitioners on interim bail. Nevertheless, the learned Additional Director General of Prosecution was directed to file the statement as ordered on 25.07.2023.

6. Accordingly, on 14.9.2023 the Additional Chief Secretary to the Government of Kerala filed a report, inter alia, stating as follows:

"At present State Forensic Lab and three Regional Forensic Science Laboratories functioning in the State are having sufficient facilities for narcotic examinations. Total number of NDPS cases pending across the State is 1699. The FSL Director reported that all the facilities are available for examination of NDPS cases in the RFSLs. Moreover, the Narcotic Division of RFSL, Thrissur, has been functioning since 2020, which carry out only the examination of Narcotic Substances. A separate floor has been constructed at RFSL, Thrissur for the purpose.

The lack of man power is the major hurdle for speedy disposal of cases including NDPS cases. A comprehensive proposal for creation of 98, including 79 technical posts, in the FSL is under the active consideration of Government. If the above requested posts are sanctioned all the hurdles pertaining to speedy disposal of cases would be settled to a considerable extent.

Since the Hon'ble High Court has expressed huge concern over the delay in examining narcotic cases, the State Police Chief has been

requested to examine the possibility of establishing a Lab/converting an existing lab, for the purpose and if necessary, to furnish detailed and comprehensive proposal by incorporating details of the infrastructure facility, total expected expenditure for the project, availability of fund, etc.

In this circumstance, I am to request you to take immediate steps to apprise the above matter before the Hon'ble High Court when the case comes up for hearing."

(emphasis given).

7. Taking into consideration the seriousness of the issue, this Court directed the Additional Chief Secretary to file an affidavit indicating the time period required to implement the matters mentioned in the report dated 14.9.2023.

8. Pursuant to the above order, the Additional Chief Secretary has filed an affidavit dated 13.10.2023 stating as follows:

"3. It is submitted that based on the order of the Hon'ble High Court dated 25.07.2023 in B.A Nos. 5686, 5549 and 5693/2023, as per the letter No. K2/212/2023- Home dated 14.09.2023, the State Police Chief had been directed to examine the possibility of establishing a lab/converting an existing lab, exclusively for NDPS cases and if necessary, to furnish a detailed and comprehensive proposal by incorporating details of the infrastructure facility, total expenditure for the project, availability of fund etc. In this regard, the State Police Chief has reported that following steps have been taken to ensure the completion of the Chemical Analysis of Narcotic Drugs within the stipulated time.

4. The testing facility of the Narcotic substances is made available in the following Units:

- 1.State Forensic Science Laboratory, Thiruvananthapuram
- 2.Regional Forensic Science Laboratory, Kochi.

3. Regional Forensic Science Laboratory, Thrissur.
4. Regional Forensic Science Laboratory, Kannur.

4. The testing facility for the examination of Ganja Samples is present in the newly established 13 District Forensic Science Laboratories (DFSLs). One more DFSL is under the process of establishment at Wayanad. As of now, there is one special unit under the State FSL, which is functioning at the Regional Forensic Science Laboratory at Thrissur. The Narcotic Division of RFSL, Thrissur, has been functioning since 2020 and carries out exclusively the examination of Narcotic Substances, A separate floor has been constructed at RFSL, Thrissur for the purpose.

5. The Testing facility for narcotics substances in the units under the State Forensic Science Laboratories has been enhanced by providing adequate amount in the State Plan Scheme and Central Assistance Schemes for the procurement of necessary instruments/equipment, chemicals glassware and lab ware.

6. To establish the identity of any unknown substance under the NDPS Act, at least two Independent analytical techniques of which one should be instrumental. So, it is mandatory to follow alternative methods like Chromatography and Spectroscopy. Gas chromatography (GC) and High performance Liquid Chromatography (HPLC) offer high sensitivity and specificity for confirmation of presumptive results in screening tests. Gas - Chromatography-Mass Spectrometry (LC-MS) are the most sensitive and specific methods for confirmation of drug presence in a sample. The Spectroscopic methods are FT-IR with standard library/control and UV-Vis Spectrophotometer with control sample. At present, from among the above mentioned sophisticated and costly instruments Gas Chromatography (GC) and High-performance Liquid Chromatography (HPLC), FT-IR with standard library/Control, and UV-Vis Spectrophotometer with control samples are made available to all the units where the examination of the narcotic substances is being carried out except for District Level Laboratories where only the examination of Ganja is being carried out. **All the basic requirement concerning instrumentation are made available at FSL and RFSLs.**

7. Even with the above facilities the delay for the completion of the chemical analysis of Narcotic Drugs, within the stipulated time is due to lacks of adequate manpower. Sometimes the officers working in the general chemistry divisions have to examine samples involved in other offenses as well. Also, the sophisticated instruments of the Narcotic Testing units require dedicated manpower for its operations. The availability of supporting staff is very much

required for increased output. Chemical analysis including NDPS cases are being examined in the Chemistry division. Hence the State Police Chief has sought 16 posts (Scientific Officer (Chemistry)-10 and Assistant Director (Chemistry)- 6) for speedy disposal of cases including NDPS cases. The State Police Chief has requested to sanction the above posts instead of establishing new Laboratory. Now, we are earnestly moving forward for sanctioning additional posts in the Chemistry division and have taken up the matter with the Finance Secretary detailing the inevitability for sanctioning the new posts.

8. It is submitted that once the new posts are sanctioned all the pending cases including NDPS cases would be settled to a considerable extent. It is humbly submitted that, in the circumstances stated above, no proposal for establishment of new Forensic Lab exclusively for NDPS cases is under the consideration of Government, at present.

(emphasis given).

9. On finding no definitive timeline stated to implement the matters outlined in the report dated 14.9.2023 and also considering the principles laid down by the Hon'ble Supreme Court in **Thana Singh vs. Central Bureau of Narcotics** [(2013) 2 SCC 603], this Court directed the Secretaries of the Finance and Home Departments to place on record a concrete proposal to implement Rule 14.

10. Following the above order, the Additional Chief Secretary filed a further affidavit dated 3.1.2024, inter alia, stating that the Finance Department has accorded concurrence

for creating 28 posts (12 posts in the Biology division, 10 posts in the Documents division and 6 posts in the Chemistry division) in the Forensic Science Laboratories, and on the approval by the Council of Ministers, the posts would be created.

11. Additionally, the Principal Secretary to the Finance Department has also filed an affidavit dated 12.1.2024 confirming that the concurrence has been accorded to create 28 posts of Scientific Officer spread in different disciplines of three Regional Forensic Science Laboratories and Forensic Science Laboratory, Thiruvananthapuram and fruitful measures are being chalked out to increase the output of existing and newly added personnel. In the event of any delay in making permanent appointments, temporary appointments will be made. Furthermore, if the existing and newly added posts do not augur to the benchmark contemplated under the NDPS Act, further posts would be created subject to the resources available with the State.

12. Heard; Sri.Sarath Babu Kottakkal, Sri.Jithin Babu and K.R.Arun Krishnan, the learned counsel appearing for the petitioners, Sri.C.S.Hrithwik, Smt.Neema T.V, Smt.Seetha.S, the learned Public Prosecutors and Sri.S.Rajeev, the learned Amicus Curiae.

13. In **Thana Singh v. Central Bureau of Narcotics** [(2013) 2 SCC 603], the Hon'ble Supreme Court has observed thus:

"15. Narcotics laboratories at the national level identify drugs for abuse and their accompanying substances in suspected samples, determine the purity and the possible origin of illicit drugs, carry out drug-related research, particularly on new sources of drugs liable to abuse, and, when required by the police or Courts of law, provide supportive expertise in drug trafficking cases. Their role in the effective implementation of the mandate of the NDPS Act is indispensable which is why every state or region must have proximate access to these laboratories so that samples collected for the purposes of the Act may be sent on a timely basis to them for scrutiny. These samples often form primary and clinching evidence for both the prosecution and the defence, making their evaluation by narcotics laboratories a crucial exercise.

18. A qualitative and quantitative overhaul of these laboratories is necessary for ameliorating the present state of affairs, for which, we are issuing the following directions:

- i) The Centre must ensure equal access to CFSL's from different parts of the country. The current four CFSL's only cater to the needs of northern and some areas of western and eastern parts of the country. Therefore, besides the three in the pipeline, more CFSL's must be established, especially to cater to the needs of southern and eastern parts of the country.
- ii) Analogous directions are issued to the states. Several states do not possess any existing infrastructure to facilitate analysis of samples and are hence, compelled to send them to laboratories in other parts of the country for scrutiny. Therefore, each state is required to establish state level and regional level forensic

science laboratories. However, the decision as to the numbers of such laboratories would depend on the backlog of cases in the state.

19. The above mentioned authorities must ensure adequate employment of technical staff and provision of facilities and resources for the purposes of proper, smooth and efficient running of the facilities of Forensic Science Laboratories under them and the Laboratories should furnish their reports expeditiously to the concerned agencies.

... ..
25. Therefore, keeping in mind the array of factors discussed above, we direct that, after the completion of necessary tests by the concerned laboratories, results of the same must be furnished to all parties concerned with the matter. Any requests as to re-testing / re-sampling shall not be entertained under the NDPS Act as a matter of course. These may, however, be permitted, in extremely exceptional circumstances, for cogent reasons to be recorded by the Presiding Judge. An application in such rare cases must be made within a period of fifteen days of the receipt of the test report; no applications for re-testing/re-sampling shall be entertained thereafter. However, in the absence of any compelling circumstances, any form of re-testing / re-sampling is strictly prohibited under the NDPS Act”.

14. In **Bharat Chaudhary v. Union of India** [(2021) 20 SCC 50], a three-judge Bench of the Honourable Supreme Court has held in the following manner:

“**13.** In the absence of any clarity so far on the quantitative analysis of the samples, the prosecution cannot be heard to state at this preliminary stage that the petitioners have been found to be in possession of commercial quantity of psychotropic substances as contemplated under the NDPS Act”.

15. This Court in **K.K Ashraf vs. State of Kerala** [2009 (4) KHC 449] has held as under:

“13. Learned Public Prosecutor submitted that the requirement of proof that the content of the narcotic drug in the contraband constitutes commercial quantity arises only at the trial stage and it has no relevance while considering the Bail Application. I am not inclined to accept this contention in view of the specific provisions in the Act. **To attract S.21(c) of the Act, there must be material to show that commercial quantity is involved. Such material could normally be provided after a quantitative analysis is made. Of course, when the quantity involved is so large that even without any quantitative analysis it could be inferred that the contraband constitutes a commercial quantity, the position may be different. But in the present case, the quantity involved is only 500 grams. It cannot be inferred that the content of the narcotic drug in the contraband constitutes commercial quantity. That there occurs delay in getting the quantitative analysis report is not a ground to invoke sub-section (4) of S.36A of the Act on the ground that the contraband involves commercial quantity. Unless there are materials to indicate that commercial quantity is involved, the Court cannot apply sub-section (4) of S.36A of the Act simply because an allegation is made without any material that commercial quantity is involved.**

14. When the law is clear and it has been interpreted by the Supreme Court in E. Micheal Raj's case, it is not a consolation at all to the accused who has been incarcerated in jail that the report from FSL is not received. When the law provides severe punishment for drug trafficking and allied offences, there must be sufficient infrastructural facilities for implementing the Act and the provisions therein. The freedom of citizen cannot be denied only on the ground that we do not have the sufficient infrastructural facilities to prove before Court without delay that the contravention involves commercial quantity of the narcotic drug”.

16. Again, in **Aneeshkutty vs. State of Kerala and Ors [MANU/KE/1282/2022]**, this Court has observed the following:

“16. Forensic Science is an indispensable branch of jurisprudence and is considered one of the most deadly weapons in the armoury of the investigator. We cannot shut our eyes to the ways in which Forensic

science is used for the detection of crime in other developed countries. As we have not invested our time and effort in establishing cutting edge labs and in employing skilled scientific officers to aid in all phases of the criminal investigation process, the acquittal rate is alarmingly high. The common refrain that we hear in Court is that Labs are working far beyond their capacity and thousands of samples forwarded much earlier are yet to be tested. It is common knowledge that thousands of samples are lying in labs and it would take years to analyse the same. The pendency in the labs is mind boggling. The less said the better. Obviously, a State like Kerala where the crime rate is high requires enough labs with highly skilled Scientific Officers and state-of-the-art equipment. The report from the FSL and the Chemical Examiners Lab form the backbone of the prosecution case. Testing of samples must be swift, efficient and accurate and the report has to reach the Courts as expeditiously as possible. It has to be ensured that a sample forwarded to the Lab is analysed and a report forwarded to the Court within an outer limit of three weeks at the most. If reports are delayed as has happened in this case, the only conclusion that can be arrived at is that the system has collapsed and needs resuscitation.

17. It is high time that the State woke up and set up enough Forensic Science/ Chemical Laboratories in the State and spruced up the infrastructure and employed technical personnel to ensure that reports are provided to the Court within three weeks from the date of furnishing of the sampling”.

17. The Narcotic Drugs and Psychotropic Substances Act came into force with effect from 14.11.1985. Subsequently, Section 52 A was inserted by Act 2 of 1989. However, there is no specific provision in the Act laying down the procedure to be followed in the drawal, storage, testing and disposal of samples of the contraband drugs/substances seized under the Act. Instead, Standing Orders/Instructions were framed by the competent authorities, from time to time, outlining the

procedure to be followed in the drawal, storage, testing and disposal of the contraband drugs/substances. But, divergent views were expressed by the courts in interpreting the Standing Orders/Instructions. Ultimately, on 23.12.2022, the Central Government, in exercise of the powers conferred under Section 76 read with Section 52(A) of the NDPS Act, promulgated the Narcotic Drugs and Psychotropic Substances (Seizure, Storage, Sampling and Disposal) Rules, 2022, laying down the procedure for the seizure, storage, sampling and disposal of the contraband drugs/substances seized under the Act. It is profitable to extract Rule 14, which reads thus:

“14. Expeditious Test.- The chemical laboratory shall submit its report to the court of Magistrate with a copy to the investigating officer within fifteen days from the date of receipt of the sample.

PROVIDED that where quantitative analysis requires longer time, the results of the qualitative test shall be dispatched to the court of Magistrate with a copy to investigating officer within the said time limit on the original copy of the Test Memo and in the next fifteen days the result of quantitative test shall also be indicated on the duplicate Test Memo and sent to the court of Magistrate with a copy to the investigating officer”.

18. Rule 14 in unequivocal terms mandates that the Chemical Laboratory shall submit the report to the jurisdictional Magistrate, with a copy to the Investigating

officer, within fifteen days from the date of receipt of the sample. And, if for any reason the 'quantitative test' of the sample requires more than fifteen days, the result of the 'qualitative test' shall be dispatched to the Magistrate within the said fifteen days on the original copy of the test memo and the result of the 'quantitative test' shall be indicated on the duplicate copy of the test memo to the Magistrate in the next fifteen days. In essence, the Chemical Laboratory is obliged to submit the result of the 'qualitative test' of the sample within fifteen days from the date of receiving the sample, and the result of the 'quantitative test' within thirty days from receiving the sample. The word used in the above rule is 'shall'.

19. It is to be borne in mind that, Section 37 of the NDPS Act stipulates that a person who is accused of an offence under Sections 19, 24 and 27-A of the Act and also involving commercial quantity shall not be released on bail unless the court is satisfied that there are reasonable grounds to believe that the accused is not guilty of the offence registered against him and he is not likely to commit any offence while on bail.

20. Sections 2 (viia) and 2 (xxiiia) of the NDPS Act define "commercial quantity" and "small quantity", respectively, in relation to narcotic drugs and psychotropic substances. "Commercial quantity" means any quantity greater than the quantity specified by the Central Government in the Specification, while "small quantity" means any quantity lesser than the quantity mentioned in the Specification.

21. It is also to be remembered that when a person is accused of an offence involving a commercial quantity of a narcotic drug and/or psychotropic substance the rigour under Section 37 of the NDPS Act gets attracted and he can be enlarged on bail only satisfying the twin conditions contemplated under the above provision. Similarly, in a case involving commercial quantity of contraband, Section 36 A permits a longer period for completing the investigation, when compared to the period permitted under the Code of Criminal Procedure. Furthermore, in such cases, a harsher punishment can be imposed. Thus, the results of the qualitative and quantitative tests play a crucial role in deciding the cases

registered under the NDPS Act, particularly while deciding bail applications, the time frame to complete the investigation, and the imposition of the punishment. In certain cases, even final reports (complaints) are laid before the jurisdictional courts before receiving the chemical analysis report. The question regarding the validity of such complaints filed before the receipt of the chemical analysis report is *sub judice* before the Honourable Supreme Court.

22. This Court has come across numerous bail applications, like in the instant case, where the prosecution had alleged that the contraband seized from the accused was 'MDMA' and was of a commercial quantity, but when the chemical analysis report was received, the contraband turned out to be 'methamphetamine' and of an intermediate quantity. This discrepancy arises because the commercial quantity of 'MDMA' under the Specification is 10 grams, whereas 'methamphetamine' is 50 grams. This again exhibits how crucial a test report is in a prosecution under the Act, and may change the whole complexion of the case.

23. Invariably, the Detecting Officers form their opinions on the seized contraband based on their experience without any scientific test or chemical analysis. It is only upon receiving the chemical analysis report does the true composition of the contraband comes to light, which again emphasises the importance of the chemical analysis report.

24. Presumably, it is after considering these anomalies and inconsistencies that the Central Government promulgated the Rules, mandating the expeditious testing of the contraband, to definitively ascertain the quantity and quality of the contraband and to avert any prejudice being caused to the accused.

25. For instance, in the present case, the prosecution has initially alleged that the contraband is 14.85 grams of 'MDMA', which is of a commercial quantity. However, the chemical analysis report has identified the contraband as 'methamphetamine', and, therefore, the contraband has turned out to be of an intermediate quantity. The fact remains that, the courts on prima facie finding the contraband to be of a

commercial quantity and applying the rigour under Section 37 of the NDPS Act declined bail to the petitioners. It was only after the chemical analysis report was received, and it was found the contraband was 'methamphetamine', this Court enlarged the petitioners on interim bail. The net result is that in a case involving an intermediate quantity of 'methamphetamine', the petitioners were enlarged on bail only after four months. The inordinate delay in submitting the chemical analysis report has caused prejudice to the petitioners, who have been incarcerated for four months on the assumption that the contraband is of a commercial quantity.

26. On an analysis of the scheme of the Act and the Rules, particularly the mandate under Rule 14 of the Rules and the well-settled principles laid down in *Thana Singh*, *Bharat Chaudhary*, *K.K Ashraf* and *Aneeshkutty* (supra), especially that the lack of infrastructure is not a ground to delay the chemical analysis of the samples, this Court is of the firm view that an accused has the right to have the expeditious testing of the contraband within the time frame stipulated under Rule 14 of

the Rules. Moreover, now that the Government of Kerala has created new posts and has undertaken to conduct expeditious tests of samples as contemplated under the Rules, there is no difficulty in conducting the test within the time frame contemplated under the Rules. It shall be the responsibility of the State to ensure the mandatory compliance of Rule 14. The respondents shall ensure that the State/Regional Forensic Science Laboratories scrupulously adhere to the time frame laid down under Rule 14, and in case of failure of the Chemical Laboratory to submit the report within the stipulated period, the accused would be at liberty to file an application before the jurisdictional court for a direction to the concerned Chemical Laboratory to expeditiously conduct the test. On such application being filed, the jurisdictional court shall direct the concerned Chemical Laboratory to expeditiously conduct the test.

27. Before parting with the applications, this Court places on record its appreciation for Adv. S. Rajeev, the learned Amicus Curiae, for his valuable assistance.

In the result, in the exercise of the plenary powers of this Court under Articles 226 and 227 of the Constitution of India, the applications are disposed of with the following directions:

(i) The respondents are directed to ensure that the State/Regional Forensic Science Laboratories in the State submit the chemical analysis reports within the time frame laid down under Rule 14 of the Rules;

(ii) In case of failure of the Chemical Laboratory to submit the report within the period stipulated under Rule 14, then the person accused of an offence under the Act, would be at liberty to file an application before the jurisdictional court for a direction to the concerned Chemical Laboratory to expeditiously conduct the test. On such application being filed, the jurisdictional court shall direct the concerned Chemical Laboratory to expeditiously conduct the test;

(iii) The interim order dated 8.8.2023, ordering the petitioners to be released on bail, is made absolute.

(iv) The Registrar (District Judiciary) shall forward a copy of this order to the competent Courts dealing with the cases under the NDPS Act.

sks/20.5.2024

sd/-
C.S.DIAS, JUDGE