

News

In the NDPS case, law students serve as amici curiae for the Kerala High Court.



The students' argument memorandum regarding the 24-hour deadline for bringing an accused person before a judge was praised by the court.

Kerala High Court law students

Two second-year law students from MS Ramaiah College of Law in Bengaluru were recently recognized by the Kerala High Court for their amici curiae aid in assisting it in reaching a decision on a significant legal issue.

Justice Bechu Kurian Thomas mentioned that law interns Nikhina Thomas and Neha Babu were observing the proceedings while he heard a bail application in a case involving the Narcotic Drugs and Psychotropic Substances (NDPS) Act.

Given the significance of the issue at hand and the dedication with which two law interns were observing the proceedings, this Court decided it was appropriate to enlist their help. The court appointed Ms. Nikhina Thomas and Ms. Neha Babu, second-year Ramaiah College, Bengaluru students, as Amici Curiae to assist the court after the two interns who were present indicated their desire to do so, according to the decision.

After being arrested for allegedly possessing 26.92 kg of ganja, the accused requested bail. The Court's main concern was whether the 24-hour period under Article 22(2) of the Constitution began when the accused's official arrest was documented or when their freedom was actually restricted.

Any individual who is arrested and held in custody is required under Article 22(2) to appear before the closest magistrate within 24 hours of their detention, not including travel time to the court.

Since the accused was taken into custody at 3 p.m. on January 25 and formally arrested at 2 p.m. the following day, but finally appeared before the magistrate at 8 p.m. on January 26, the accused's attorney argued that his client had been imprisoned for more than 24 hours.

The designated amici curiae contended that the 24-hour window for an accused person to appear before a judge starts when the accused person's freedom is actually restricted, not when the arrest is officially documented.

They cited the seizure mahazar of January 25, which demonstrated that the petitioner had been unlawfully detained since 3 p.m. that day and had not been before the magistrate until 8 p.m. the following day.

The students emphasized that unrecorded periods of imprisonment amounted to illegal detention and possible human rights abuses by citing the Supreme Court's decisions in *DK Basu v. State of WB* (1997) and *Joginder Kumar v. State of UP* (1994).

The Court further observed that the terms "arrested" and "detained" were frequently abused by law enforcement and investigative organizations to assert that the 24-hour period only starts once the arrest document is created.

Criticising such an approach, the Court noted that the appropriate legal test to be followed was to examine the time from when the person is physically detained or deprived of their freedom.

Therefore, it can be claimed that a person is under arrest if their freedom of movement is completely restricted or when someone in a position of authority holds them against their will by limiting their mobility. It would be sufficient to exercise actual restraint in words, deeds, or behavior. The Court further stated that extended durations of restricted liberty that do not constitute arrest will not be barred by the failure, refusal, or neglect to register an arrest or the continuance of an interrogation without documenting an arrest.

Using these guidelines, the Court found that the accused had been held for an unrecorded period of time prior to the official arrest being made, which was illegal detention.

As a result, the court granted the petitioner bail with restrictions.

The Court expressed gratitude for both law students' contributions, saying,

"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."

NB Fathima Sulfath, an advocate, defended the accused.

R Vinu Raj, a special public prosecutor, represented the Narcotics Control Bureau.