

**HIGH COURT OF KERALA****Date - 8<sup>th</sup> day of December 2023****CRL.M.APPL.NO.1/2023 IN CRL.A NO. 1449 OF 2023**

- 1. RATHEESH,**
- 2. ELDHO RESPONDENT**

**VS****THE STATE OF KERALA REPRESENTED BY PUBLIC  
PROSECUTOR,HIGH COURT OFKERALA****Legislation and Rules:**

Section 389(1) of the Code of Criminal Procedure, 1973

Indian Penal Code (IPC) Sections 143, 144, 147, 148, 307, 323, 324, 326,  
341

**Subject:** Petition for suspension of sentence passed by the trial court against the petitioners/appellants in connection with the brutal attack on PW2, leading to serious injuries and paralysis.

**Headnotes:**

Petition for Suspension of Sentence – Petitioners convicted for serious offenses including Section 307 of IPC – Seeking suspension of sentence pending appeal – Claim of insufficient evidence by prosecution and wrong appreciation of evidence by trial court [Paras 2, 5].

Involvement in Multiple Crimes – Petitioners involved in several other crimes – Detailed list of crimes involving the 1<sup>st</sup> and 2<sup>nd</sup> petitioner provided – Considered significant in decision-making [Para 8].

Legal Principles and Precedents – Citing Bhagwan Rama Shinde Gosai and others v. State of Gujarat [(1999) 4 SCC 421] regarding suspension of

sentence – Apex Court guidelines on suspension of sentence in cases of fixed period sentence [Para 6].

Evaluation of Criminal Background – 1<sup>st</sup> petitioner involved in 30 crimes, 2<sup>nd</sup> petitioner convicted in serious offenses including under Section 307 IPC – Impact of criminal history on the decision of suspension of sentence [Para 11].

Decision – Suspension of sentence granted to 1<sup>st</sup> petitioner under strict conditions; Bail granted with bond and sureties – Suspension denied to 2<sup>nd</sup> petitioner due to involvement in more serious crimes and history of convictions [Paras 11, final order].

Referred Cases: Bhagwan Rama Shinde Gosai and others v. State of Gujarat [(1999) 4 SCC 421], Gomti v. Thakurdas and Others [2007 (11) SCC 160], Omprakash Sahni v. Jai Shankar Chaudhary [AIR 2023 SC 2202].

Representing Advocates:

For Petitioner: P.K. Varghese, M.T. Sameer, Dhanesh V. Madhavan, Jerry Mathew, Deepa K. Radhakrishnan, Sojan K. Varghese, Arjun Kumar K.S., Reghu Sreedharan, Rameez M. Azeez, Namitha K.S., Sudarsanan U., Anu Ashokan, Athul.P, Justin K.K.

For Respondent: Public Prosecutor.

**Application praying that in the circumstances stated therein the High Court be pleased to suspend the sentence passed by the trial court against the Petitioners/Appellants/Accused No.4 & 5 in SC No.352/2018 on the file of the Assistant Sessions Court , Perumbavoor , pending disposal of the above Criminal Appeal , so as to secure the ends of justice.**

This Application coming on for orders upon perusing the application and upon hearing the arguments of P.K.VARGHESE, M.T.SAMEER, DHANESH V.MADHAVAN, JERRY MATHEW, DEEPA K.RADHAKRISHNAN, SOJAN K. VARGHESE, ARJUN KUMAR K.S., REGHU SREEDHARAN, RAMEEZ M. AZEEZ, NAMITHA K.S., SUDARSANAN U., ANU ASHOKAN, ATHUL.P, JUSTIN K.K. Advocates for the petitioner and of the PUBLIC PROSECUTOR for the respondent, the court passed the following:

p.t.o

**P.G. AJITHKUMAR, J.**

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**Crl.M.A.No.1 of 2023 in  
Crl.Appeal No. 1449 of 2023**  
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**Dated this the 08<sup>th</sup> day of December, 2023**

### **ORDER**

This is a petition filed by the appellants under Section 389(1) of the Code of Criminal Procedure, 1973.

2. The learned counsel for the petitioners would contend that the evidence let in by the prosecution is totally insufficient to prove the charge levelled against the petitioners, but the court below on a totally wrong appreciation of evidence had convicted them. Therefore, there is every chance for them to succeed in the appeal. On such grounds they seek to suspend the sentence.

3. The respondent has filed a written objection through the learned Public Prosecutor. Apart from contending that the evidence let

in by the prosecution is sufficient to prove the complicity of the petitioners to the offence, it is contended that both the petitioners involved in several other crimes and therefore, they are not entitled to be released on

bail.

4. Heard the learned counsel for the petitioners and the learned Public Prosecutor.

5. The learned counsel for the petitioners would submit that going by the charge framed against the accused in S.C. No.352/2018, these petitioners, who are accused Nos.4 and 5, did not have any role in the offending act that caused serious injuries to PW2-the victim. It was the 2<sup>nd</sup> accused who stabbed using a knife and the 3<sup>rd</sup> accused, who beat PW2 using an iron road. The said acts had inflicted serious injuries to PW2 resulting in paralysis of his body below abdomen. The learned Public Prosecutor would submit that the evidence let in by the prosecution certainly proved the participation of the petitioners in the unlawful assembly in prosecution of the common object of which PW2 was brutally attacked.

6. The learned counsel for the petitioners relied on the decision of the Apex Court in **Bhagwan Rama Shinde Gosai and others v. State of Gujarat [(1999) 4 SCC 421]** to contend that the sentence is being for a fixed period, the petitioners are entitled for suspension of sentence. The observation of the Apex Court is that when a convicted person

is sentenced to fixed period of sentence, suspension of sentence shall be considered by the appellate court liberally unless there are exceptional circumstances.

7. Here, the petitioners were sentenced to undergo imprisonment for a period of ten years for the offence under Section 307 of the IPC. For the other offences namely Sections 143, 144, 147, 148, 341, 323, 324 and 326 of the IPC, they were awarded sentence of lesser terms. Therefore, the question is whether there is any special circumstance to deny them bail.

8. The other crimes in which the petitioners involved are the following:

The 1<sup>st</sup> petitioner involved in the following crimes:

1. Cr 66/03 u/s 395 IPC Chalakkudy Police Station.
2. Cr.165/04 u/s 394, 34 IPC (Nedupuzha P.S)
3. Cr 417/04 u/s 395 IPC & Sec 3 of Explosive Substance Act, Ollur PS.
4. Cr 32/05 u/s 325,427,395 IPC Nedupuzha Police Station
5. Cr 228/07 u/s 364,396,302 IPC Changaramkulam Police Station
6. Cr 62/08/s3(1) OF KAAPA ACT
7. Cr 232/12u/s 5 of Explosive Substance Act
8. Cr 755/10u/s143,147, 148,307,326, 49, 324 IPC.
9. Cr 719/11w/s324,326,427, 120(b),34 IPC, Angamaly Police Station

10. Cr 1316/11u/s 308, 34 IPC.
11. Cr 78/11/s107 Cr.pc
12. Cr 395/11 u/s West PS 366(A) 376(2)(g), 272, 373,  
354, 341 IPC, Kollam West PS
13. Cr 46/12u/s 143, 147, 148, 452, 149 IPC
14. Cr 1134/20 U/S 143, 144, 147, 148, 153A, 454, 380,  
427 R/W 149 IPC
15. Cr112/13 u/s 323, 341, 324, 308, 294(b), 506(ii), 34 IPC
16. Cr.636/13 u/s143, 147, 148, 120(B), 326, 109, 212,  
324, 149 IPC
17. Cr 196/13 u/s 15(4) & 19 OF KAAPA, Ayyampuzha Police  
Station.
18. Cr149/14 u/s 143, 144, 147, 148, 326, 324, 307, 506(ii),  
120(b), 109, 149 IPC & Sec.3 of Explosive Substance Act Sec.27 of  
Arms Act.
19. Cr 366/14 u/s 143, 144, 147, 148, 452, 324, 308, 506 (ii), 427,  
149 IPC.
20. Cr 383/14 u/s 15(4) & 19 of KAAPA.
21. Cr 620/14 u/s 307 IPC, Angamaly Police Station.
22. Cr.2180/16 u/s 143, 147, 148, 323, 324, 307,341,149 IPC
23. Cr.2195/16 u/s 143, 147, 148, 341, 308, 323, 324, 34 IPC24.  
Cr.2259/16 u/s 143, 144, 147, 148, 120(b), 201, 427, 324, 326, 302,  
149 IPC and Sec 27 of Arms Act.
25. Cr/1966/16 u/s 120(B), 341, 323, 324, 326, 308, 34 IPC

PALLURUTHI STATION

26. Cr.335/17 U/S 402 IPC AYYAMPUZHA PS.
27. Cr.1599/17 U/S 427 IPC AND SEC 6 OF KERALA PUBLIC  
WAYS RESTRICTION AND ASSEMBLIES ACT.
28. Cr.478/19 US 107 CrPC
29. Cr.836/19 U/S 143, 147, 283, 149IPC
30. Cr. 3/22 u/s 447, 506, 109,34 IPC

The 2<sup>nd</sup> petitioner involved in the following crimes:

1. Kalady PS Cr. 715/12 U/s 506(1), 34 IPC CC 840/14 of JFCMC  
Kalady
2. Kalady PS Cr.723/12 U/s 399 IPC & Sec 27 of Arms Act &  
Sec 5 of Explosive Substance Act SC 294/15 of Sessions Court  
Ernakulam.
3. Kalady PS Cr. 636/13 U/s143, 147, 148, 120(b), 326, 109, 212,  
324 r/w 149 IPC SC 421/14 of Sessions Perumbavoor.
4. Kalady PS Cr. 1533/14 U/s 452, 323, 506(2), 34 IPC CC  
745/15 of JFCMC Kalady.
5. Angamaly PS Cr.111/14 U/s 15(4) & 19 of KAAPA.
6. Kalady PS Cr. 271/15 U/s 307, 34 IPC & Sec 27 of Arms Act  
CP 11/15 of Sessions Ernakulam.
7. Kalady PS Cr. 2345/14 U/s 399 IPC & Sec 27 of Arms Act CP  
10/15 of JFCM Kalady.
8. Kalady PS Cr. 2180/16 U/s 143, 147, 148, 323, 324,  
307, 341, 149 IPC UI

9. Kalady PS Cr. 2195/16 U/s 143, 147, 148, 341, 308, 323, 324, 34 IPC UI
10. Kalady PS Cr. 2259/16 U/s 143, 144, 147, 148 120(b), 201, 427, 324, 326, 302 r/w 149 & Sec.27 of Arms Act UI.
11. Angamaly PS Cr. 592/09 U/s 324 IPC, Acquitted on 25.10.23
12. Angamaly PS Cr. 240/10 U/s 447, 341, 323, 354, 294(b)  
CC 1133/12 JFCM Aluva.
13. Angamaly PS Cr. 719/11 U/s 324, 326, 427, 120, 34 IPC CC 580/16 JFCM Angamaly.
14. Angamaly PS Cr. 620/14 U/s 307, 341, 143, 144, 147, 148, 149 IPC Convicted, RI for 10 years on 31.10.2017
15. Angamaly PS Cr. 3102/14 U/s 341, 452, 324, 506(1), 34 IPC CC 1550/15 JFCM Angamaly
16. Angamaly Ps Cr. 1111/14 U/s 15(4) & 19 of KAAPA
17. Angamaly PS Cr. 1313/17 U/s 110(e) of CrPC.

9. It is true that the petitioners were on bail during the trial of the present case. As per the decision held in **Gomti v. Thakurdas and Others** [2007 (11) SCC 160]. The fact that the convicts were on bail during the trial and they did not misuse the liberties so given have no much significance once they have been convicted. Therefore, the said aspects shall not necessarily entitle the petitioners to claim suspension of sentence.



10. As held by the Apex Court in **Omprakash Sahni v. Jai Shankar Chaudhary [AIR 2023 SC 2202]**, the Appellate Court is duty bound to objectively assess the matter and materials on record while deciding whether the convict is entitled to get an order of suspension of execution of the sentence.

11. In the case on hand, the 1<sup>st</sup> petitioner involved in 30 crimes. Most of the cases were occurred prior to the present one. Subsequent crimes, which are Serial Nos.26 to 30 are not as serious as the present one. It is seen that he was not convicted in any of such cases. On the other hand, the second petitioner was convicted in Crime No.620/2014, which involved an offence under Section 307 of the IPC. He was sentenced to undergo imprisonment for ten years in that case. He had involved even in a case involving offence under Section 302 of the IPC. Considering those facts, I am of the view that the sentence imposed on the 1<sup>st</sup> petitioner is liable to be suspended on strict conditions whereas, the 2<sup>nd</sup> petitioner is not entitled to get an order of suspension of sentence.

Accordingly, the sentence imposed on the 1<sup>st</sup> petitioner accused No.4 is suspended and bail granted to him on his executing a bond for Rs.1,00,000/- (Rupees one lakh only) with two solvent sureties each for the like sum to the satisfaction of the trial court and subject to the following conditions:

i) the 1<sup>st</sup> petitioner shall deposit the entire amount of fine; ii) the 1<sup>st</sup> petitioner shall not involve in any offence while on bail; and iii) the

1<sup>st</sup> petitioner shall not indulge in any act that would pose any threat to the person or property of PW2, the injured.

It is made clear that violation of any of the above conditions will result in cancellation of his bail. The petition as regards the second petitioner is dismissed.

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