

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 2<sup>ND</sup> DAY OF FEBRUARY 2026 / 13TH MAGHA, 1947

TR.P(CRL.) NO. 3 OF 2026

CC NO.3 OF 2014 OF SPECIAL C SPE/CBI-I&3 ADDITIONAL DISTRICT COURT, ERNAKULAM

PETITIONER/ACCUSED:

SABU K.S, AGED 60 YEARS,  
S/O K SREEDHARAN NAIR, SIVASANNIDHI, KIZHUVILLAM P.O,  
MAMMOM, ATTINGAL, THIRUVANANTHAPURAM-, PIN - 695304.

BY ADVS.  
SRI.P.MARTIN JOSE  
SRI.P.PRIJITH  
SRI.THOMAS P.KURUVILLA  
SRI.R.GITHESE  
SHRI.M.A.MOHAMMED SIRAJ  
SHRI.AJAY BEN JOSE  
SRI.MANJUNATH MENON  
SMT.ANNA LINDA EDEN  
SHRI.HARIKRISHNAN S.  
SMT.ANAVADYA SANIL KUMAR  
SMT.ANJALI KRISHNA  
SHRI.ABHINAV P. S.  
SRI.S.SREEKUMAR (SR.)

RESPONDENTS/COMPLAINANT:

- 1 CENTRAL BUREAU OF INVESTIGATION,  
REPRESENTED BY ITS STANDING COUNSEL HIGH COURT OF  
KERALA, ERNAKULAM, PIN - 682031.
- 2 THE ASSISTANT DIRECTOR, DIRECTORATE OF ENFORCEMENT,  
COCHIN ZONAL OFFICE, KANOOS CASTLE, MULLASSERY CANAL  
ROAD WEST, COCHIN -, PIN - 682011.



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BY ADV SHRI.SREELAL N.WARRIER, SPL.PUBLIC PROSECUTOR,  
CENTRAL BUREAU OF INVESTIGATION (CBI)

ADV. JAISHANKER V.NAIR, STANDING COUNSEL FOR  
DIRECTORATE OF ENFORCEMENT

THIS TRANSFER PETITION (CRIMINAL) HAVING BEEN FINALLY HEARD  
ON 16.01.2026, THE COURT ON 02.02.2026 DELIVERED THE FOLLOWING:



'C.R'

***A. BADHARUDEEN, J.***

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*Tr.P(Crl.) No.3 of 2026*

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*Dated this the 2<sup>nd</sup> day of February, 2026****ORDER***

Sabu K.S, who is the accused in C.C.No.3/2014, pending before the Special CBI Court-I, Ernakulam, has filed this transfer petition under Section 447 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short hereafter). The prayer in the petition is to transfer the entire records in C.C.No.3/2014 pending before the Special CBI Court-I, Ernakulam to Special CBI Court-II, Ernakulam, where the case pertaining to the predicate offences, i.e offences under Section 13(1)(e) r/w 13(2) of the Prevention of Corruption Act, 1988 ('PC Act, 1988' for short), numbered as S.C.No.329/2017, has been pending, for consideration of the same simultaneously by the same Judge. Sabu K.S is the sole accused in S.C.No.329/2017 also.



2. Heard the learned counsel for the petitioner and the learned Special Public Prosecutor appearing for the 1<sup>st</sup> respondent (CBI) and the learned Standing Counsel representing the Directorate of Enforcement of Cochin Zonal Office, in detail. Perused the relevant provisions.

3. The learned counsel for the petitioner submitted that Annexure A final report (pertaining to C.C.No.3/2014) was filed alleging commission of scheduled offences under the Prevention of Money Laundering Act ('PML Act' for short) and Annexure B is the complaint filed by the Enforcement Directorate against the petitioner alleging commission of offences punishable under Sections 3 and 4 of the PML Act. According to the learned counsel, the allegations in Annexures A and B are almost same and interconnected, and the witnesses to be examined and documents to be marked are one and the same. It is submitted by the learned Counsel for the petitioner that the Special Court, CBI-II, Ernakulam, is also a Special Court for the trial of cases under the PC Act as well as the PML Act and hence transfer of Annexure A final report pending before the Special Court CBI-I, Ernakulam, to the



Special Court CBI-II, Ernakulam, where Annexure B complaint alleging offences under the PML Act is pending, is necessary to protect the interest of the accused, so that both the cases have to be tried by one court.

4. Whereas the learned Special Public Prosecutor for the CBI zealously opposed the transfer and he has highlighted Section 44(1) (c) of the PML Act to contend that, in order to commit a case, for which cognizance of the scheduled offence has been taken by the Court other than the Special Court, which had taken cognizance of the offence of money laundering under clause(b), it shall, on an application by the authority authorised to file a complaint under the PML Act, commit the case to the Special Court. Therefore, the petitioner has no right to file a transfer petition seeking transfer of a case pertaining to a scheduled offence to a court where a case involving the offences under the PML Act is pending. It is also submitted by the learned Special Public Prosecutor that, in fact, trial of the accused for the scheduled offence and a finding regarding commission of the said offence is absolutely necessary to go with the trial of the PML Act offences.



Therefore, the question of joint trial or simultaneous trial doesn't arise and on that count also, transfer sought for is liable to fail. It is also pointed out that under Section 447 of BNSS also, the petitioner has no right to come before this Court straight away seeking transfer, since it has been specifically stipulated in the proviso to Section 447 of BNSS that no application under Section 447 of BNSS would lie to the High Court for transferring a case from one criminal court to another criminal court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him.

5. The learned Standing Counsel appearing for the Enforcement Directorate would submit that, though as per Section 44(1) (c) of the PML Act, the authority authorised to file a complaint is competent to seek committal of a case relating to the scheduled offence to the Special Court when cognizance of the scheduled offence was taken by a Special Court, the same would not operate as an absolute bar for an accused to file a petition under the provisions of BNSS seeking transfer for valid grounds.



6. In this connection, it is necessary to refer Section 44 of the PML Act and Section 447 of BNSS, which are extracted hereunder:

*“Section 44 of PML Act: Offences triable by Special Courts.*

*(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),--*

*[(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:*

*Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or];*

*(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take [cognizance of offence under section 3, without the accused being committed to it for trial];*

*[Provided that after conclusion of investigation, if no offence of moneylaundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or]*

*[(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case*



***relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed;***

*(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 ( 2 of 1974), as it applies to a trial before a Court of Session.]*

*[Explanation.--For the removal of doubts, it is clarified that,--*

*(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;*

*(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.]*

*(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section(1) of that section as if the reference to "Magistrate" in that section includes also a reference to a Special Court designated under section 43."*



*“Section 447 of BNSS: Power of High Court to transfer cases and appeals - (1) Whenever it is made to appear to the High Court---*

*(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto; or*

*(b) that some question of law of unusual difficulty is likely to arise; or*

*(c) that an order under this section is required by any provision of this Sanhita, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order---*

*(i) that any offence be inquired into or tried by any Court not qualified under sections 197 to 205 (both inclusive), but in other respects competent to inquire into or try such offence;*

*(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;*

*(iii) that any particular case be committed for trial to a Court of Session; or*

*(iv) that any particular case or appeal be transferred to and tried before itself.*

*(2) The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative:*

***Provided that no application shall lie to the High Court for transferring a case from one Criminal Court to another Criminal Court in the same sessions division, unless an application for such transfer has been made to the Sessions Judge and rejected by him. ”***



7. The learned Special Public Prosecutor for CBI placed a decision of the Orissa High Court in Cuttack in Crl.M.C.No.1207 of 2022 reported in [MANU/OR/0436/2023 : 2023(I)ILR-CUT1099], ***Pankajini Sahu and Ors. Vs. Joint Director, Enforcement Directorate, GOI and Ors.***, where the learned Single Judge of the Orissa High Court considered quashment of notices while dealing with the application under Section 44 of the PML Act. In the said case, in paragraph 12, the Orissa High Court held as under:

*“In the case at hand, the authority under the PMLA has not moved the learned Special court at Bolangir for committal of the case in respect of the scheduled offence to the PMLA court at Bhubaneswar and therefore, it has been challenged by the petitioners since the PMLA court on receiving complaint has already summoned them. After having a detailed discussion as above, the conclusion is that if an application is moved by the competent authority under the PMLA after exercising its discretion for committal of a case in view of Section 44(1)(c) of the PMLA only in appropriate cases and in the interest of justice, in and under such circumstances, the Special court shall have to examine it and take a decision for committal of the case to the designated court under the PMLA and not otherwise. Since no such discretion has been*



*exercised by the PMLA authority in so far as the present case is concerned and for the fact that the scheme as a whole and Section 44(1)(c) of the PMLA does not make it mandatory for committal of a case of the scheduled offences to the PMLA court, the petitioners as a matter of right cannot demand such committal of the case from the file of learned Special Judge, Vigilance, Bolangir to the PMLA court at Bhubaneswar. However, in the humble view of the Court, the PMLA authority should examine the plea of the petitioners applying its discretion and in the event found to be a fit case for committal may move the learned Special Judge, Vigilance, Bolangir for a judicious decision in terms of Section 44(1)(c) of the PMLA.”*

8. Before proceeding further, it is necessary to refer Section 65 of the PML Act which stipulates that the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) ('Cr.P.C' for short) shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation investigation, prosecution and all other proceedings under this Act. Therefore, insofar as the provisions which are not inconsistent with the provisions of the PML Act are concerned, provisions of the Cr.P.C or BNSS (as the case may be) would apply in relation to cases under the PML Act as well. On a perusal of Section 44(1)(c) of the PML Act, it is evident that the same



is an enabling provision inasmuch as the authority who filed complaint under the PML Act to request for committal of a case where cognizance for the schedule offences under the PML Act was taken by a court other than the PML Act court, so as to get committal of the case involving scheduled offence also to the PML Act court.

9. It is not in dispute that joint trial of a case involving scheduled offence and PML Act offences is an outright impossibility. That is to say, only after finding the accused guilty for the scheduled offence/offences, on conclusion of trial, the trial of an accused, who involved in the PML Act offence is possible. Be it so, in view of Section 44(1)(c) of PML Act, the authority who filed complaint under the PML Act may seek committal of a case, for which cognizance was taken for the scheduled offence by a Special Court other than the PML Act court. The learned Special Public Prosecutor appearing for the CBI vehemently canvassed that in view of Section 44(1)(c) of the PML Act, the provisions of BNSS could not be invoked by an accused seeking transfer of a case pending, where the cognizance for the scheduled offences was taken by another Special Court. In fact, even though



Section 44(1)(c) of the PML Act provides so, that doesn't exclude the right of any other aggrieved persons to file a transfer petition by invoking the relevant provisions of BNSS, as pointed out by the learned Standing Counsel for the E.D. Therefore, this Court is of the view that, for valid reasons, the person other than the authority who filed a complaint under the PML Act also can seek transfer of a case involving scheduled offences, to the PML Act court, when the court where the complaint alleging commission of PML Act offence is pending also is notified under the PC Act as well as under the PML Act.

10. Therefore, the contention raised by the learned Special Public Prosecutor for the CBI that, the petitioner, who is the accused in both cases, has no right to file a transfer petition by invoking the provisions of BNSS, could not be accepted.

11. Another contention raised by the learned Special Public Prosecutor for CBI is that no application would lie to the High Court for transferring a case from one criminal court to another court in the same Sessions division unless an application for such transfer has been made to the Sessions Judge and rejected by him and this argument



has been mooted with the aid of proviso to Section 447(2) of BNSS. In fact, the power under Section 447 of BNSS is *pari materia* to the power provided under Section 407 of the Cr.P.C. *Pari materia* proviso is available in Section 407 of Cr.P.C as well.

12. In this connection, it is relevant to refer a decision reported in [2005 (4) KLT 475], ***Surendra Kumar v. Vijayan***, where a Division Bench of this Court while overruling the decision reported in [1981 CriLJ 1352 : 1981 KLT 557 : 1981 KLT SN 96], ***State of Kerala v. Reny George and Ors.*** held that *an interested litigant is entitled to invoke Section 409 of the Code before the Sessions Judge for the purpose of withdrawing or recalling cases including revisions and appeals already made over to an Additional Sessions Judge, provided the trial or hearing of the cases or revisions or appeals as the case may be, has not commenced. It is an administrative exercise of power by the Sessions Judge. (2) An interested litigant is entitled to move the Sessions Judge for transferring cases including revisions and appeals at any stage from the court of an Additional Sessions Judge, if such transfer is expedient for the ends of justice. (3) Unless the litigant thus*



*first moves the Sessions Judge, an application for transfer under Section 407 before the High Court is not maintainable. (4) The Additional Sessions Judge concerned is entitled to make a report to the Sessions Judge for transferring any cases including revisions and appeals pending before him irrespective of the stage of such matters. Thus the legal position is not in dispute that an interested litigant is entitled to move for transferring a case from one criminal court to another criminal court in the same Sessions division, before the Sessions Court. But in terms of the proviso to Section 447 of BNSS, no application shall lie to the High Court for transferring a case from one criminal court to another criminal court in the same Sessions division unless an application for such transfer has been made to the Sessions Judge and rejected by the Sessions Judge. In this context, it is necessary to consider the status of a Special Court created by a Statute. As far as the Special Court under the PML Act is concerned, the same is the creation of Section 43 of the PML Act and same is at the helm of the Central Government in consultation with the Chief Justice of the High Court. Similarly, the Special Court constituted under Section 4 of the PC Act*



also is the creation of the statute and the power to appoint a Special Judge under the PC Act is vested in the State Government or the Central Government for a particular area, in terms of Section 3 of the PC Act. If so, it is not safe to say that, when a person wants to transfer a case pending before the Special Court under the PC Act to the Special Court under the PML Act, before approaching the High Court under Section 447 of BNSS the said person shall approach the Sessions Court first and get a rejection order there from, since Special Courts created by special statute exercising exclusive jurisdiction in relation to the offences under the special statute could not be roped into within the ambit of proviso to Section 447 of BNSS. In such view of the matter, a party who wants to transfer a case from one Special Court to another Special Court can directly approach the High Court without approaching a Sessions Court, and such a course of action is legally permissible in terms of Section 447 of BNSS. Therefore, this contention raised by the learned Special Public Prosecutor for CBI is not acceptable.

13. Coming to the transfer sought for, as already observed, even though Section 44(1)(c) of the PML Act empowers the authority,



who filed the complaint under PML Act, to request committal of the case relating to scheduled offence, where cognizance was taken by a court other than the PML Act court for the scheduled offence, that by itself doesn't take away the right of the litigant to invoke the power vested in the High Court under Section 447 of BNSS in an appropriate case and there is no bar for the High Court to consider the transfer in the interest of justice, provided that, the court where from the case pertaining to the scheduled offence is sought to be transferred also should be a court duly notified to try offences under the PC Act.

14. In the instant case, the transfer sought is from a CBI court to another CBI court and both the courts are Special Courts notified under the PC Act as well as under the PML Act. Therefore, there is no harm in permitting trial of both the cases by the same Judge. Thus in the interest of justice, such a prayer is liable to be allowed.

15. In the result, this Transfer Petition stands allowed. Accordingly, C.C.No.3/2014 pending before the Special CBI Court-I, Ernakulam, is transferred to Special CBI Court-II, Ernakulam, where S.C.No.329/2017, has been pending and to consider both the cases by



the same Judge, in accordance with law. The Special CBI Court-I, Ernakulam, is directed to transfer the entire case records in C.C.No.3/2014 to the Special CBI Court-II, Ernakulam, forthwith.

Registry is directed to forward a copy of this order to the Special Courts concerned for information and compliance.

*Sd/-*

***A. BADHARUDEEN, JUDGE***

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APPENDIX OF TR.P(CRL.) NO. 3 OF 2026

**PETITIONER' s ANNEXURES**

**Annexure A**                      **TRUE COPY OF THE FINAL REPORT IN C.C. NO. 3  
OF 2014 DATED 09-06-2014.**

**Annexure B**                      **TRUE COPY OF COMPLAINT IN S.C. NO.329 OF  
2017.**