

**IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V
&
THE HONOURABLE MR.JUSTICE K. V. JAYAKUMAR**

Thursday, the 9th day of July 2026 / 18th Ashadha, 1948

CRL.M.APPL.NO.1/2026 IN CRL.A NO.130 OF 2026

SC 118/2018 OF DISTRICT & SESSIONS COURT, ERNAKULAM

APPLICANT/APPELLANT:

SUNIL N.S. @ PULSAR SUNI, AGED 37 YEARS,
S/O.SURENDRAN, NEDUVELIKKUDY HOUSE,
ELAMBAKKAPPILLY KARA, NETTANCITY BHAGAM,
VENGOOR WEST, ERNAKULAM, PIN - 683456.

RESPONDENT/RESPONDENT/STATE/COMPLAINANT:

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

Application praying that in the circumstances stated therein the High Court be pleased to allow this Criminal Miscellaneous Application, suspend the sentence imposed upon the Petitioner herein by the judgment of conviction and sentence dated 12.12.2025 in S.C.No.118 of 2018 on the file of the Court of Session, Ernakulam Division, and release him on bail pending disposal of the aforesaid Criminal Appeal, in the interests of justice.

This Application coming on for orders on 09/07/2026 and upon perusing the application and upon hearing the arguments of M/S.SASTHAMANGALAM S. AJITHKUMAR (SR.),V.V.PRATHEEKSH KURUP, Advocates for the applicant and of the PUBLIC PROSECUTOR for the respondent, the court passed the following:

P.T.O.

THURSDAY, THE 9TH DAY OF JULY 2026

Crl.M.Appl 1/2026 IN CRL.A No. 130 of 2026

SUNIL N.S. @ PULSAR SUNI

VS

STATE OF KERALA

ADVS FOR APPELLANT/S:

SRI.V.V.PRATHEEKSH KURUP, ShRI.SASTHAMANGALAM S.
AJITHKUMAR (SR.)

ADVS FOR RESPONDENT/S:

PUBLIC PROSECUTOR, SRI.SIDHARTH A.MENON,
SHRI.V.AJAKUMAR, SPL. P.P. FOR SC 118/2018 PRL.SESSION
COURT, ERNAKULAM



RAJA VIJAYARAGHAVAN V.

&

K. V. JAYAKUMAR, JJ.

Crl. A. No. 130 of 2026

Dated this the 9th day of July, 2026

ORDER

K. V. Jayakumar, J.

Crl. M.A. No. 1 of 2026

This application is filed under Section 430(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking suspension of sentence.

2. The applicant herein is the accused No.1 in S.C. No. 118 of 2018 on the files of the Court of Session, Ernakulam. As per the impugned judgment dated 12.12.2025, the learned Sessions Judge found the applicant, along with five others, guilty of the offences punishable under Section 376D and Section 120B r/w Sections 342, 354, 354B, 357 and 376D of the Indian Penal Code and Sections 66E and 67A of the Information Technology (Amendment) Act and he was sentenced as under:

- a) to undergo rigorous imprisonment for a period of 20 years and to pay a fine of Rs.50,000/-, with a default clause, for the offence punishable under Section 376D of the IPC.
- b) to undergo rigorous imprisonment for a term of 20 years and to pay a fine of Rs.50,000/-, with a default clause, for the offences punishable under

Section 120B r/w Sections 342, 354, 355(b), 357 and 376D of the Indian Penal Code and Section 66(E) and 67(A) of the IT Act.

- c) to undergo rigorous imprisonment for a period of 10 years and to pay a fine of Rs.25,000/-, with a default clause, for the offences punishable under Section 366 of the Indian Penal Code.
- d) to undergo rigorous imprisonment for one year for the offence punishable u/s 342 of the IPC, and a sentence of imprisonment for one year under Section 357 of the IPC.
- e) to undergo imprisonment for a period of 3 years and to pay a fine of Rs. 1,00,000/-, with a default clause, for the offence punishable under Section 66E of the Information Technology Act, 2000.
- f) to undergo rigorous imprisonment for 5 years and to pay a fine of Rs. 1,00,000/-, with a default clause, for the offence punishable under Section 67A of the Information Technology Act, 2000.

3. The prosecution case, in brief, is that the 8th accused has hatched a criminal conspiracy with the 1st accused, the applicant herein, to abduct, sexually assault and to record nude and sexually explicit visuals of the victim, a leading actress, with a view to defame, harass and traumatise her. Pursuant to the said conspiracy, the 1st accused has agreed to execute the heinous act in exchange of money. On 17.02.2017, while the victim was travelling from Thrissur to Ernakulam in a Mahindra XUV car, the 1st accused created a mock road accident, boarded the car

in which the victim was travelling, abducted her, wrongfully confined her in that vehicle, and committed rape on her by forcing her to commit oral sex.

4. The prosecution further alleges that the visuals of the sexual assault were recorded on a mobile phone in such a manner as to clearly disclose the identity of the victim. It is further alleged by the prosecution that the applicant had shown the visuals to others. The prosecution further alleges that, after the incident, the 1st accused absconded along with the co-accused and attempted to conceal the evidence. Furthermore, while the applicant was in judicial custody, he conspired to extort money from the 8th accused by using the visuals of the sexual assault.

5. During the trial, 261 prosecution witnesses were examined, and 835 exhibits were marked. 142 material objects were also identified and marked. On the side of the defence, 3 witnesses were examined as DWs. 1 to 3, and 221 exhibits were marked.

6. The learned Sessions Judge, after a meticulous evaluation of the materials and evidence on record, has convicted the applicant and accused Nos. 2 to 6. However, the learned Sessions Judge proceeded to acquit accused Nos. 7, 8, 9 and 15.

The submissions of the learned counsel for the applicant/accused No. 1:

7. Sri. Sasthamangalam S. Ajithkumar, the learned Senior Counsel, as instructed by Sri. Pratheeksh Kurup submitted that the learned Sessions Judge has convicted and sentenced the applicant without proper evaluation of the evidence on

record. The evidence of PW1, the victim, is unworthy of credence. It is further submitted that the learned Sessions Judge has discarded vital contradictions and omissions in the prosecution evidence.

8. The learned counsel has pointed out that the applicant was arrested on 23.02.2017 and he has been in judicial custody till 20.09.2024. Thereafter, he was enlarged on bail by the Apex Court as per the order dated 17.09.2024. He further submitted that he is undergoing the sentence from 12.12.2025, the date of the judgment. The learned counsel has pointed out that the applicant has been sentenced to undergo a term sentence i.e., for 20 years, for the offence punishable under Section 376D of the IPC. According to the learned counsel, he has been in jail for 8 years, one month, and 17 days as of today.

9. The learned counsel would further submit that, according to the prosecution case, the 8th accused has initiated the conspiracy to commit rape on the victim and to record the visuals. But the learned Sessions Judge disbelieved the conspiracy part of the case allegedly initiated by the 8th accused. Therefore, according to the learned counsel, a major part of the charge could not be proved.

10. The learned counsel has pointed out that this Court would take several years to dispose of this appeal and the other connected appeals filed by the accused and the State. Therefore, according to the learned counsel for the applicant, the sentence of the applicant is to be suspended, and he may be enlarged on bail. Profuse reliance was placed on the judgment in **Aasif @ Pasha v. State of UP**¹.

¹ [2025 (6) KHC 440]

The learned counsel for the applicant further alleged that even if the applicant is enlarged on bail, no prejudice would be caused to the prosecution.

The submissions of the learned Special Public Prosecutor:

11. Sri. V. Ajakumar, the learned Special Public Prosecutor, vehemently opposed the application and submitted that the applicant is the prime accused in the case, who was engaged by the 8th accused by offering him consideration to execute the gang rape of the victim. According to the learned Special Public Prosecutor, the materials on record clearly disclose that the applicant played the most major role in the commission of the offence and was instrumental in orchestrating the entire incident. It is further submitted that the applicant is a habitual and hardened offender with an extensive criminal antecedent, having been involved in as many as eleven criminal cases, including offences of dacoity, cheating punishable under Section 420 of the Penal Code, and offences under the Narcotic Drugs and Psychotropic Substances (NDPS) Act. It is contended that his criminal history demonstrates a consistent pattern of unlawful conduct and reflects his propensity to commit serious offences. The learned Special Public Prosecutor further pointed out that, during the pendency of the trial, the applicant had approached this Court on as many as six occasions seeking bail, but the same was not granted. It was only thereafter that the Hon'ble Supreme Court granted him bail, subject to stringent conditions. However, according to the learned Special Public Prosecutor, the applicant failed to adhere to the conditions so imposed and, after his release from

judicial custody, violated the terms of bail by making public disclosures regarding his role in the commission of the crime, thereby acting in breach of the conditions governing his release. He had also indulged in a crime by committing mischief and brawl inside a hotel while on bail. It is also submitted that the State has preferred an appeal seeking enhancement of the sentence imposed upon the applicant. The learned Sessions Judge has awarded the applicant a sentence of rigorous imprisonment for a period of twenty years, and it is pointed out that the applicant has not yet undergone even half of the sentence imposed upon him. It was forcefully contended that no grounds whatsoever are made out for granting the relief sought in the present application.

12. The learned counsel has invited the attention of this Court to Section 374(4) of the Criminal Procedure Code (for the sake of brevity, 'the Code'), which mandates the disposal of appeals arising out of the conviction for an offence punishable under Section 376D of the IPC within a period of six months from the date of filing of such appeal. According to the learned Special Public Prosecutor, he is ready for the final hearing of the appeals at any time, subject to the convenience of this Court. The learned counsel further submitted that if the sentence of the applicant is suspended, he would abscond and indulge in crimes. It is also submitted that the victim fears that he is still in possession of copy of the visuals and may circulate the same.

The submissions of the learned counsel for the victim:

13. Smt. Vrinda Grover, the learned counsel appearing for the victim, would submit that this is a diabolic and heinous crime against the victim. Accepting money from an accused to commit gang rape and to record the visuals of the sexual assault is a ghastly and macabre crime. The learned counsel would further submit that the appeal preferred by the State seeking the enhancement of punishment is pending before this Court. Moreover, the victim also intends to prefer an appeal against the acquittal of the other accused and seeking the enhancement of punishment. The learned counsel argued that once an accused is convicted, the presumption of innocence no longer exists.

14. The learned counsel further pointed out that the learned Sessions Judge, after a detailed evaluation of the voluminous evidence, has arrived at a conclusion as to the guilt of the accused. Considering the nature and gravity of the offence and the societal impact of the crime, the applicant is not entitled to suspension of sentence under Section 389 of the Code. The learned counsel for the victim has placed reliance on the judgments in **Preet Pal Singh v. State of Uttar Pradesh and another²**, **Omprakash Sahni v. Jai Shankar Chaudhary and another³**, **Shivani Tyagi v. State of U.P. and another⁴**. She has also placed reliance on the judgment of the Apex Court in Crl. Appeal Nos. 1330-1332 of 2017 in **Khem Singh v. State of Uttaranchal⁵**.

² (2020) 8 SCC 645

³ (2023) 6 SCC 123

⁴ 2024 SCC OnLine SC 842

⁵ 2025 SCC OnLine SC 1778

15. According to the learned counsel, the long incarceration of an accused and the grant of bail during the trial stage are not significant while considering the application for suspension of sentence.

Judicial evaluation:

16. Section 389 of the Code is the enabling provision for post-conviction bail and suspension of sentence. It would be apposite to extract Section 389 of the Code.

"Section 389 Suspension of sentence pending the appeal; release of appellant on bail -

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release;

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall;

- (ii) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or
- (ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under Sub-Section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced."

17. Section 430 is the corresponding provision in the new code, the Bharatiya Nagarik Suraksha Sanhita (BNSS).

18. Before we proceed to discuss the factual aspects of the matter, it would be useful to refer to the principles laid down by the Apex Court with regard to the principles that are to be borne in mind while considering an application seeking suspension of sentence.

19. In **Vasant Tukaram Pawar v. State of Maharashtra**⁶, the Hon'ble Supreme Court explained the nature and scope of the jurisdiction to be exercised by an appellate court while considering an application for suspension of sentence under Section 389 of the Code. It was observed as under in para 7 of the judgment:

"7. Section 389 of the Code of Criminal Procedure, 1973 (in short "the Code") deals with "suspension of execution of

⁶ (2005) 5 SCC 281

sentence pending the appeal and release of the appellant on bail". There is a distinction between bail and suspension of sentence. One of the essential ingredients of Section 389 is the requirement of the appellate court to record reasons in writing for order of suspension of execution of the sentence or an order of release if the accused is in confinement. The said court can direct that he be released on bail or on his own bond. Requirement of recording reasons in writing clearly indicates that there has to be careful consideration of the relevant aspects and the order directing suspension of sentence and grant of bail should not be passed as a matter of routine."

20. Later, in **Preet Pal Singh** (supra), the Apex Court further expatiated the principles and observed that while considering an application for regular bail under Section 439 of Cr.P.C., the courts may be liberal, as the principle applicable is 'bail is the rule, and jail is the exception'. However, in a case of post-conviction bail, by suspension of the operation of the sentence, there is a finding of guilt, and the question of the presumption of innocence does not arise. The Apex Court held that the principle 'bail is the rule and jail is the exception' is not attracted in a post-conviction stage. The Apex Court went on to hold that there should be strong and compelling reasons for the grant of bail by suspension of sentence, and such reasons must be recorded in the order of granting bail, as mandated in Section 389(1) of Cr.PC. The relevant paragraphs of **Preet Pal Singh** (supra) are extracted hereunder:

"35. There is a difference between grant of bail under Section 439 CrPC in case of pre-trial arrest and suspension of sentence under Section 389 CrPC and grant of bail, post conviction. In the earlier case, there may be presumption of innocence, which is a fundamental

postulate of criminal jurisprudence, and the courts may be liberal, depending on the facts and circumstances of the case, on the principle that bail is the rule and jail is an exception, as held by this Court in *Dataram Singh v. State of U.P.* [*Dataram Singh v. State of U.P.*, [(2018) 3 SCC 22] However, in case of post-conviction bail, by suspension of operation of the sentence, there is a finding of guilt and the question of presumption of innocence does not arise. Nor is the principle of bail being the rule and jail an exception attracted, once there is conviction upon trial. Rather, the court considering an application for suspension of sentence and grant of bail, is to consider the prima facie merits of the appeal, coupled with other factors. There should be strong compelling reasons for grant of bail, notwithstanding an order of conviction, by suspension of sentence, and this strong and compelling reason must be recorded in the order granting bail, as mandated in Section 389(1) CrPC.”

21. In **Omprakash Sahni** (supra), the Apex Court has reiterated the principles for the grant of post-conviction bail and the suspension of sentence. In **Omprakash Sahni** (supra), the Apex Court made it clear that the benefit of suspension of sentence can be granted only in exceptional cases in cases involving conviction under Section 302 and, further, the court should consider the relevant factors like the nature of accusation made against the accused, the manner of commission of crime, the gravity of the offence, and the desirability of releasing the accused on bail after having been convicted for committing the serious offence of murder. It was observed thus:

“21. Suspension conveys postponement or temporarily preventing a state of affairs from continuing. According to *Black's*

Law Dictionary (Seventh Edition), the word "suspend" means, inter alia, to interrupt; postpone; defer. *Black's Law Dictionary* (Seventh Edition) describes the word "suspension" to mean, inter alia, an act of temporarily delaying, interrupting or terminating something. Attributing the same meaning to the word "suspend" as pointed out above, *New Oxford Dictionary of English* (1998 Edition) describes suspend as temporarily preventing from continuing or being enforced or given effect or defer or delay an action, event or judgment.

22. Thus, when we speak of suspension of sentence after conviction, the idea is to defer or postpone the execution of the sentence. The purpose of postponement of sentence cannot be achieved by detaining the convict in jail; hence, as a natural consequence of postponement of execution, the convict may be enlarged on bail till further orders.

23. The principle underlying the theory of criminal jurisprudence in our country is that an accused is presumed to be innocent till he is held guilty by a court of competent jurisdiction. Once the accused is held guilty, the presumption of innocence gets erased. In the same manner, if the accused is acquitted, then the presumption of innocence gets further fortified.

24. From perusal of Section 389CrPC, it is evident that save and except the matter falling under the category of sub-section (3) neither any specific principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of competent jurisdiction, and in the aforesaid background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage viz. Sections 437, 438, 439 and 389(1)CrPC."

22. In **Shivani Tyagi** (supra), the victim of an acid attack approached the Apex Court challenging the order granting suspension of sentence and their consequential enlargement on bail. The Hon'ble court, while interfering with the order, observed that an acid attack may completely strip off the victim of her basic human rights owing to permanent disfiguration and in appeals involving such serious offence(s), serious consideration of all parameters should be made. It was observed as under in paragraph 9 of the judgment:

"9. We have already referred to the mandate under Section 389 Cr. P.C. that the order passed invoking the said provision should reflect the reason for coming to the conclusion that the convicts are entitled to get suspended their sentence and consequential release on bail. In the decision in *State of Haryana v. Hasmat* [(2019) 5 SCC 373], this Court held that in an appeal against conviction involving serious offence like murder punishable under Section 302, IPC the prayer for suspension of sentence and grant of bail should be considered with reference to the relevant factors mentioned thereunder, though not exhaustively. On its perusal, we are of the opinion that factors like nature of the offence held to have committed, the manner of their commission, the gravity of the offence, and also the desirability of releasing the convict on bail are to be considered objectively and such consideration should reflect in the consequential order passed under Section 389, Cr. P.C. It is also relevant to state that the mere factum of sufferance of incarceration for a particular period, in a case where life imprisonment is imposed, cannot be a reason for invocation of power under Section 389 Cr. P.C. without referring to the relevant factors. We say so because there cannot be any doubt with respect to the position that disposal of appeals against conviction, (especially in cases where life

imprisonment is imposed for serious offences), within a short span of time may not be possible in view of the number of pending cases. In such circumstances if it is said that disregarding the other relevant factors and parameters for the exercise of power under Section 389, Cr. P.C., likelihood of delay and incarceration for a particular period can be taken as a ground for suspension of sentence and to enlarge a convict on bail, then, in almost every such case, favourable invocation of said power would become inevitable. That certainly cannot be the legislative intention as can be seen from the phraseology in Section 389 Cr. P.C. Such an interpretation would also go against public interest and social security. In such cases giving preference over appeals where sentence is suspended, in the matter of hearing or adopting such other methods making an early hearing possible could be resorted. We shall not be understood to have held that irrespective of inordinate delay in consideration of appeal and long incarceration undergone the power under the said provision cannot be invoked. In short, we are of the view that each case has to be examined on its own merits and based on the parameters, to find out whether the sentence imposed on the appellant(s) concerned should be suspended during the pendency of the appeal and the appellant(s) should be released on bail."

23. The Hon'ble Supreme Court, in the judgments referred to above, has drawn a clear and well-defined distinction between the principles governing the grant of bail at the pre-conviction stage and those applicable after conviction. In the case of pre-conviction bail, the settled principle is that "bail is the rule and jail is the exception," in view of the underlying principle that every accused is presumed to be innocent until proven guilty. The legal position, however, undergoes a fundamental change once a competent court records a finding of guilt and convicts the accused.

At the post-conviction stage, the presumption of innocence no longer survives. The provisions of Section 389 of the Code require the appellate court to exercise its discretion with greater circumspection. Before suspending the sentence and releasing a convict on bail, the appellate court is duty-bound to record strong, cogent, and compelling reasons justifying such an exercise of discretion. This requirement is not an empty formality but flows from the legislative intent underlying Section 389 of the Code, which recognises that a judgment of conviction carries with it a presumption of correctness unless it is set aside in appeal. The Hon'ble Supreme Court has further held that, while considering an application under Section 389 of the Code, the appellate court is required to objectively evaluate all the relevant circumstances, including the nature of the offence, the manner in which it was committed, the gravity and seriousness of the crime, the sentence imposed, and the desirability of releasing the convict on bail pending disposal of the appeal. The Court must also bear in mind larger considerations of public interest, societal impact, and the need to preserve public confidence in the administration of criminal justice. These considerations must be reflected in the order passed under Section 389 of the Code, so as to demonstrate a proper and judicious exercise of discretion. The Hon'ble Supreme Court has also held that no inflexible rule can be laid down in matters of suspension of sentence pending appeal. Each case must necessarily be examined on its own facts and merits, and the appellate court must, on the basis of the settled parameters governing the exercise of power under Section 389 of the Code, determine whether a case has been made out for suspending the sentence

imposed upon the appellant and releasing him on bail during the pendency of the appeal.

24. In the light of the principles above, we have carefully gone through the impugned judgment and the materials which have been handed over. It needs to be borne in mind at this juncture that the instant appeal has been filed only on 23.01.2026, and the matter was admitted, and the trial court records have been called for. They are yet to be received. Some of the co-accused are yet to prefer an appeal. The appeal preferred by the State challenging the order of acquittal of some of the accused and for other reliefs is also pending.

25. PW1 is the victim and the lead prosecution witness. In her deposition before the trial court, she gave a detailed, consistent, and graphic account of the entire occurrence leading to the commission of the offence. According to her, on the fateful day, she was travelling from Thrissur to Ernakulam in MO9 Mahindra XUV bearing Registration No. KL-39-F-5744, which was being driven by the 2nd accused. When the vehicle reached Kottayi, MO12 van bearing Registration No. KL-60-9338 deliberately rammed the rear portion of the Mahindra XUV. She thereafter narrated, in considerable detail, the manner in which she was forcibly abducted by accused Nos. 1 to 6, the sequence of events that unfolded during the journey, the points at which the various accused boarded the Mahindra XUV, and the circumstances under which she was eventually taken to the residence of PW5. Her testimony furnishes a continuous and coherent account of the incident from the moment of the alleged collision until she reached the residence of PW5.

26. The victim identified the 1st accused during the Test Identification Parade as well as before the trial court during her deposition. She gave a detailed account of the sexual assault allegedly committed upon her by the 1st accused with the active aid and assistance of the other accused persons. She further deposed that the 1st accused had captured her nude visuals on a mobile phone during the course of the incident. The victim was subjected to an extensive and searching cross-examination by the defence. The learned Sessions Judge, after meticulously analysing her evidence in the light of the entire materials available on record, found her testimony to be natural, cogent, credible, reliable, and worthy of acceptance. The trial court further held that the contradictions, omissions, and discrepancies highlighted by the defence were minor in nature and did not affect the core of the prosecution case. According to the learned Sessions Judge, those inconsistencies were neither material nor sufficient to discredit the otherwise trustworthy testimony of the victim.

27. PW110, Dr. Milan Raju, is the medical officer who examined PW1 immediately after the occurrence. She issued Ext. P113 wound certificate recording the history narrated by the victim as well as the findings noticed during the medical examination. The history recorded in Ext. P113 reveals that, while travelling from Thrissur to Kochi on 17.02.2017 at about 9.30 p.m., the vehicle in which the victim was travelling was hit from behind by another vehicle, following which two persons forcibly entered her vehicle. The victim also informed the doctor that she had been subjected to oral sexual assault while inside the moving vehicle. The history

recorded contemporaneously in the medical records lends corroboration to the version subsequently narrated by the victim before the court.

28. During the course of the medical examination, PW110 noted a mild contusion on the left arm of the victim, an abrasion on her right forearm, and an injury on the second toe of her right foot. The victim also informed the doctor that it was the first day of her menstrual cycle. These injuries and observations were duly recorded in Ext. P113 and form part of the contemporaneous medical evidence placed before the trial court.

29. PW5, Paul Michael Lal @ Lal, is another material witness relied upon by the prosecution. He deposed that, on 17.02.2017 at about 11.30 p.m., the victim contacted him over the telephone. She came to his residence in the Mahindra XUV (MO9). PW5 stated that, when the victim arrived, she appeared visibly disturbed, frightened, and perplexed. According to him, the victim immediately informed him that while she was travelling from Thrissur to Ernakulam, unknown persons had deliberately caused an accident, forcibly entered the vehicle, and captured her nude visuals. The testimony of PW5 assumes significance, as it relates to the earliest disclosure made by the victim immediately after the occurrence and lends contemporaneous corroboration to the prosecution version.

30. The learned Sessions Judge concluded that the scientific evidence adduced by the prosecution in this case would lend sufficient corroboration to the evidence of the victim. According to the victim, during the incident, there was

ejaculation by the 1st accused and the semen spread over the dress worn by PW1. The DNA profile obtained from the seminal stain on the dress worn by the victim at the time of the incident was found matching with the samples collected from the 1st accused.

31. The main contention advanced by the learned Senior Counsel on behalf of the applicant is that he has undergone nearly eight years of imprisonment. The allegations in the present case disclose an exceptionally grave and disturbing crime. The prosecution case is that the applicant was engaged by offering consideration to execute a planned sexual assault on the victim, an actress, and to record her nude visuals with the intention of using them to blackmail and intimidate her. Such a calculated and premeditated act represents an extraordinary degree of criminal depravity, as contended by the learned Special Public Prosecutor and the learned counsel who appeared for the victim. The manner of commission of the offence is unprecedented in its nature and execution. The contention advanced that the allegation, which was found to be true, has shocked the collective conscience of society and cannot be brushed aside. Its gravity extends beyond the individual victim, as it strikes at the dignity, bodily autonomy, and sense of security of women. It would also undermine public confidence in the rule of law and the administration of criminal justice. In that view of the matter, the long incarceration cannot by itself constitute a ground for suspension of sentence under Section 389 of the Code. Having regard to the role attributed to the applicant, the nature of the offence, the manner in which it was committed, the gravity and seriousness of the crime, the

sentence imposed by the trial court, the criminal antecedents of the applicant in as many as 11 grave crimes, his alleged involvement in another criminal case while he was on bail in the present case, and his violation of the conditions of bail imposed by the Court, we are of the considered view that no exceptional circumstance has been made out warranting the suspension of the sentence. We have also taken into account the larger considerations of public interest, the societal impact of the offence, and the need to preserve public confidence in the administration of criminal justice.

32. The reliance placed by the learned counsel for the applicant on the decision of the Hon'ble Supreme Court in **Aasif @ Pasha** (supra) is, in our view, misplaced. The said decision was rendered in an entirely different factual context. In that case, the accused had been sentenced to undergo imprisonment for a term of four years for the offences punishable under Section 354 of the Indian Penal Code and Sections 7 and 8 of the Protection of Children from Sexual Offences Act. The appellate court had declined to exercise its discretion under Section 389 of the Code. It was in those peculiar circumstances that the Hon'ble Supreme Court observed that, in an appropriate case involving a term sentence, the appellate court may exercise its discretion to suspend the sentence pending disposal of the appeal. The facts of the present case stand on an entirely different footing, having regard to the nature of the allegations, the seriousness of the offence, the sentence imposed, and the antecedents and conduct of the applicant. Consequently, the ratio laid down in the said decision may not advance the case of the appellant.

33. It would be useful to refer to the judgment in **Rafiq v. State of U.P.**⁷, at this juncture. In **Rafiq** (supra), Justice V.R. Krishna Iyer, speaking for the Bench, held in paragraph Nos. 6 and 7 as under:

"6. There are several "sacred cows" of the criminal law in Indo-Anglian jurisprudence which are superstitious survivals and need to be re-examined. When rapists are revelling in their promiscuous pursuits and half of humankind-womankind- is protesting against its hapless lot, when no woman of honour will accuse another of rape since she sacrifices thereby what is dearest to her, we cannot cling to a fossil formula and insist on corroborative testimony, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. In this case, the testimony has commanded acceptance from two courts. When a woman is ravished what is inflicted is not merely physical injury. but 'the deep sense of some deathless shame'".

"A rape! a rape!....."

Yes, you have ravish'd justice;

Forced her to do your pleasure.

7. Hardly a sensitized judge who sees the conspectus of circumstances in its totality and rejects the testimony of a rape victim unless there are very strong circumstances militating against its veracity. None we see in his case, and confirmation of the conviction by the courts below must, therefore, be a matter of course. Judicial response to human rights cannot be blunted by legal bigotry."

34. Having bestowed our anxious consideration to the submissions advanced and the materials placed on record, we are of the considered view that the applicant has not been able to point out any patent infirmity, manifest illegality,

⁷ [1980 KHC 754]

or perversity in the judgment rendered by the learned Sessions Judge. At this interlocutory stage, we are unable to conclude that the findings recorded by the learned Sessions Judge are so unreasonable or perverse as to justify suspension of the execution of the sentence.

35. In such circumstances, we are of the considered view that the applicant has failed to make out any exceptional or sufficient grounds warranting the suspension of the execution of the sentence imposed by the trial court.

This application is dismissed.



Sd/-
**RAJA VIJAYARAGHAVAN V,
JUDGE**

Sd/-
**K. V. JAYAKUMAR,
JUDGE**

BR