

FRIDAY, THE 17TH DAY OF JULY 2026

Crl.M.Appl 1/2025 IN CRL.A No. 2337 of 2025

SALEEM H @ VADIVAL SALIM

VS

STATE OF KERALA

ADVS FOR APPELLANT/S:

SRI.K.V.SABU, SRI.M.G.SREEJITH, SRI.AKHIL K SABU,
SRI.NIKHIL K SABU, SHRI.ARUNRAJ S., SMT.LAYA THERESA
ANTONY, SMT.HANNA RAHMAN, SMT.ANJANA A., SMT.INDU MENON
M., SMT.ANJU P.S.

ADVS FOR RESPONDENT/S:

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

ORDER

RAJA VIJAYARAGHAVAN V.

&

K. V. JAYAKUMAR, JJ.

Crl. A. No. 2337 of 2025

Dated this the 17th day of July, 2026

ORDER

K. V. Jayakumar, J.

Crl. M.A. No. 1 of 2025

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

2. The applicant herein is the accused No.5 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 guilty of the offences punishable under Section 376D, Section 120B r/w Sections 342, 354, 354B, 357 and 376D, and Section 109 r/w Sections 342, 354, 354B, 357, 366 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 Sections 66(E) and 67(A) of the IT Act.
- c) to undergo simple 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 IPC.
- d) 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 offence punishable under Section 366 of IPC.

3. The prosecution case, in brief, is that the 8th accused has hatched a criminal conspiracy with the 1st accused 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. Initially, the accused Nos. 1 and 8 had tried to execute their plan on 4th and 5th January 2017, while the victim was engaged in a shooting in Goa. But they could not carry out their plan at that time. Therefore, the Accused Nos. 1 and 2 have decided to execute their plan to sexually abuse the victim in a more precise and accurate manner. Accordingly, the accused Nos. 1 and 8 had conspired with Accused Nos. 2 to 6, and all of them decided to execute their plan in a more precise manner, and respective roles were assigned to each of the conspirators. Pursuant to the said conspiracy hatched by

them, on 17.02.2017, the accused Nos. 1, 3, and 4 proceeded in MO12 van bearing Registration No. KL-60-9338 to Karukutty and waited there. The accused Nos. 5 and 6 had waited near the Apollo company, Kalamassery. The accused No. 2, in furtherance of the prearranged plan, has proceeded from the residence of PW1 at Thrissur to Ernakulam on 17.02.2017 at about 7.45 p.m in MO9 Mahindra XUV KL-39-F-5744. The prosecution further alleges that the accused No. 2, while driving the vehicle, gave information to the accused No.1 about their current location. According to the prosecution, accused nos.1, 3, and 4 proceeded in MO12 vehicle, chased MO9, created a fake accident, and all accused nos.1 to 6 entered into MO9 at different times, 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 Accused Nos. 2 to 6 facilitated Accused No.1 for the commission of rape. They outraged the modesty of the victim and abducted her with the intention that she would be forced to engage in illicit intercourse. 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 accused No. 1 had shown the visuals to others. The prosecution further alleges that, immediately after the incident, Accused Nos. 1 to 6 absconded and attempted to conceal the evidence.

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. 1 to 4 and 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. 5:

7. Sri. K. V. Sabu, the learned counsel for the applicant, 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 is a call taxi driver. The allegation against the applicant is that he was part and parcel of the conspiracy committed by A1 to A6. The learned counsel submitted that there is no prima facie evidence to show that there was a conspiracy in between A1, A5, and A6. The learned counsel submitted that on a perusal of the evidence of PW1, the victim would show that the applicant is innocent and he has no role in the alleged commission of the offence. The accused No.1 is the perpetrator of the crime, and there is nothing on record to indicate that Accused No. 5 was involved in the crime. It is pointed out that the applicant has driven the vehicle from Vennala to Kakkanad,

and at Kakkanad, he was directed by A1 to purchase a bottle of water for PW1, and that till that time, there was no complaint raised by PW1 against the applicant. Thereafter, Accused No.1 drove the vehicle.

9. It is submitted that the applicant had no connection with the alleged offence or the alleged conspiracy. According to the defence, the applicant was merely a passenger and had no knowledge whatsoever of the alleged offence. The learned counsel pointed out that, as admitted by the prosecution, no sexual harassment took place when the applicant was present in the vehicle, and that the applicant was not in any manner associated with the alleged sexual harassment.

10. 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.

11. The learned Counsel for the applicant submitted that the prosecution has failed to establish the arrest of the applicant. According to the prosecution, accused Nos.5 and 6 were taken from the building belonging to one Doraiswami. The version of PW202 is that accused Nos.5 and 6 were found in the Karappakkam area by CW337. It is submitted that the Karppakkam area is far away from Doraiswami's building and, therefore, it is clear that accused Nos.5 and 6 were not arrested from Coimbatore, but they were arrested from their house on 18.02.2017, early in the morning itself. Even though, according to the prosecution, a train ticket

going from Aluva to Coimbatore dated 18.02.2017 was recovered from the applicant, the same does not contain any mark of a ticket examiner and has no authenticity at all.

12. He further submitted that the applicant has been in judicial custody for about 2 $\frac{1}{2}$ years. 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.

13. The learned counsel has pointed out that on a perusal of the documentary as well as the oral evidence of all the witnesses, the prosecution has failed to prove any iota of evidence that the applicant had shared any common intention with accused Nos. 1 to 4 and therefore, the offence under Section 376D is not attracted against him. It is further submitted 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:

14. Sri. V. Ajakumar, the learned Special Public Prosecutor, vehemently opposed the application and submitted that the applicant is the one who facilitated, aided, and assisted the other accused in the commission of the crime. According to the learned Special Public Prosecutor, the materials on record clearly disclose that the applicant played an active role in the commission of the offence and was instrumental in orchestrating the entire incident. The active involvement and participation of the applicant in the execution of the crime is well proved by the

prosecution, and the learned Sessions Judge, after a careful evaluation of the entire evidence, came to the conclusion of the active participation and involvement of the accused in the crime.

15. The learned Special Public Prosecutor would submit that the evidence of PW1 regarding the entry and exit of accused nos.1 to 6 at different points was corroborated and substantiated by electronic evidence. The consistent version of PW1 regarding the incident, including the words and conduct of the Applicant as narrated by her while he was present in the vehicle, establishes the Applicant was well aware of the conspiracy and his active involvement in the commission of the crime.

16. The learned Special Public Prosecutor further submitted that the digital evidence as well as the CDR of the mobile used by the applicant would prove the pre-planned criminal conspiracy as well as the active participation of the applicant. The use of mobile phone , its SIM, CDR etc., are well proved by the prosecution.

17. The learned Public Prosecutor would submit that after the commission of the offence, Accused Nos. 1, 3, 4, 5, and 6 absconded on getting information regarding the report of the crime. The applicant absconded to Coimbatore, Karappakam, and CW337 found him and brought him to Aluva police Club, and the arrest was recorded by PW202. The discrepancies pointed out by the learned counsel for the applicant regarding the arrest of the applicant are immaterial since the entire prosecution evidence would unerringly point out the participation and involvement of the applicant in the execution of the crime, and the discrepancies

raised were duly considered and dismissed by the learned sessions judge in view of the cogent evidence adduced by the prosecution. The evidence of PW203 relied upon by the applicant is not relevant to the point since the witness is none other than the mother of the applicant, who turned hostile to the prosecution. He further submitted that the prosecution unerringly proved that Accused No. 1 to 6 and 8, in furtherance of their conspiracy, committed the heinous and brutal crime.

18. It is further submitted that the state preferred an appeal for the enhancement of the sentences imposed against certain other accused in the crime. The learned Public Prosecutor further submitted that if the sentence of the applicant is suspended, he would abscond and indulge in crimes. The submissions advanced by the learned counsel for the applicant are irrelevant at the interlocutory stage, while considering the application for suspension of sentence.

The submissions of the learned counsel for the victim:

19. 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.

20. Learned counsel submitted that the learned Sessions Judge, upon careful evaluation of the evidence of PW1, duly corroborated by digital, electronic, and oral evidence, rightly concluded that Accused Nos. 1 to 6 had entered into a criminal conspiracy, pursuant to which PW1 was abducted, wrongfully confined, and subjected to rape. Learned counsel further submitted that, on a proper appreciation of the evidence on record, the learned Sessions Judge rightly concluded that Accused Nos. 2 to 6 had facilitated and aided the commission of the offence of rape.

21. The learned Counsel would further submit that 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.

22. The learned counsel for the victim has placed reliance on the judgments in **Preet Pal Singh v. State of Uttar Pradesh and another¹**, **Omprakash Sahni v. Jai Shankar Chaudhary and another²**, **Shivani Tyagi v. State of U.P. and another³**.

23. According to the learned counsel, the contention that the Applicant was a mute spectator and had no active role in the incident is wholly irrelevant, particularly in the context of a crime of such a grave nature. The evidence of PW1 would clearly dispel such a contention.

¹ (2020) 8 SCC 645

² (2023) 6 SCC 123

³ 2024 SCC OnLine SC 842

24. The learned Counsel further pointed out that prolonged 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:

25. 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."

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

27. 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.

28. In **Vasant Tukaram Pawar v. State of Maharashtra**⁴, 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 sentence pending the appeal and release of the appellant on

⁴ (2005) 5 SCC 281

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."

29. 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."

30. In **Omprakash Sahni** (supra), the Apex Court has reiterated the principles for the grant of post-conviction bail and the suspension of sentence. The Hon'ble 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."

31. 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."

32. 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.

33. In the light of the principles above, we have carefully gone through the impugned judgment and the materials which have been handed over. The appeal

has been 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.

34. 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.

35. The victim identified accused No.5 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. Accused No.5 brought the mobile phone as instructed by Accused No.1. 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.

36. PW1 deposed that when the vehicle was stopped on the left side on reaching Palarivattom signal, and accused no.6 alighted from the vehicle and accused no.5 boarded the vehicle and sat on her left side. When she asked his name, Accused No. 5 told her that his name was Arun. Thereafter, the vehicle proceeded through several by-lanes and reached Kakkanad - Thrissur Road. Then Accused No. 5 occupied the driver's seat, and Accused No. 1 shifted to the passenger seat and sat on her left side. Accused No. 1 informed her that he had a quotation to capture her naked video. She asked about the person who entrusted the quotation. Accused No. 1 told her that it was a lady. When accused no.5 heard that the quotation was given by a lady, he turned back and in an offensive way asked who would ask to do that. The accused No. 1 threatened him and said, 'Saleem, you just mind your own business and drive'. Accused No. 1 directed Accused No. 5 to purchase water and to take the camera from MO12 vehicle. As per the direction of Accused No. 1, he had brought a mobile from the MO12 Van and

handed it over to Accused No. 1 for capturing the nude videos of the victim. Accused No. 1 has also directed the applicant to alight from MO9 vehicle and to drive MO12 van. PW1 further testified that the Applicant had followed the instructions given by the Accused No.1 and proceeded to drive the MO12 vehicle.

37. PW156 (Vijayakumar C.K.) was running a hotel by the name 'Kamadhenu' at Chittethukara. He deposed that on 17.02.2017, between 10 p.m and 10.30 p.m one person came to his hotel to buy water and returned after purchasing water. He came back to the shop again after five minutes and purchased cigarette. He identified Accused No. 5 as the person who purchased the water and cigarette.

38. The evidence of PW10, 11, 12 and 13 would show that accused Nos. 1, 3, 4, 5 and 6 were known to each other. The evidence of PW12 would show that accused nos.1, 3, and 5 used to visit accused nos.4 and 6 in the tenanted house of PW12. Accused nos. 1 and 3 to 6 reached the rental house at Thammanam, immediately after the commission of the crime. PW10 and PW11 deposed about the presence of accused nos.1, 3, 4, 5, and 6 in the said locality on the alleged day of occurrence. The evidence of PW156, Vijaykumar, owner of the hotel, would also prima facie, would prove the role of the applicant.

39. The learned Sessions Judge, after meticulous evaluation of the location details, FSL examination, and CDR, duly corroborated by the evidence of PW1, arrived at the conclusion that Accused Nos. 5 and 6 were also present either in MO9 or MO12 from Premier Junction to Padamugal at the relevant point of time. The

learned Sessions Judge concluded that the evidence of PW1 corroborated with the digital evidence, location maps, Ext. P88 series CDR details and the evidence of PW10 to 12, along with the acts and conduct of the accused, would prove that accused Nos. 1 to 6 conspired to commit the crime and in furtherance of the conspiracy, abducted and assaulted PW1 physically, mentally and sexually.

40. On going through the judgement and the materials placed on record, we are of the view that, prima facie, there is sufficient evidence on record to prove the alleged conspiracy between the accused nos. 1 to 6 and they have acted in furtherance of the said conspiracy and executed their plan with precision. On careful consideration of the available records on evidence, we are unable to accept the contention of the learned counsel for the applicant that he was only a mere passenger in MO9 vehicle, no active role in the commission of the crime or in the conspiracy. Prima facie, it appears that the applicant had assisted and aided the commission of the crime, and he had shared the common intention with all the conspirators.

41. The contention advanced by the learned Senior Counsel on behalf of the applicant is that he has undergone nearly 2 $\frac{1}{2}$ 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, and the sentence imposed by the trial 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.

42. 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, 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.

43. 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

Jvt