

FRIDAY, THE 31ST DAY OF JULY 2026

Crl.M.Appl 1/2026 IN CRL.A No. 4 of 2026

MARTIN ANTONY

VS

STATE OF KERALA

ADVS FOR APPELLANT/S:

DR. ALEX JOSEPH, SMT.NISHA K.PETER

ADVS FOR RESPONDENT/S:

PUBLIC PROSECUTOR, DIRECTOR GENERAL OF PROSECUTION,
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. 4 of 2026

Dated this the 31st 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.2 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 and section 109 r/w Sections 342, 354, 354(B), 357, 366 and 376D and Section 201 of the Indian Penal Code 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 Rigorous Imprisonment for 3 years and also to pay a fine of Rs. 25,000/-, with a default clause, for the offence punishable under Section 201 of the 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 8 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. Accused Nos. 1 and 2 on 17.02.2017 hatched a criminal conspiracy, as a part of which accused No. 2 proceeded in MO9 Mahindra XUV to bring PW1 to Ernakulam. Accused No. 1 hatched a criminal conspiracy with accused Nos. 3 to 6 and thereby 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, the applicant herein, 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 along with her 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 and 3 to 6 absconded and attempted to conceal the evidence. The accused No.2 has disposed of his mobile SIM card shortly after the commission of the crime by putting it in the closet and flushing it inside with a view to destroy 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 and 3 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. Alex Joseph, the learned counsel submitted that the learned Sessions Judge has convicted and sentenced the applicant without proper evaluation of the evidence on record. It is submitted that 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 would submit that the prosecution miserably failed to prove the involvement of the applicant in the crime. The applicant was not a participant in the alleged conspiracy and was falsely implicated for the sole reason that he was deputed to pick up the victim on the fateful day. None of the witnesses, including PW1, has deposed to the involvement of the applicant. The applicant took up the job only because the accused No. 1 refused and had no knowledge about the crime. The prosecution has not attributed any motive or mens rea to the applicant for the commission of the crime.

9. The only allegation is the involvement in a conspiracy with accused No.1 and facilitating the same. But nothing was adduced by the prosecution to prove the alleged conspiracy. As regards the alleged conspiracy at the residence of PW12 on 11.02.2017, the evidence of PW12 would show that accused No. 2 was not present, nor is there even an allegation that the applicant was present at the residence of PW12. PW12 has not stated anything about the presence of any of the accused persons at his residence on 11.02.2017.

10. The learned Counsel further submitted that no allegation of sexual assault was levelled against the applicant and he was not present at the time of the commission of the alleged sexual assault against the victim. He was neither a witness nor a passenger or a driver of the MO9 Mahindra XUV at the time of the alleged commission of the sexual assault; he was taken away by the other accused.

11. The learned Counsel would point out that the accused No. 2, unlike other accused, did not conceal his identity or name; moreover, the applicant was also subjected to physical abuse by the other accused. The Counsel submitted that the evidence of PW1 itself would show that she herself disclosed her destination as Panampally Nagar to the other accused, not by the applicant herein.

12. The learned Counsel further submitted that the applicant neither had any knowledge about the fact that MO12 Van was following MO9 vehicle in which the victim was taken to Ernakulam. The learned counsel further submitted that the applicant has no role in the procurement of the MO12 Van, nor assisted or participated with accused No.1 in the preparation and commission of the crime.

13. The learned Counsel submitted that the evidence of PW28, PW33, PW45, PW4 and PW5 would show that accused No. 2 was not a member of Cine Drivers Union and he was called only on the fateful day to drive the vehicle. He did not know the commission of the crime.

14. It is further stated that the evidence of PW1, PW5, PW8, PW42, PW45, PW192 and PW202 disproves the case of the prosecution that the applicant tried to escape from the house of PW5 immediately after dropping the victim there and dumping the SIM Card of his mobile phone into the latrine there.

15. The learned counsel has pointed out that the applicant was arrested on 17.02.2017 and has undergone more than 5 years of imprisonment as an under trial prisoner, and was enlarged on bail by the Apex Court as per the order dated

09.03.2022. 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 more than five and a half years.

16. 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.

The submissions of the learned Special Public Prosecutor:

17. 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 a major role in the commission of the offence and was instrumental in orchestrating the entire incident.

18. The learned Public Prosecutor submitted that the applicant played a major role, equal to or greater than that of accused No. 1, in the conspiracy, preparation, and execution of the crime. The evidence of PW45 would show that accused Nos. 1 and 2 were present at Lal Media Studio, Palarivattom, on the

afternoon of the fateful day. The CDR and location details would prove that Accused No.1 and 2 contacted each other throughout. Immediately before the fake accident at Kottayi, accused No.1 sent a message to accused No. 2, "phonil allengil signal".

19. The learned Public Prosecutor submitted that PW1 categorically deposed about the involvement of accused No. 2 and the acts committed by him to facilitate the other accused in the commission of the crime. PW1 started the journey with the applicant believing him to be a trustworthy driver. But he betrayed her faith and committed a heinous crime along with the other accused. The prosecution has adduced sufficient cogent and credible evidence to prove the involvement of the applicant in the conspiracy and commission of the crime. It is further pointed out that the applicant was the one who continuously shared the location of the victim with accused No. 1 and stopped the MO9 vehicle at the premeditated spot, thereby facilitating the entry of the other accused and the execution of the crime, in which he played a major role, culminating in the commission of the heinous crime. Immediately after dropping PW1 at the residence of PW5, accused No. 2 attempted to flee. He was brought back to the residence of PW5 only due to the intervention of PW8. Upon apprehending police intervention, the applicant destroyed evidence by flushing his SIM card down the toilet at the residence of PW5. The applicant is the first person who was arrested in the crime.

20. The learned Special Public Prosecutor further pointed out that the Hon'ble Supreme Court granted bail to the applicant only due to the prolongation of the trial, 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 defamatory videos against PW1 and for which a crime was registered against the applicant as Crime No. 77/2025 for offence under Sections 72, 75(1)(iv) and 79 of the Bharatiya Nyaya Sanhita and offence under Section 67 of the Information Technology Act by the Cyber Crime Police Station, Thrissur, and the investigation is going on, thereby acting in breach of the conditions governing his release. It is also submitted that the State has preferred Crl. A No. 295/2026 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.

21. 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. 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:

22. 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.

23. 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 another¹**, **Omprakash Sahni v. Jai Shankar Chaudhary and another²**, **Shivani Tyagi v. State of U.P. and another³**. She has also placed

¹ (2020) 8 SCC 645

² (2023) 6 SCC 123

³ 2024 SCC OnLine SC 842

reliance on the judgment of the Apex Court in Crl. Appeal Nos. 1330-1332 of 2017 in **Khem Singh v. State of Uttaranchal**⁴.

24. 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:

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

⁴ 2025 SCC OnLine SC 1778

an appeal by a 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;

- (i) 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**⁵, the Hon'ble Supreme Court explained the nature and scope of the jurisdiction to be exercised by

⁵ (2005) 5 SCC 281

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 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.P.C. 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 that bail is 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. 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."

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 their sentence suspended 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 the 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 driven by the 2nd accused. When the vehicle reached Kottayi, the 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 (Paul Michael Lal @ Lal). 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. PW1 categorically stated the involvement of the applicant in her evidence. Throughout the journey from Thrissur, Accused No.2 was observed by the victim driving with one hand while constantly sending messages and communicating their location. She enquired about the same and asked to drive fast. Immediately after the fake accident, the applicant got out of the vehicle and then re-entered the vehicle along with Accused Nos. 3 and 4, offering no resistance or objection as they sat on either side of the victim and followed the instructions. He stopped the vehicle

at multiple pre-planned points to facilitate the entry and exit of other accomplices. When she enquired of the applicant about his involvement in the crime, he pretended ignorance. 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. The evidence of PW45 (Manoj Kumar @ Manoj Karanthoor) established that the applicant was appointed as the victim's driver for the journey from Thrissur to Ernakulam on the specific recommendation of Accused No. 1.

37. The CDRs show that accused No. 2 was in constant contact with accused No. 1 throughout. Ext.P236 series and Ext. P237 are the CDRs of the mobile number of accused No.2 along with the location details. Between 18:133 to 19:23 hours, accused No.1 and Accused No.2 contacted each other on six occasions. While waiting at the residence of PW1, there were calls between accused No.1 and 2. At 9:14 pm, accused No. 1 sent a message to accused No. 2 immediately before the accident as "phonil allengil signal"

38. The applicant dropped the victim at the residence of PW5 (Lal). However, he immediately attempted to escape from the scene and was brought back to the residence by PW5's driver (PW8). While at PW5's residence waiting for the police, the applicant went into a bathroom and destroyed his SIM card by putting it in a toilet closet. The police found his phone without a SIM card shortly thereafter, which the court concluded was a deliberate act to erase records of his communications with accused No. 1

39. The learned Sessions Judge, upon a careful evaluation of the oral evidence of PW1, PW45, PW8, and the other material witnesses, the location details, the CDRs, and the documentary and scientific evidence, concluded that PW1 was subjected to rape by accused No. 1 and that accused Nos. 2 to 6 facilitated and aided the commission of the offence.

40. On going through the judgment 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 driver in the MO9 vehicle, with no active role in the commission of the crime or motive. 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. Another contention advanced by the learned Counsel on behalf of the applicant was regarding the incarceration of nearly five and a half years of imprisonment. 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 points urged by the learned counsel for the applicant do not 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, 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.

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