

THURSDAY, THE 20TH DAY OF AUGUST 2026

Crl.M.Appl 1/2025 IN CRL.A No. 2327 of 2025

PADMARAJAN @ PAPPAN MASH

VS

STATE OF KERALA & ANOTHER

ADVS FOR APPELLANT/S:

SRI.S.RAJEEV, SRI.V.VINAY, SRI.M.S.ANEER, SHRI.SARATH
K.P., SHRI.ANILKUMAR C.R., SHRI.K.S.KIRAN KRISHNAN,
SMT.DIPA V., SHRI.AKASH CHERIAN THOMAS, SHRI.AZAD
SUNIL, SHRI.T.P.ARAVIND, SMT.AKSHARA S., SHRI.MAHESWAR
PADICKAL

ADVS FOR RESPONDENT/S:

PUBLIC PROSECUTOR, SRI.SOORAJ T.ELENJICKAL, SMT.NANDA
SURENDRAN

ORDER

**RAJA VIJAYARAGHAVAN V.
&
K. V. JAYAKUMAR, JJ.**

Crl. A. No. 2327 of 2025

Dated this the 20th day of August, 2026

ORDER

K. V. Jayakumar, J.

Crl. M.A. No. 1 of 2025

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 sole accused in S.C. No.472 of 2021 on the file of the Court of Special Judge, Fast Track Special Court, Thalassery. As per the impugned judgment dated 14.11.2025, the learned Special Judge found the applicant guilty of the offences punishable under Section 376(2)(f), 376AB and Section 354B of the Indian Penal Code and Sections 5(f),(l),(m) r/w Section 6 of the Protection of Children from Sexual Offences Act (PoCSO), and he was convicted and sentenced as under:

- a) to undergo imprisonment for life for the remainder of his natural life and to pay a fine of Rs.1,00,000/-, with a default clause, for the offence punishable under Section 376AB of the IPC.

- b) to undergo rigorous imprisonment for a term of 20 years each and to pay a fine of Rs.50,000/-, each with a default clause, for the offences punishable under Section 5(f) and 5(l) of the PoCSO Act.

3. The prosecution case, in brief, is that the applicant/accused is a teacher at U. P. School, Palathai. On a day before 15.01.2020, and thereafter on 15.01.2020 and 02.02.2020, the applicant, who is her Malayalam teacher, took her to the washroom and committed aggravated penetrative sexual assault and rape on the victim girl aged 10 years and 6 months, by inserting finger into her vagina and anus. The prosecution further alleges that the accused tied up and put cloth on the mouth of the victim and was sexually assaulted. On 17.03.2020, based on the statement of the victim girl, Crime No.94/2020 was registered by Panoor Police Station, alleging offences punishable under sections 376(2)(i) and 376(2)(f) of the Indian Penal Code and Sections 5(f), 5(l), 5(m) and Section 6 of the Protection of Children from Sexual Offences Act Act.

4. During the trial, 40 prosecution witnesses were examined as PWs.1 to 40, and 98 exhibits were marked as Exts.P1 to P98. 15 material objects were also identified and marked. On the side of the defence, 3 witnesses were examined as DWs. 1 to 3, and Exts. D1 to D155 were marked. Exts.X1 to X8 were also marked.

5. The learned Sessions Judge, after a meticulous evaluation of the materials and evidence on record, has convicted the applicant as aforesaid.

The submissions of the learned counsel for the applicant :

6. Sri. S Rajeev, 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. It is further submitted that the learned Sessions Judge has discarded vital contradictions and omissions in the prosecution evidence.

6.1. The learned counsel would submit that the evidence of PW1, the victim, is unworthy of credence. The learned counsel has pointed out that PW1, the victim girl, made material contradictions in her statements and gave fanciful and imaginary accounts. The statement of the victim was recorded on more than one occasion, and she changed her version on several occasions. The learned counsel pointed out that, in her statement under Section 154 Cr.P.C., the victim stated that she was tied up and that a cloth was placed over her mouth. However, while deposing before the court, she denied the same. The version of PW1 with respect to the place of occurrence is not consistent and reliable. She identified the washroom where the alleged offence had taken place, based on which the scene mahazar and sketch plan were prepared. Subsequently, another scene mahazar was prepared, showing a different washroom, namely, the one used by the teachers, as the place of occurrence. When confronted with this discrepancy, the victim explained that, had she confined her account to the second washroom, both the public and the police would have disbelieved her, as it would have been difficult to commit such acts in that small room, which contained a closet. According to the learned counsel for the applicant, the offence alleged is highly improbable to have occurred in the

compartment bathroom of the school situated in a limited space wherein about 600 children are pursuing their education. The scene mahazar definitely suggests that the incident as alleged by the victim could not have been performed in a place of that nature, which is in close vicinity of the room of the headmistress. This is particularly so as the alleged acts are stated to have occurred not on one occasion, but on several occasions. To believe that such an incident could have been perpetrated by a teacher within a few feet of the classroom without attracting the attention of the teachers and students is an impossibility is the contention forcefully advanced. PW37, the Investigating Officer, admitted in her evidence that she had recorded the audio of the statement of the victim, as there were contradictions in the statement of the victim. The evidence of PW1, the victim, would show that it is nothing but tutored. The learned counsel has pointed out as many as 9 material contradictions in the evidence of PW1, which are as follows:

- i) sending naked photos of the victim (xxx) by the accused on the mobile phone of her mother.
- ii) statements related to the last incident of her taking to Poyiloor at a temple and meeting with a swamy and related events.
- iii) and thereafter about the meeting of another handsome guy who came on a motorcycle having Registration No.5000 and then taking her to a house at Poyiloor and the rape by another man and drowning her in a bathtub
- iv) her narration of journey in a bike along with Pappan Master and the description of events and landmarks she had noticed
- v) Taking her to Olive Hotel and giving food by accused
- vi) and her statement that Pappan Master used to call her at night over the phone and the planning of elopement

- vii) regarding her statement of spreading blood in her dress
- viii) The health issue of Piles and wearing of Pampers from third standard onwards.
- ix) Taking of two small boys to school on the same bike to school along with PW1 (xxx) on the last date of incident. Dramatic narration of various incidents.

6.2. It is submitted that the investigation into this case was handled by many investigation agencies. The investigation which was conducted by PW34, PW35, and PW38, supervised by a senior IPS officer, could not come to the conclusion that the accused committed the alleged offence. The initial investigation was conducted by the local police, which was later handed over to PW38, Detective Inspector, Crime Branch, Kasaragod, supervised by Crime Branch Dy. S.P. Later, a lady police officer, PW37, ACP, Narcotic Cell, was made part of the investigation. Thereafter, the investigation was handed over to PW39, the Deputy Superintendent of Police attached to the local police, who, according to the learned counsel, moulded the case to suit the whims and fancies of a particular politically motivated person. According to the learned counsel, the conviction entered against the applicant is illegal and unsustainable in law.

6.3. The learned counsel submitted that the learned Special Judge failed to take note of the defence case and the evidence adduced by the defence in its correct perspective. It is submitted that the Investigating Officer sought the assistance of a clinical psychologist to provide psycho-social support to the victim. But material witnesses, including the clinical psychologists, were not examined by

the prosecution, allegedly with a view to suppressing the truth regarding the innocence of the applicant.

6.4. It is further submitted that the medical evidence is not in support of the prosecution. The prosecution has relied on Ext. P5 report and the evidence of PW8 Dr.Poornima to substantiate that there is some manipulation in the vagina of the victim. However, PW8 deposed before the court that the noted tear could have been caused by scratching with a finger on account of a fungal infection. The learned counsel further pointed out that PW9, Dr. Vasumathi, a gynecologist who examined the victim immediately after the alleged incident and issued Ext.P16 medical prescription, contains no mention of sexual assault, nor was the police informed of any such incident at that time. In Ext.P16, she noted the presence of fungal infection. It is pointed out by the learned counsel that the fact that the mother of the victim had also lodged a complaint against another teacher, which was investigated by the police and found to be baseless, was not taken note of by the learned Special Judge.

6.5. The learned counsel would submit that the applicant was falsely implicated in this case due to political animosity and vengeance. The accused was a BJP sympathiser and had published a Facebook post supporting the Citizenship Amendment Bill. As a result, differences of opinion arose between the accused and the parents of some of the students. The said post provoked people in a particular community, and they made an agitation demanding the transfer of the applicant from the School. It is submitted that the accused was made a scapegoat. The learned counsel pointed out that PW11 (Lailabee), who was a teacher in the school,

deposed that the applicant was subjected to severe criticism from different corners for making a post in support of the Citizenship Bill on Facebook. The learned counsel for the applicant 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:

7. Smt. Sareena George, the learned Special Public Prosecutor, vehemently opposed the application. It is also submitted that the learned Special Judge has evaluated the evidence of the child in its proper perspective and has arrived at the right conclusion.

8. The learned Public Prosecutor submitted that the evidence of PW8, Dr. Poornima Prabhu, would lend sufficient corroboration to the testimony of the survivor. Referring to the observations made by the Apex Court in **Preetpal Singh v. State of U.P**¹ she submitted that unless the trial court's findings are palpably perverse, the appellate court should not suspend the sentence in such cases of grave sexual abuse involving minors. She also emphasized that, at this stage of considering a suspension of sentence, the evidence is not to be re-evaluated in detail.

The submissions of the learned counsel for the victim:

9. Sri. Suraj T Elanjickal, the learned counsel appearing for the mother of the victim, would submit that the allegations levelled against the accused are of a heinous nature. The victim girl, aged about 10 years, was subjected to penetrative

¹ (2020) 8 SCC 645

sexual assault by her own school teacher. The learned counsel would submit that, after a careful evaluation of the evidence of PW1, the victim, and the other evidence adduced, the learned Special Judge rightly found the accused guilty, which calls for no interference. The learned counsel argued that once an accused is convicted, the presumption of innocence no longer exists.

10. 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, the applicant is not entitled to suspension of sentence under Section 389 of the Code.

Judicial evaluation:

11. 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."

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

13. 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.

14. In **Vasant Tukaram Pawar v. State of Maharashtra**², 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 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."

15. 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

² (2005) 5 SCC 281

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."

16. 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.

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

18. PW1 is the victim. She gave detailed evidence about the alleged penetrative sexual assault by the applicant. She was subjected to cross examination by the defence counsel. During the cross examination, numerous material contradictions and omissions were brought out by him. On a preliminary analysis of the evidence of PW1, the victim, prima facie, we find that the victim had an inconsistent, embellished, improved and fanciful version about the alleged sexual abuse. We find that the scene of occurrence, the toilet of the school, is very close to the classrooms. It is pertinent to note that the school is situated in a small extent of property.

19. The victim was first examined by PW9, Dr. Vasumathi and issued Ext.P16 prescription. She has not noticed any evidence of sexual abuse. However, PW8, Dr. Poornima Prabhu, examined the victim and issued Ext.P5 report. In Ext.P5 report, she has noted some manipulation in the vagina of the victim. She further opined that the tear of the hymen could have been caused by scratching with a finger on account of fungal infection.

20. It is pertinent to note that the investigation of this case was conducted by three separate agencies. The initial investigation was conducted by local police and later by the Crime Branch, which was supervised by a DySP. In both these

investigations, they have arrived at different conclusions about the alleged sexual assault by the applicant.

21. Upon hearing the submissions advanced by the learned counsel in Court and upon a careful perusal of the available records, we are of the considered view that the contentions put forth by the learned counsel for the applicant are weighty and cannot be brushed aside in a cursory manner. Prima facie, we find some merit in the argument advanced by the learned counsel for the applicant

22. We are of the view that the applicant has made out a good case on merits in the appeal, and the grounds urged by him are compelling. Though it is premature to enter into a conclusive finding regarding the merits of the contention of the applicant that he is innocent, we are convinced that the applicant has made out an arguable case. We are convinced that insofar as the conviction of the applicant is concerned, there is some infirmity in the order of conviction that renders the order of conviction prima facie erroneous.

23. Resultantly, this application is allowed. The applicant shall be enlarged on bail, subject to the following conditions:

- a) The applicant shall execute a bond for a sum of Rs. 1,00,000/- (Rupees One Lakh only) with two solvent sureties, each for the like amount, to the satisfaction of the learned Special Judge, Thalassery.
- b) The applicant shall not enter the Revenue District in which the survivor resides. This condition is imposed to ensure that the survivor is not subjected to any intimidation, influence, interference or unwarranted contact during the pendency of the proceedings.

- c) The applicant shall not, either directly or indirectly, contact the victim, her friends or relatives, or attempt to communicate with or influence them in any manner. He shall also not make any comment on social media, publish or circulate any material, or give any interview to any person touching upon the facts of this case, particularly in a manner that may prejudice the interests of the victim or the fair administration of justice.
- d) The applicant shall not leave the country without obtaining the prior permission of this Court. If the applicant is required to travel outside the country for any compelling reason, he shall seek appropriate orders from this Court in advance.
- e) The applicant shall not commit any offence while on bail. Any violation of the conditions imposed herein shall entitle the prosecution to seek appropriate orders, including cancellation of bail, in accordance with law.

Sd/-
RAJA VIJAYARAGHAVAN V,
JUDGE

Sd/-
K.V. JAYAKUMAR,
JUDGE