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Tr.P.(Crl) No.38 of 2026 and
Crl. M.C.No. 4292 of 2026

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"C.R."

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 29TH DAY OF SEPTEMBER 2026 / 7TH ASWINA, 1948

TR.P(CRL.) NO. 38 OF 2026

CRIME NO.202/2018 OF Mattannur Police Station, Kannur
AGAINST THE ORDER DATED 06.06.2026 IN CRTP NO.12 OF 2026
OF DISTRICT COURT & SESSIONS COURT / RENT CONTROL APPELLATE
AUTHORITY, THALASSERY ARISING OUT OF THE ORDER/JUDGMENT DATED
IN SC NO.598 OF 2018 OF DISTRICT COURT & SESSIONS COURT / RENT
CONTROL APPELLATE AUTHORITY, THALASSERY

PETITIONERS/ACCUSED 1 TO 3:

- 1 AKASH M.V,
 AGED 31 YEARS
 S/O RAVEENDRAN, LAKSHMI NILAYAM, VANJERI,
 THILLENKERI, KANNUR, PIN - 670702
- 2 RAJIL RAJ,
 AGED 32 YEARS
 S/O RAJAN, PAZHAYAPURAYIL HOUSE, KARUVALLI,
 THILLENKERI, KANNUR, PIN - 670072
- 3 JITHIN A. @ CHATHU,
 AGED 31 YEARS
 S/O MUKUNDAN, KURUVODE HOUSE, MUDAKKOZHI,
 MUZHAKKUNNU P.O., KANNUR, PIN - 670607

BY ADVS.
SRI.S.RAJEEV
SRI.M.S.ANEER



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

RESPONDENTS/STATE:

- 1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF
KERALA. ERNAKULAM (IN CRIME NO. 202/2018 OF
MATTANNUR POLICE STATION,KANNUR), PIN - 682031
- 2* MUHAMMED C.P,
SCHOOL PARAMBATH, EDAYANNUR,ELAMPARA, KEEZHALLUR
(P.O) ,KANNUR DISTRICT.

*IMPLEADED AS ADDL R2 AS PER OREDR DATED 15/6/26 IN
CRL MA 2/2026

BY ADV
SRI.ASAF ALI T., DGP
SHRI.JAWAHAR JOSE

THIS TRANSFER PETITION (CRIMINAL) HAVING COME UP FINAL
HEARING ON 17.09.2026, ALONG WITH CrI.MC.4292/2026, THE COURT
ON 29.09.2026 DELIVERED THE FOLLOWING:



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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

TUESDAY, THE 29TH DAY OF SEPTEMBER 2026 / 7TH ASWINA, 1948CRL.MC NO. 4292 OF 2026

CRIME NO.202/2018 OF Mattannur Police Station, Kannur

AGAINST THE ORDER DATED 22.05.2026 IN CRMP 4/2026 IN SC
NO.596 OF 2018 OF DISTRICT COURT & SESSIONS COURT / RENT
CONTROL APPELLATE AUTHORITY, THALASSERY

PETITIONERS/ACCUSED:

- 1 AKASH
 AGED 31 YEARS
 S/O RAVINDRAN LAKSHMI NILAYAM, VANJERI, THILLENKERI
 P O, KANNUR -, PIN - 670702
- 2 RAJIL RAJ
 AGED 31 YEARS
 S/O RAJAN, PAZHAYA PURAYIL HOUSE, KARUVALLI,
 THILLENKERI P O, KANNUR -, PIN - 670702
- 3 JITHIN @ CHATHU
 AGED 30 YEARS
 S/O MUKUNDAN, KURUVOD HOUSE, MURAKKOZHI, MUZHAKUNNU
 P O, KANNUR -, PIN - 670673

BY ADVS.
SRI.S.RAJEEV
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



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SHRI.T.P.ARAVIND
SHRI.MAHESWAR PADICKAL
SMT.AKSHARA S.
SMT.NIVEDITA RAJEEV

RESPONDENTS/STATE:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR HIGH COURT OF
KERALA, PIN - 682031
- 2* MUHAMMED C.P,
SCHOOL PARAMBATH, EDAYANNUR, ELAMPARA, KEEZHALLUR
(P.O), KANNUR DISTRICT.

*IMPLEADED AS PER THE ORDER 17.09.2026 IN
CRL.M.A.NO.2 OF 2026.

BY ADV
SRI.ASAF ALI T., DGP
SHRI.JAWAHAR JOSE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR FINAL HEARING
ON 17.09.2026, ALONG WITH Tr.P(CrI.).38/2026, THE COURT ON
29.09.2026 PASSED THE FOLLOWING:



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“C.R.”

C.S.DIAS,J.

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**Tr.P.(Crl) No.38 of 2026
and
Crl. M.C.No. 4292 of 2026**

Dated this the 29th day of September, 2026

COMMON ORDER

The Transfer Petition and the Criminal Miscellaneous Case are filed by accused Nos.1 to 3 in S.C.No.596 of 2018 on the file of the Court of the Additional Sessions Judge-III, Thalassery, which arises from Crime No.202 of 2018 registered by the Mattannur Police Station, Kannur.

2. The transfer petition is filed to transfer the above case from the present Court to any other court of competent jurisdiction, and the Criminal Miscellaneous Case ('petition', for brevity) is filed to set aside the order refusing to record the evidence of PW2 in the question-and-answer form instead of in the narrative form. As both cases are between the same parties and arise out of the same crime, they are being disposed of by this common order.



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3. The relevant factual matrix for the determination of these cases is as follows:

(i) The eighteen accused persons are alleged to have committed the offences punishable under Sections 447, 341, 342, 324, 326, 307, 302, 120(B), 109 and 201 read with Section 34 of the Indian Penal Code, Section 4 read with Section 25(1B) (b) of the Arms Act and Sections 3 and 5 of the Explosive Substances Act.

(ii) The substratum of the prosecution case is that the accused persons had hatched a conspiracy, and on 12.02.2018, they had formed an unlawful assembly and attacked one Shuhaib with deadly weapons and explosive substances, and he succumbed to fatal injuries and other persons suffered grievous injuries.

(iii) The petitioners contend that, during the recording of evidence of PW2, several unfortunate incidents took place at the instance of the learned Sessions Judge, which have given a genuine and



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reasonable apprehension in petitioners' minds that they may not receive a fair and impartial trial.

(iv) The petitioners' counsel requested the learned Sessions Judge to record the evidence of PW2 in the question-and-answer form, as provided under Section 137 of the Indian Evidence Act, because the witness appeared to be tutored and had given a parroted version of the alleged incident. As the learned Sessions Judge failed to pass any order on the request, the petitioners' counsel filed an application for the above purpose, which was dismissed by the impugned order. Assailing the said order, the present petition is filed. The learned Sessions Judge was apprised of this fact and was requested to adjourn the trial till a decision was taken in the matter.

(v) During the interregnum period, the petitioners filed Crl.MP (TP) No.11 of 2026 before the Court of Session, Thalassery, to transfer the case from the



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present court to any other court. However, the said Court dismissed the transfer petition on the technical ground that it was not supported by an affidavit. Immediately, the petitioners filed Crl.MP (TP) No.12/2026, supported by an affidavit, for an identical relief, but the same was dismissed on merits.

(vi) In the meantime, on 25.05.2026, the learned Sessions Judge, on learning about the filing of the transfer petition, cancelled the bail bonds of all the 18 accused persons and remanded them to judicial custody, despite all of them being present in court.

(vii) Aggrieved by the order cancelling the bail bonds, the accused persons filed B.A.No.2930 of 2026 before this Court. This Court stayed the operation of the order and enlarged all the accused persons on interim bail. Later, the bail application was allowed, confirming the interim bail order.

(viii) The learned Sessions Judge made certain



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unwarranted remarks in the open court concerning the counsel for the accused persons.

(ix) The petitioners apprehend that they may not get justice from the learned Sessions Judge. The accused persons' confidence has been eroded. If the proceedings are continued before the present Judge, there is a possibility of further complications, delay, and a strained atmosphere.

(x) It is a fundamental principle of administration of justice that justice should not only be done, but also seem to be done. Yet, the accused persons are willing to co-operate with the trial. Therefore, the proceedings may be transferred from the present court to any other court of competent jurisdiction. Likewise, the impugned order dismissing the application to record the evidence of PW2 in question-answer form may also be set aside.

4. Pursuant to the directions of this Court, the



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learned Sessions Judge has filed a report, inter alia, stating as follows: S.C.No.596 of 2018 arises from the incident of the year 2018. The case is included in the Action Plan Phase-V for arrears reduction and expeditious disposal. Although the trial was scheduled for October 2025, the trial was adjourned at the request of the petitioners' counsel, who underwent knee replacement surgery. The prosecution has cited 142 witnesses. Only one witness has been examined in full, and the examination of two other witnesses is incomplete. The trial has been derailed due to the unnecessary objections raised by the petitioners' counsel. On 18.05.2026, while the chief examination of PW2 was being recorded in the narrative form, as provided under Section 311(2) of the BNSS (erstwhile Section 276 CrPC), the petitioners' counsel insisted that the evidence be recorded in the question-and-answer form. Nevertheless, the learned counsel cross-examined PW2 in part. On 21.05.2026, the



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learned counsel submitted an application to eschew the evidence of PW2 as it was not recorded as insisted by him. On the following day, when CW2 was present for examination, the learned counsel insisted that an order be passed on his application before commencement of the examination of the witness. Accordingly, the impugned order was passed. Before the commencement of the chief-examination of PW3, the witness appeared to be frightened and distressed. The learned Sessions Judge assured the witness of protection and built his confidence to enable him to depose without fear, and he regained his composure and gave his testimony. Despite passing the impugned order, the counsel for all the accused persons refused to cross-examine the witness, which compelled the court to record that there was no cross-examination for the accused. The application was filed only to record the evidence in question-and-answer form, not to record the witness's demeanour. As the counsel refused to cross-



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examine the witness, the accused persons were directed to cross-examine the witness, but all of them refused. As the accused persons were deliberately protracting the trial, their bail bonds were cancelled and they were remanded to judicial custody. Nevertheless, the High Court has set aside the order. The impugned order was passed only because the accused attempted to protract the trial. The learned Sessions Judge has no personal ill-will, grievance or animosity towards the petitioners' counsel. The observations made during the proceedings were only to maintain the decorum, preserve the integrity of the trial and ensure compliance with the statutory mandate for a fair and expeditious trial.

5. I have heard Sri. S. Rajeev, the learned counsel for the petitioners, Sri. T. Asaf Ali, the learned Director General of Police and Sri. Jawahar Jose, the learned counsel for the additional 2nd respondent (victim - father of the deceased).



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First Preliminary Objection:

6. Sri. Rajeev raised a preliminary objection that Sri. Asaf Ali cannot argue these cases because he appeared before this Court in W.P.(C) No.6630 of 2018 and W.A.No.628 of 2018 for the victim. The learned counsel placed reliance on the decisions of the Hon'ble Supreme Court in **Manoj and Others v. State of Madhya Pradesh** [(2023) 2 SCC 353], **Harendra Rai v. State of Bihar and Others** [AIR 2023 SC 4331], and the decisions of this Court in **Babu v. State of Kerala** [1984 KLT 164], **Chandradas v. State of Kerala** [2005 (2) KLT SN 23] and **Subash Chandran v. State of Kerala** [1981 KLT SN 69] to bolster his contention that the prosecutor is an officer of the court and he must act fairly towards the accused and the victim. Therefore, if Sri. Asaf Ali is permitted to appear in these cases, he would not be acting fairly to the accused persons.

7. Sri. Asaf Ali countered the above submission by



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contending that there is no legal prohibition on counsel who once appeared for a victim later appearing as the State Public Prosecutor. He placed reliance on the Division Bench decision of this Court in **Balakrishna Pillai v. State of Kerala** [1999 KHC 39] to buttress his contention.

8. In **Balakrishna Pillai's** case (supra), the Division Bench has observed thus:

"25..... It is not correct to say that if a person who was appearing in the case in support of the prosecution, was later appointed as Special Public Prosecutor would act only with a view to secure conviction of the accused at all costs. We are of the opinion that conviction and awarding of sentence in a criminal case are powers conferred on the court concerned depending upon the sufficiency of the evidence to the satisfaction of the Court and as provided under law....."

9. The objection, therefore, is not merely whether there is a statutory prohibition against such subsequent appearance, but whether the materials on record disclose a conflict of interest, or circumstances giving rise to a reasonable apprehension that the prosecutor may not discharge his statutory duty fairly and independently. No such material has been placed before this Court. The mere fact of a prior appearance for the victim, by itself, is



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insufficient to establish such a disqualification.

10. For the aforesaid reasons, the preliminary objection raised by Sri. S. Rajeev is held untenable.

Second Preliminary Objection:

11. Sri. Asaf Ali, on the contrary, raised a preliminary objection that the transfer petition is not maintainable in law because the Court of Session has already dismissed the transfer petition filed by the petitioners. The petitioners must, therefore, challenge the order dismissing their transfer petition.

12. Sri. S. Rajeev countered the above preliminary objection by drawing the attention of this Court to the proviso to sub-section (2) of Section 447 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), which unequivocally provides that a proceeding to transfer a case from one court to another can be exercised by this Court only after a transfer petition filed before the Court of Session is dismissed. Thus, according to him, the proper remedy is to



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file a fresh transfer petition, and not to challenge the order dismissing the transfer petition.

13. It is thus necessary to refer to Section 447 of the BNSS, which reads as follows:

“447. Power of High Court to transfer cases and appeals.

(1) Whenever it is made to appear to the High Court-(a) that a fair and impartial inquiry or trial cannot be had in any Criminal Court subordinate thereto; or(b) that some question of law of unusual difficulty is likely to arise; or(c) that an order under this section is required by any provision of this Sanhita, or will tend to the general convenience of the parties or witnesses, or is expedient for the ends of justice, it may order-(i) that any offence be inquired into or tried by any Court not qualified under sections 197 to 205 (both inclusive), but in other respects competent to inquire into or try such offence;(ii) that any particular case or appeal, or class of cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;(iii) that any particular case be committed for trial to a Court of Session; or(iv) that any particular case or appeal be transferred to and tried before itself.

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

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

(emphasis supplied)

14. The proviso to the sub-section (2) to Section 447 explicitly operates as a condition precedent to invoke this



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Court's power to transfer a proceeding; it does not require the applicant to challenge the Sessions Judge's order by way of a separate proceeding. Once an application for transfer within the Sessions Division has been made and rejected, the statutory remedy before this Court becomes available. Whether the same grounds ultimately justify transfer is a matter going to the merits of the case.

15. For the aforesaid reason, I overrule the preliminary objection raised by the prosecution, and hold that the transfer petition is maintainable.

Main Arguments:

16. Sri. S. Rajeev argued that the petitioners' counsel had only requested the learned Sessions Judge to record the demeanour of the witness, which has led to the these unwarranted litigations. The learned Sessions Judge, in a knee-jerk reaction, cancelled the bail bonds of all the accused persons, without giving them an opportunity of being heard, and remanded them to judicial custody. Only



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due to this Court's timely intervention, the accused persons were enlarged on interim bail on the following day. In the interim bail order, this Court has emphatically observed that the bail cancellation order was *ex facie* illegal. In fact, the learned Sessions Judge kept on motivating the witnesses in the box to speak up, and repeatedly said that the Court was with them. This act has created an apprehension in the mind of the accused that the learned Judge was biased and that they would be denied justice. Furthermore, the learned Judge behaved immaturely towards the petitioners' counsel, who is a senior member of the Bar, which was unwarranted. As the relationship between the counsel and the learned Judge is strained, it would be just and appropriate to transfer the proceedings from the present court, and set aside the impugned order.

17. Sri. Asaf Ali vehemently opposed the transfer petition and the petition. He submitted that, even



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assuming that the learned Sessions Judge has passed a wrong order, that is not a ground for transfer. The accused persons' sole intention is to protract the case being decided. Moreover, the Court of Session has dismissed the transfer petition by a reasoned order. There is no change in circumstances or error in the impugned order warranting the filing of a fresh transfer petition before this Court. Sri. Asaf Ali also contended that the whole problem has stemmed from the application filed by the petitioners' counsel to record the examination-in-chief of PW2 in the question-answer form. Sri.Asaf Ali drew the attention of this Court to Section 311(2) of the BNSS, which states that evidence must ordinarily be recorded in narrative form, and that it may be taken in the question-answer form only at the discretion of the Presiding Judge. He also referred to Sections 142, 146 and 148 of the Bharatiya Sakshya Adhiniyam, 2023, and the decisions of the Hon'ble Supreme Court in **Makhan Lal Bangal v.**



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Manas Bhunia and Others [(2001) 2 SCC 652] to drive home his contention that the evidence of a witness is ordinarily to be recorded in the narrative form. He, therefore, prayed that both the cases may be dismissed.

18. Sri. Jawahar Jose supported the contentions of Sri.Asaf Ali.

19. The questions that arise for consideration in the two cases are:

(a) Whether the impugned order refusing to record the answers of the witness in the question-and-answer form is erroneous and liable to be interfered with?

(b) Whether there are justifiable grounds to transfer the case?

Question No.1:

20. The controversy leading to these cases has arisen during the chief-examination of PW2, who, according to the accused persons, had testified like a parrot, which established that he was tutored. Therefore,



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it was necessary to record his evidence in the question-and-answer form.

21. In the above context, it is apposite to refer to Section 311 of the BNSS, which reads as follows:

“311. Record in trial before Court of Session.- (1) In all trials before a Court of Session, the evidence of each witness shall, as his examination proceeds, be taken down in writing either by the presiding Judge himself or by his dictation in open Court, or under his direction and superintendence, by an officer of the Court appointed by him in this behalf.

(2) Such evidence shall ordinarily be taken down in the form of a narrative, but the presiding Judge may, in his discretion, take down, or cause to be taken down, any part of such evidence in the form of question and answer.

(3) The evidence so taken down shall be signed by the presiding Judge and shall form part of the record.”

(emphasis given)

22. The above provision undoubtedly establishes that the ordinary rule is to record the evidence in the narrative form. Although the discretion conferred on the Presiding Judge is undoubtedly wide, it is a judicial discretion and must necessarily be exercised on relevant considerations and in furtherance of a fair trial. The mere preference of a party for a particular mode of recording of evidence cannot curtail the discretion of the Judge. The contention that the witness was giving a tutored version



does not, by itself, confer on the accused a right to insist upon the question-and-answer form. The appropriate safeguards available in the course of cross-examination remain open to the defence, and any material contradiction, inconsistency or circumstance bearing upon the credibility of the witness can be brought on record in accordance with law. Nonetheless, if the discretion were shown to have been exercised arbitrarily, for an extraneous purpose, or in a manner causing prejudice to a party, the order would remain amenable to judicial review.

23. In **Makhan Lal Bangal's case** (supra), the Hon'ble Supreme Court has held as follows:

"24..... Incidentally and interestingly, it may be noticed that when the Code of Criminal Procedure, 1973 was enacted, repealing the 1898 Code, Section 276 was introduced providing for evidence to be ordinarily taken down in the form of question and answer but vesting a discretion in the presiding judge to record the evidence in the form of a narrative. Within three years the Law Commission of the India found this system causing delay in trial and hence not workable and on its recommendation, by the Code of Criminal Procedure (Amendment) Act (45 of 1978), Section 276 was amended so as to provide that in trial before courts of session evidence shall ordinarily be taken down in the form of a narrative but the presiding judge may in his discretion taken down or cause to be taken down any part of such evidence in the form of question and answer. Thus recording of evidence in narrative form is the rule. Such mode of recording evidence is



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statutorily provided for session trials where life and liberty of persons is at stake. We fail to understand why the recording of evidence in narrative cannot be a mode to be followed in the trial of election petitions."

24. The materials on record do not substantiate any legal infirmity or error in the discretion exercised by the learned Sessions Judge in refusing to record the evidence of the witness in the question-answer form. Thus, I answer question No.1 against the petitioners.

Question No.2:

25. The main plank of the petitioners seeking transfer of the proceedings is that the learned Sessions Judge, after refusing to record the evidence of PW2 in the question-answer form, dismissed the petitioners' application for the said purpose and, thereafter, cancelled the bail bonds of the accused persons, and motivated the witnesses. Consequently, the petitioners have lost faith in the learned Sessions Judge and are apprehensive that they may not get justice.

26. Now, by the upholding of the impugned order,



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refusing to record the evidence of PW2 in the question-answer form, the petitioners' grievance on the said question does not subsist any longer.

27. Likewise, the order cancelling the bail bonds of the accused persons being set aside by this Court and the petitioners being enlarged on interim bail, which order was subsequently confirmed by making the interim order absolute, the petitioners' said grievance also stands redressed.

28. It is well-nigh settled that merely because a court has passed an erroneous order, the same is not a ground to order the transfer of a case. The test to transfer proceedings is not whether the impugned orders are correct in law, but whether, having regard to the totality of the circumstances, the apprehension that a fair and impartial trial may not be had is reasonable, genuine and justifiable. An erroneous order may therefore be relevant as one circumstance in a cumulative assessment,



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although it cannot, standing alone, constitute a ground for transfer.

29. The Hon'ble Supreme Court in **K.P. Tiwari v. State of M.P** [1994 Supp. (1) SCC 540] has observed that the officers of the District Judiciary work under a charged atmosphere and are constantly under psychological pressure with all the contestants and their lawyers almost breathing down their necks- more correctly, up to their nostrils. They do not have the benefit of a detached atmosphere of the higher courts to think coolly and decide patiently. Every error, however gross it may look, should not, therefore, be attributed to improper motive.

30. There is a profusion of precedential authority laying down the principles for ordering the transfer of a case from one court to another in exercise of the power of this Court under Section 447 of the BNSS, which is *pari materia* with S.407 of the Code of Criminal Procedure.

31. In **Balakrishna Pillai v. State of Kerala** [2000



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KHC 646], the Hon'ble Supreme Court has held as follows:

"10. It is true that one of the principles of administration of justice is that justice should not only be done but it should be seen to have been done. However, a mere allegation that there is the apprehension that justice will not be done in a given case is not sufficient. Before transferring the case Court has to find out whether the apprehension appears to be reasonable. To Judge the reasonableness of the apprehension, the state of mind of the person who entertains the apprehension is no doubt relevant but that is not all. The apprehension must appear to the Court to be reasonable, genuine and justifiable. In the present day scenario, if these types of applications are entertained, the entire judicial administration would be polluted with frivolous petitions for various reasons".

32. This Court in **Berely v. Xavier and Another** [1986 KHC 278] has observed thus:

"13. This Court has noticed an increasing tendency to file such transfer petitions on the basis of unfounded allegations against Criminal Courts. Sessions Judges and Magistrates had occasion to complain that they are facing considerable difficulties in the conduct of trials. Very often they are told to their face "you may dismiss the petition. I will go to the High Court" (In this case also, the defence counsel told the Sessions Judge that when he makes a particular averment in the transfer petition before the High Court, the Sessions Judge should not deny it). Such actions have a demoralising effect on the criminal judiciary and seriously affect administration of criminal justice. No person, not a litigant, not a counsel, not a prosecutor, not a Court should contribute anything to the demoralisation of the criminal judiciary. Apparently, threat of filing transfer petition is being held as Damocles sword against judicial officers. I see only a reaction, perhaps an avoidable one, on the part of the learned Sessions Judge to this situation. Viewed in the background of the findings recorded in the order dismissing the transfer petition, there is no doubt that the allegation of bias against the learned Sessions Judge was baseless and unfounded."



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33. The petitioners filed the transfer petition before the Court of Session on identical grounds. However, the same was dismissed on the finding that the petitioners had failed to make out justifiable grounds for the Court to exercise its discretionary power in their favour.

34. On an overall consideration of the facts, the materials on record, the reasons in the impugned order and the exposition of law in the aforecited decisions, I do not find any valid ground to transfer the proceedings. Thus, I answer question No.2 against the petitioners as well.

35. Notwithstanding the above findings on the questions raised in these petitions, before parting with these cases, especially since the petitioners have a grievance that the learned Sessions Judge motivated the witnesses to speak up, which action has created an apprehension in the mind of the accused that the learned Judge is biased and that they would be denied justice, I



would like to make the following observations, which is not finding against the learned Sessions Judge, but to remind the delicate balance that a Judge must maintain between active judicial control of the proceedings and the appearance of complete neutrality.

36. A Judge is not a mere spectator, but is an active participant in every legal proceeding with the objective to elicit the truth. Nevertheless, in the same breath I say that a Judge must exercise her powers without transgressing into the areas of the counsel for the parties, without any hint of partisanship and without appearing to frighten, coerce, confuse or intimidate the witnesses or the parties. She must take both the prosecution and defence with her. Ultimately, the goal is that truth must triumph.

37. Here, it is not out of place to reminisce and state the saying of Greek philosopher Socrates on the qualities required in a judge, namely—"to hear courteously, to answer wisely, to consider soberly and to decide impartially.



38. The learned Sessions Judge in her report has stated that she only assured the witness of protection and built his confidence to enable him to depose without fear, and the witness regained his composure and continued his testimony.

39. I have no doubt in my mind that, if there is any threat or intimidation to a witness, the Court should step in and provide all the necessary protection to the witnesses, especially in cases involving those who wield money and muscle power. The witness should feel safe and protected to depose without the fear of being haunted by those against whom he proposes to testify. But, the Court should refrain from motivating any witness, because it would naturally send a wrong message to the accused that the court is against them. Judges must deal with cases in accordance with the fourfold principles of Socrates, so that such unnecessary situations can be averted. I leave it at that. I am certain that the Bench and the Bar would iron



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out the creases and proceed with the trial. The learned Sessions Judge shall ensure that both sides are afforded a full and effective opportunity to participate in the trial, including by *suo motu* reopening the evidence and permitting the counsel for the accused to cross-examine the witnesses. The counsel for the accused persons are expected to cooperate with the Court and avoid unnecessary interruptions or adjournments. Considering that the case is of the year 2018 and given the number of witnesses cited, the trial shall be conducted with due expedition. The learned Sessions Judge is directed to dispose of the case, untrammelled by any observation made in this order.

With the above observations, the transfer petition and petition are dismissed.

Sd/-

C.S.DIAS, JUDGE

dkr



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APPENDIX OF TR.P(CRL.) NO. 38 OF 2026

PETITIONER ANNEXURES

Annexure I	A COPY OF THE ORDER DATED 22.05.2026 IN CRL MP NO 4/2026 IN SC NO 596/2018 PENDING ON THE FILE OF ADDL. SESSIONS JUDGE-III, THALASSERY
Annexure II	TRUE COPY OF THE PETITION SUBMITTED BY THE COUNSEL FOR THE PETITIONER TO GRANT A BREATHING TIME TO APPROACH THIS HON'BLE COURT.
Annexure III	A COPY OF THE FIRST ORDER DATED 25.05.2026 CANCELLING THE BAIL GRANTED TO THE PETITIONERS AND REMANDING THEM TO JUDICIAL CUSTODY
Annexure IV	A COPY OF THE ORDER IN BAIL APPLICATION NO.2930/2026 DATED 05.06.2026
Annexure V	A COPY OF THE ORDER DATED. 01.06.2026 IN CRL.M.P.(TP) NO.11/2026 FILED BEFORE COURT OF SESSIONS , THALASSERY
Annexure VI	A CERTIFIED COPY OF THE ORDER DATED 06/06/2026 IN CRL.M.P.(TP) NO.12/2026 FILED BEFORE COURT OF SESSIONS , THALASSERY



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APPENDIX OF CRL.MC NO. 4292 OF 2026

PETITIONER ANNEXURES

Annexure I	A COPY OF THE PETITION DATED 21.05.2026 IN SC NO 596/2018 BEFORE THE ADDL SESSIONS JUDGE-III, THALASSERY
Annexure II	A CERTIFIED COPY OF THE ORDER DATED 22.05.2026 IN CRL MP NO 4/2026 IN SC NO 596/2018 PENDING ON THE FILE OF ADDL. SESSIONS JUDGE-III, THALASSERY