



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

TUESDAY, THE 13TH DAY OF OCTOBER 2026 / 21ST ASWINA, 1948

WP(CRL.) NO. 1511 OF 2026

CRIME NO.1548/2018 OF ERNAKULAM CENTRAL POLICE STATION,
ERNAKULAM.

PETITIONER(S) :

- 1 NAJEEB,
AGED 40 YEARS,
S/O. MAJEED, NETTEPPARAMBIL HOUSE,
EARAVELI BHAGAM, MATTANCHERY,
ERNAKULAM, PIN - 682 002.
- 2 SHANAVAS,
AGED 40 YEARS,
S/O.USMAN, ZANE HOUSE PILAKKOOL DESHAM,
TEMPLE GATE P.O, THALASSERY,
KANNUR, PIN - 670 102.

BY ADVS.
SHRI.E.A.HARIS
SHRI.M.A.AHAMMAD SAHEER
SRI.MUHAMMED YASIL
SMT.AAGI JOHNY

RESPONDENT(S) :

- 1 STATE OF KERALA,
REPRESENTED BY SECRETARY, HOME DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695 001.
- 2 STATION HOUSE OFFICER,
ERNAKULAM CENTRAL POLICE STATION,
ERNAKULAM, PIN - 682 018.



3 ASSISTANT COMMISSIONER OF POLICE,
CONTROL ROOM, KOCHI, ERNAKULAM, PIN - 682 018.

ADDL.R4 BHOOPATHI, AGED 52 YEARS,
SUPPUVEEDU HOUSE, VATTAVADA, KOVILLOOR P.O,
IDUKKI - 685 615. (ADDL.R4 IS IMPEADED AS PER
ORDER DATED 12.10.2026 IN W.P.(CRL.)NO.1511 OF
2026)

BY ADVS.

SHRI.RASHEED C.NOORANAD, SPL.GOVERNMENT PLEADER/
PUBLIC PROSECUTOR

SMT.DEVIKA K.R.

SHRI.K.S.ARUN KUMAR

DIRECTOR GENERAL OF PROSECUTION

SMT.LALIZA.T.Y., SENIOR G.P.

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 13.10.2026, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



“C.R.”

JUDGMENT

Accused nos.24 and 25 in Crime No.1548/2018 of the Central Police Station, Ernakulam, are the petitioners herein. In the crime above referred, the police completed the investigation and filed final report against the accused nos.1 to 16, which was taken cognizance of and numbered as S.C.No.1068/2018 by the Sessions Court, Ernakulam. The investigation in respect of accused nos.17 to 26 is ongoing and final report is yet to be filed. The petitioners essentially seek the trial in S.C.No.1068/2018 of the Sessions Court, Ernakulam, to be kept in abeyance, until completion of investigation and filing of final report as against the petitioners, as well.

2. Heard learned Senior Adv. P.Vijayabhanu, duly instructed by Adv. E.A.Haris on behalf of the petitioners and Adv. Rasheed C., learned Special Government Pleader/Prosecutor on behalf of the respondents. An impleading petition was filed by the mother of the victim vide I.A.No.1/2026, which was allowed as unopposed. Heard Adv.



Devika K.R. on behalf of the additionally impleaded 4th respondent.

3. Learned Senior Counsel on behalf of the petitioners would contend that the petitioners (accused nos.24 and 25) were arrested in the year 2018 itself. However, the investigation as against accused nos.17 to 26, including the petitioners, is not complete and final report has not been filed. As per Ext.P1 remand report, the 1st petitioner/A24 conspired with the main accused persons to design a plan for them to flee from the place of occurrence and accordingly, took accused nos.1 and 5, along with another accused Abdul Nazer, in his autorickshaw from the place of occurrence up to a place called Arookutty. Similarly, Ext.P2 remand report would indicate that the 2nd petitioner/A25 conspired with the main accused persons to harbour the offenders, specifically an accused by name Muhammed Rifa, thus participating in the crime. The petitioners herein approached this Court seeking to expedite the investigation against them by filing a Writ Petition, which was disposed of vide Ext.P4 judgment. Ext.P4 directed the Investigating Officer to expedite the investigation, despite which the investigation has not been



completed and final report filed, is the grievance. Learned Senior Counsel then referred to Ext.P6 memo submitted in compliance of Rule 19(4) of the Criminal Rules of Practice, specifically to the persons referred to in serial nos.34 and 35 in the list of witnesses, who are sought to be examined to prove the seizure of the autorickshaw used by the main accused persons to flee from the place of occurrence. Learned Senior Counsel also refers to serial nos.126 and 127, the forensic experts to prove the blood stain in the said autorickshaw. Similarly, learned Senior Counsel referred to Ext.P6 list of documents, specifically to ones mentioned at serial nos.167, 169, 170 and 171, which pertains to the above referred autorickshaw. Similarly, in Ext.P6 list of material objects relied on by the prosecution, learned Senior Counsel relies on serial no.69, which are the suspected stains collected from the autorickshaw.

4. According to the learned Senior Counsel, all these evidence will be taken in the absence of the petitioners, which would prejudice them in the impending trial to be conducted upon completion of investigation, and filing of final report against accused nos.17 to 26. Learned Senior



Counsel would point out that there are about 156 witnesses so to be examined by the prosecution, who may have to be called again to prove the offences against the present petitioners in their trial. According to the learned Senior Counsel, there exists a possibility of a definite advantage to the prosecution to fill up the lacunae and cure the deficiencies in the prosecution case. Besides, the petitioners have a right to get the investigation against them expedited, since they were arrested eight years back, in the year 2018, especially when Ext.P4 judgment directed to expedite the investigation in the crime. Thus, learned Senior Counsel would seek two reliefs, the first to complete the investigation and file the final report within a period of six months ; and the second, to keep in abeyance the trial as against accused nos.1 to 16 in S.C.No.1068/2018 of the Sessions Court, Ernakulam.

5. In answer, learned Public Prosecutor would submit that accused nos.1 to 16 are directly involved in the crime, whereas accused nos.17 to 26 - including the petitioners - are persons who have harboured the accused persons. The latter are persons who have not directly involved in the physical acts constituting the crime.



Learned Public Prosecutor then submitted that the mother of the victim approached this Court by filing O.P. (CrI.)No.920/2024 seeking to expedite the trial, which was allowed as per judgment dated 24.01.2025 directing disposal of the Sessions Case within a period of nine months. When the same was not complied with, the victim's mother filed an I.A. in the said Original Petition, where this Court gave a peremptory direction to frame the charge on 06.08.2026 and to dispose of the case within a period of four months therefrom. Learned Public Prosecutor pointed out that the Sessions Case has been scheduled for eighteen days continuously commencing from 15.10.2026 onwards. In such circumstances, any interference would seriously jeopardize the interests of the prosecution, besides paving the way for violation of the directions of this Court to complete the trial within the time frame stipulated.

6. Learned Public Prosecutor then pointed out that seeking the self-same relief, accused nos.1, 2 and 4 to 6 approached this Court by filing W.P.(CrI.)No.983 of 2026. By a detailed judgment dated 14.07.2026, the same was dismissed on merits, also with a finding that the attempt of the petitioners therein was only to procrastinate the



trial in the Sessions Case. Learned Public Prosecutor then pointed out that the witnesses sought to be examined, as per the instructions, have nothing to do with the allegations leveled against the present petitioners, who are accused nos.24 and 25. The conspiracy alleged against the petitioners is only in the context of harbouring the offenders.

7. Learned counsel for the impleading petitioner, who is the mother of the victim, would submit that the final report in this case was filed in the year 2018 itself. However, the case was not taken up for trial. In such circumstances, the impleading petitioner approached this Court by filing O.P.(CrI.).No.920/2024, which was allowed vide Annexure-1 judgment directing disposal of the Sessions Case within a period of nine months. When the same was not complied with, the impleading petitioner again approached this Court by filing an I.A, wherein peremptory direction was given to complete the trial within four months from the date of framing charge. Learned counsel would point out that having regard to the nature of the allegations against accused nos.17 to 26, including the petitioners, no prejudice, whatsoever, will be caused due to the trial



scheduled against accused nos.1 to 16, who have direct role in committing the murder of the deceased and causing serious injuries to other victims. According to the learned counsel, the present petitioners have been set in motion by accused nos.1 to 16 only to procrastinate the trial scheduled to be commenced from 15.10.2026.

8. Having heard the learned counsel appearing for the respective parties, this Court finds absolutely no merit in this Writ Petition. **Primarily**, this Court notice that the petitioners could not point out any specific prejudice due to the conduct of the trial, as against accused nos.1 to 16. It is foundational that the evidence in a criminal trial has to be let in only in the presence of the accused persons as enjoined by Section 273 Cr.P.C, wherefore, the evidence which will be adduced in the trial, as against accused nos.1 to 16 cannot be used against the petitioners (accused nos.24 and 25). The exceptions to this proposition is by virtue of Section 299 of the Code of Criminal Procedure (Cr.P.C) [corresponding to Section 335 of the Bharatiya Nagarik Suraksha Sanhita (B.N.S.S)] and Section 33 of the Evidence Act [corresponding to Section 27 of the Bharatiya Sakshya Adhiniyam (B.S.A)]. The foundational fact



to invoke Section 299 Cr.P.C is the abscondence of the accused person and the absence of an immediate prospect of arresting him, which conditions are not available in the instant facts. Therefore, recording evidence in the absence of accused, as envisaged in Section 299 Cr.P.C, does not arise in the instant facts. Under Section 33 of the Evidence Act, the evidence in a judicial proceeding is relevant in a subsequent judicial proceeding in situations where the witnesses already examined are either dead, or cannot be found, or is incapable of giving evidence at the time of the subsequent judicial proceeding etc. Proviso to Section 33 stipulates that the proceedings should be between the same parties and that the adverse party in the first proceeding had the right and opportunity to cross-examine the witness. These pre-conditions in Section 33 also will not be satisfied in the instant facts. A three Judge Bench of the Hon'ble Supreme Court in ***A.T.Mydeen and Another v. Assistant Commissioner, Customs Department*** [(2022) 14 SCC 392] categorically held in paragraph no.26 that each case has to be decided on its own merit and the evidence recorded in one case cannot be used even in its cross-case. After referring to the binding precedents, the



Hon'ble Supreme Court concluded in paragraph nos.42 and 43 are as follows:

“42. The provisions of law and the essence of case laws, as discussed above, give a clear impression that in the matter of a criminal trial against any accused, the distinctiveness of evidence is paramount in light of accused's right to fair trial, which encompasses two important facets along with others i.e. firstly, the recording of evidence in the presence of accused or his pleader and secondly, the right of accused to cross-examine the witnesses. These facts are, of course, subject to exceptions provided under law. In other words, the culpability of any accused cannot be decided on the basis of any evidence, which was not recorded in his presence or his pleader's presence and for which he did not get an opportunity of cross-examination, unless the case falls under exceptions of law, as noted above.

43. The essence of the above synthesis is that evidence recorded in a criminal trial against any accused is confined to the culpability of that accused only and it does not have any bearing upon a co-accused, who has been tried on the basis of evidence recorded in a separate trial, though for the commission of the same offence.”

(underlined for emphasis)



9. When the law in this regard stands settled to the effect that the evidence, which is sought to be let in, as against accused nos.1 to 16, cannot be and shall not be used against the petitioners, I fail to understand the prejudice/jeopardy sought to be canvassed by the petitioners.

10. In a situation, where a second charge sheet was filed as against eight new accused persons, another three judge Bench of the Hon'ble Supreme Court, in *Essar Teleholdings Limited v. Central Bureau of Investigation [(2015) 10 SCC 562]*, quoted with approval the reasoning of the trial judge that it is not obligatory to hold a joint trial, especially when the clubbing of cases together would prolong the trial, besides causing prejudice to the accused, against whom minor offences are alleged. In the instant facts also, a joint trial will prolong the trial, since the investigation as against accused nos.17 to 26 is only in progress and not completed, particularly so since the trial against the main accused persons could not be commenced, despite a lapse of eight years.



11. Secondly, as canvassed by the prosecution, there is marked difference in the nature of the accusations made against accused nos.1 to 16, who are going to be tried, *vis-a-vis* the allegations against accused nos.17 to 26. Even going by Exts.P1 and P2 remand reports - leave alone the limited purpose and use of the contents of a remand report - the allegation against the petitioners are that of criminal conspiracy to enable the main accused persons to flee from the place of occurrence and also for harbouring the offenders. No specific or direct role is sought to be assigned to them, as things stands now, in the actual execution of the crime, resulting in the death of one person and serious injuries to others. Thus, there exists clear distinguishable difference in the nature and character of evidence to be let in, as against accused nos.1 to 16 *vis-a-vis* accused nos.17 to 26, inclusive of the petitioners.

12. Thirdly, this Court, by Annexure-1 judgment, followed by Annexure-2 Order, prescribed time limit for disposal of the Sessions Case, and accordingly, the case stands scheduled for trial for eighteen consecutive days,



commencing from 15.10.2026. Any interference at this belated stage would upset and unsettle the schedule of trial, leading to non-compliance of the directions contained in Annexures 1 and 2. This is all the more so, when the petitioners cannot espouse and establish a clear legal injury or prejudice in proceeding with such trial. In this regard, this Court cannot loose sight of the right of the victim too, of a speedy trial, as reiterated by the Hon'ble Supreme Court recently in ***Renuka Jain v. State of N.C.T of Delhi*** [2026 KHC Online 6780]

13. Finally, this Court notice that the self-same contentions, with the self-same reliefs, were sought for at the instance of accused nos.1, 2 and 4 to 6 before this Court seeking stay of the trial in S.C.No.1068/2018, which Writ Petition was dismissed vide Annexure-3 judgment. There, a learned Single Judge, in paragraph no.11, took stock of the same distinction as regards the role of the offenders, who are arraigned as accused nos. 17 to 26, to find that the same is confined to harbouring the offenders and aiding and abetting their escape from the clutches of law.



For the afore-reasons, this Writ Petition fails and the same will stand dismissed.

Sd/-

C.JAYACHANDRAN, JUDGE

ak



APPENDIX OF WP(CRL.) NO. 1511 OF 2026

RESPONDENTS' ANNEXURES:-

- Annexure 1** A TRUE COPY OF THE JUDGMENT DATED 24.01.2025 IN O.P.(CRL.) NO. 920 OF 2024.
- Annexure 2** A TRUE COPY OF THE INTERIM ORDER DATED 03.08.2026 PASSED BY THIS HON'BLE COURT IN O.P.(CRL.) NO. 920 OF 2024.
- Annexure 3** A TRUE COPY OF THE JUDGMENT IN WP(CRL) 983/2026 OF THIS HON'BLE COURT DATED 14.07.2026.

PETITIONERS' EXHIBITS:-

- Exhibit P1** THE TRUE COPY OF THE REMAND REPORT DATED 18.07.2018 OF THE 1ST PETITIONER ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, ERNAKULAM.
- Exhibit P2** THE TRUE COPY OF THE REMAND REPORT DATED 18.07.2018 OF THE 2ND PETITIONER ON THE FILES OF JUDICIAL FIRST CLASS MAGISTRATE COURT-II, ERNAKULAM.
- Exhibit P3** THE TRUE COPY OF THE RELEVANT PAGES OF FINAL REPORT DATED 24.09.2018 IN CRIME NO.1548/2018 OF THE ERNAKULAM CENTRAL POLICE STATION.
- Exhibit P4** THE TRUE COPY OF THE ORDER DATED 05.06.2025 IN W.P.(CRL.) NO. 498/2025 OF THIS HON'BLE COURT.
- Exhibit P5** THE TRUE COPY OF THE PROCEEDINGS SHOWING THE SCHEDULE OF TRIAL IN S.C. NO. 1068/2018 ON THE FILES OF THE PRINCIPAL SESSIONS COURT, ERNAKULAM.
- Exhibit P6** THE TRUE COPY OF THE CONSOLIDATED WITNESS LIST IN S.C. NO. 1068/2018 ON THE FILES OF THE PRINCIPAL SESSIONS COURT, ERNAKULAM.



Exhibit P7

**THE TRUE COPY OF THE SEIZURE MAHAZAR
DATED 18.07.2018 IN CRIME NO.1548/2018
ON THE FILES OF PRINCIPAL SESSIONS
COURT, ERNAKULAM.**