

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**PRESENT**

**THE HONOURABLE MR.JUSTICE K. BABU**

**TUESDAY, THE 21<sup>ST</sup> DAY OF FEBRUARY 2023 / 2ND PHALGUNA, 1944**

**CRL.MC NO. 1516 OF 2023**

**IN SC NO.118/2018 OF PRINCIPAL SESSIONS COURT, ERNAKULAM**

**PETITIONER/ACCUSED:**

SUNIL N.S  
AGED 33 YEARS  
NEDUIVALIKKUDI, ELAMPAKKAPPILLY, VRNGOOR, KOOVAPPADY,  
ERNAKULAM., PIN - 683544  
BY ADV V.V.PRATHEEKSH KURUP

**RESPONDENT:**

STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM, PIN - 682031

G SUDHEER, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON  
21.02.2023, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

**K.BABU, J.**

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**Crl. M.C. No.1516 of 2023**  
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Dated this the 21<sup>st</sup> day of February, 2023

**ORDER**

The prayer in this Crl.M.C.is as follows:

*“Direct the court below to cause the production of the petitioner/accused No.1 before the trial court during all days of the trial”*

2. The petitioner is accused No.1 in S.C. No.118/2018 on the file of the Principal District and Sessions Court, Ernakulam.

3. The prosecution case is that in furtherance of a criminal conspiracy by a movie star (A8), the petitioner/accused No.1, along with certain accused, abducted and sexually assaulted the victim in a moving car. The offences charged against the accused are under Sections 120-B, 109, 342, 366, 354, 354B, 357, 376D, 201, 212 r/w 34 of the Indian Penal Code and Sections 66E and 66A of the Information Technology Act.

4. The Court below is proceeding with the trial in the matter. The grievance of the petitioner is that he is not being produced before the Court during the trial.

5. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

6. The learned counsel for the petitioner contended that the physical presence of the petitioner/accused is required to provide timely inputs to his counsel during the examination of the witnesses. According to the learned counsel, the lawyer in the trial Court would be in a better position to obtain instructions and clarification from the petitioner/accused during the trial if he is physically available.

7. The learned counsel for the petitioner further submitted that even after making a specific request, the accused is not being produced physically before the Court during trial.

8. The learned Public Prosecutor submitted that the accused's presence is now ensured through video conferencing. The learned Public Prosecutor further submitted that the prosecution has no difficulty in producing the accused if a direction to that effect is given.

9. The learned counsel for the petitioner relying on Sections 273 and 278 of the Code of Criminal Procedure, prayed for a direction to ensure the physical presence of the accused during trial.

10. Section 273 Cr.P.C. mandates that evidence for the prosecution and defence should be taken in the presence of the accused (except in

cases falling under Sections 317 and 299). Section 278 requires that as the evidence of each witness is completed, it shall be read over to him in the presence of the accused or of his pleader. "Presence of the accused", as provided in Sections 273 and 278, does not always mean the actual presence of the accused. While video conferencing system is employed for the trial proceedings, examination of the witnesses, and keeping the accused in jail is substantial compliance with the provisions of Sections 273 and 278.

11. In the present case, the grievance of the petitioner is that if his physical presence is ensured, he will be in a better position to assist his counsel by providing timely inputs. He contends that the counsel will benefit by seeking instructions and clarifications as and when required during the trial. It is also relevant to note that the petitioner is detained in the Sub Jail, Ernakulam, which is only less than three kms away from the trial Court. The prosecution has no case that any security issue is involved in the physical production of the petitioner before the Court. The sum and substance of the contention of the petitioner is that his physical absence in the Court causes prejudice to him in the conduct of the case.

12. Fair trial is the main object of criminal procedure, and such fairness should not be hampered or threatened in any manner as it entails the interest of the accused, the victim, and of society. Fundamentally, a fair

trial has a sacrosanct purpose. It has a demonstrable object that the accused should not be prejudiced.

13. Appreciating the petitioner's contentions on the touch stone of the principle of fair trial, I am of the view that a direction is to be issued to the trial Court to see that the petitioner is physically produced before the Court during the trial.

The Crl.M.C is therefore disposed of directing the Principal Sessions Judge, Ernakulam, to ensure the physical presence of the petitioner/accused No.1 during the trial.

Sd/-

**K.BABU  
JUDGE**

SMF

**APPENDIX OF CRL.MC 1516/2023**

PETITIONER ANNEXURES

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| Annexure-1 | ANNEXURE 1. TRUE COPY OF ADIARY PROCEEDINGS FROM E-COURTS DATED 10.2.2023 IN SC/0100118/2018   |
| Annexure-2 | TRUE COPY OF ADIARY PROCEEDINGS FROM E-COURTS DATED 15.2.2023 IN SC/0100118/2018               |
| Annexure-3 | TRUE COPY OF ADIARY PROCEEDINGS FROM E-COURTS DATED 16.2.2023 IN SC/0100118/2018               |
| Annexure-4 | TRUE COPY OF THE JUDGMENT DATED 07-02-2023 IN CRL.MC NO. 1093 OF 2023 OF THIS HONORABLE COURT. |