

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 6<sup>TH</sup> DAY OF MARCH 2023 / 15TH PHALGUNA, 1944

CRL.A NO. 257 OF 2023

AGAINST THE ORDER/JUDGMENT CRMP 848/2023 OF SESSIONS COURT,  
KASARAGOD

APPELLANT/S:

- 1 SHOUKATH MOHAMMED KUNHI  
AGED 26 YEARS  
S/O MUHAMMED T.P., M. K. HOUSE POROPPAD, ELAMBACHI,  
SOUTH TRIKARPUR, HOSDRUG TALUK, KASARAGOD DISTRICT,  
PIN - 671310, PIN - 671310
- 2 MUHAMMED YOUNUS APPATTILLATH  
AGED 28 YEARS  
S/O HANEEPHA KADERI PATTILLATH APPATTILLATH HOUSE,  
THOUBATH MANZIL POROPPAD, ELAMBACHI, SOUTH TRIKARPUR  
HOSDRUG TALUK, KASARAGOD DISTRICT, PIN - 671310, PIN  
- 671310  
BY ADVS.  
E.A.HARIS  
P.C.NOUSHAD  
C.K.SREEDHARAN  
M.A.AHAMMAD SAHEER

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR,HIGH COURT OF  
KERALA, PIN - 682031
- 2 THE STATION HOUSE OFFICER  
CHANDERA POLICE STATION, KASARAGODE DISTRICT, PIN -  
671123, PIN - 671123

OTHER PRESENT:

ADDL.PP. P. NARAYANAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
3.3.2023, THE COURT ON 06.03.2023, ALONG WITH CRL.A.289/2023,  
290/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 6<sup>TH</sup> DAY OF MARCH 2023 / 15TH PHALGUNA, 1944

CRL.A NO. 289 OF 2023

AGAINST THE ORDER/JUDGMENT CRMP 848/2023 OF SESSIONS COURT,  
KASARAGOD

**APPELLANT/S:**

MUHAMMED NUHMAN M.A.  
AGED 20 YEARS  
SON OF USMAN M.K., RESIDING AT VETTAKULAM HOUSE,  
VETTAKULAM, SOUTH THRIKKARIPUR VILLAGE, KASARAGOD  
DISTRICT, PIN - 671310  
BY ADVS.  
T.MADHU  
C.R.SARADAMANI  
SHAHID AZEEZ  
RENJISH S. MENON  
RESHMA SANTHOSH

**RESPONDENT/S:**

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, PIN - 682031
- 2 THE STATION HOUSE OFFICER, CHANDERA POLICE STATION,  
KASARAGOD DISTRICT, PIN - 671123
- 3 SUBHASH . T  
S/O. SANTHA, AGED 41 YEARS, RESIDING AT THACHAN  
HOUSE, VAYALODY, SOUTH THRIKKARIPUR VILLAGE, HOSDURG  
TALUK, KASARAGOD DISTRICT, PIN - 671123  
BY ADVS.  
PUBLIC PROSECUTOR  
A.ARUNKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
3.3.2023, THE COURT ON 06.03.2023, ALONG WITH CRL.A.257/2023,  
290/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 6<sup>TH</sup> DAY OF MARCH 2023 / 15TH PHALGUNA, 1944

CRL.A NO. 290 OF 2023

AGAINST THE ORDER/JUDGMENT CRMP 848/2023 OF SESSIONS COURT,  
KASARAGOD

APPELLANT/S:

- 1 MUHAMMED SHABAS O.T. @ SHABAS,  
AGED 22 YEARS  
S/O.AMEER ALI K, BADARIYA MANZIL, PORAPPAD, SOUTH  
THRIKARIPUR VILLAGE, KASARAGOD DISTRICT,, PIN -  
671310
- 2 MUHAMMED RAHNAS P.K. @ RAHNA  
AGED 25 YEARS  
S/O.ABDUL ROUF, PARAKADAVATH HOUSE, VITTAKULAM,  
PORAPPAD, SOUTH THRIKARIPUR VILLAGE, KASARAGOD,, PIN  
- 671310  
BY ADVS.  
P.MARTIN JOSE  
P.PRIJITH  
THOMAS P.KURUVILLA  
R.GITTHESH  
AJAY BEN JOSE  
MANJUNATH MENON  
SACHIN JACOB AMBAT  
ANNA LINDA EDEN  
HARIKRISHNAN S.  
S.SREEKUMAR (SR.)

RESPONDENT/S:

- 1 THE STATE OF KERALA,  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, ERNAKULAM, PIN - 682031
- 2 THE STATION HOUSE OFFICER,  
CHANDERA POLICE STATION, CHANDERA - TRIKARIPUR -  
OLAVARA ROAD, CHANDERA, MANIYAT, KERALA, PIN -  
671310

3       SMT.M.AMMINI,  
          AGED 56 YEARS  
          MARNADIYAN HOUSE, VAYALODI P.O., ELAMPACHI, SOUTH  
          THRIKARIPOOR, KASARAGOD DISTRICT., PIN - 671315  
          BY ADV A.ARUNKUMAR

          THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
3.3.2023, THE COURT ON 06.03.2023, ALONG WITH CRL.A.289/2023,  
257/2023 AND CONNECTED CASES, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 6<sup>TH</sup> DAY OF MARCH 2023 / 15TH PHALGUNA, 1944

CRL.A NO. 303 OF 2023

AGAINST THE ORDER/JUDGMENT CRMP 848/2023 OF SESSIONS  
COURT, KASARAGOD

**APPELLANT/S:**

MUHAMMED SAFWAN M.T.P  
AGED 23 YEARS  
RESIDING AT DARUL MUBARAK, NEAR TRANSFORMER,  
POROPPAD, THEKKE THRIKKARIPUR VILLAGE,  
KASARAGOD DISTRICT, PIN CODE., PIN - 671310  
BY ADVS.  
BONNY BENNY  
M.RAMESH CHANDER (SR.)  
BALU TOM  
GOVIND G. NAIR  
BEJOY JOSEPH P.J.

**RESPONDENT/S:**

- 1 STATE OF KERALA  
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF  
KERALA, PIN - 682031
- 2 M.AMMINI  
W/O.A. KRISHNAN, MARNADIAN HOUSE, VAYALODI  
SOUTH, TRIKARIPUR VILLAGE, P.O.ELAMBACHI,  
KASARAGOD - 671 311., PIN - 671311  
BY ADVS.  
PUBLIC PROSECUTOR  
A.ARUNKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON  
3.3.2023, THE COURT ON 06.03.2023, ALONG WITH  
CRL.A.289/2023, 290/2023 AND CONNECTED CASES, THE COURT  
ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

Dated this the 6<sup>th</sup> day of March, 2023

Appellants are accused Nos. 1 to 6 in Crime No.1067 of 2022 of Chandra Police Station, registered for offences punishable under Sections 302, 201, 212 read with 34 of Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

2. The prosecution allegation, as discernible from the FIR and Final Report, are as under;

On 04.12.2022, at about 12.00 hrs., while the mother of the first accused was taking her bath, the deceased Prijesh @ Priyesh peeped through the open ventilator of the bathroom and recorded her bathing scene in his mobile phone. On seeing Prijesh peeping through the ventilator, the first accused was informed about the incident by his

mother. The first accused passed on the information to accused Nos. 2, 3 and 4. The fourth accused informed accused No.5 and the sixth accused got information from the younger brother of the first accused. Thereupon, accused Nos. 1 to 3 went in search of Prijesh and accosted him while he was travelling on his bike on the Elambachi Weavers Society-Oropattu Road in South Thrikkarippur Village. After catching hold of Prijesh, accused Nos. 1 to 3 snatched his mobile phone and beat him with hands and also using the petiole of coconut palm (അങ്ങിൻ മടൽ). By that time, accused Nos. 4 to 6 also reached the spot and, along with the other accused, they brought Prijesh to a bathroom next to a well situated on the west of the mud road to Mullathod. While inside the bathroom also, Prijesh was beaten with raw and dry petiole. Thereafter, the accused brought Vijayan, a close relative of Prijesh, to the spot and told him

that Prijesh is in an inebriated condition and had recorded the bathroom scene of the first accused's mother. The accused compelled Vijayan to take Prijesh to his house. As Vijayan refused to take Prijesh along with him, the accused carried Prijesh on a motorcycle, seating him in-between the second and fourth accused and abandoned Prijesh in a coconut field situated on the north-east side of his house.

3. The next day morning (05.12.2022), by about 6.45 a.m., Prijesh was found dead by his brother-in-law Subash. Based on the information given by Subash, a crime was registered under Section 174 Cr.P.C. Immediately after commencement of the investigation, it came to light that accused Nos.1 to 6 had committed the crime. Thereupon, report was submitted to delete Section 174 Cr.P.C. and add Section 302 read with 34 of IPC. During the course of investigation, it was revealed that the accused had attempted to



tamper with the evidence. Hence, Section 201 of IPC was added as per report dated 05.12.2022. As further investigation revealed that the seventh accused had harboured accused Nos. 4 and 5 and the eighth accused had concealed the mobile phone belonging to the third accused, accused Nos. 7 and 8 were added and Section 212 of IPC was incorporated. The investigation also revealed that the accused and deceased Prijesh are from the same area and the accused had known that Prijesh belonged to the Scheduled Caste Pulaya community. Therefore, the offence under Section 3(2)(b) of the SC/ST (POA) Act was added as per report dated 16.12.2022.

4. Accused Nos. 1 and 2 were arrested on 6.12.2022, the third accused on 07.12.2022, accused Nos. 4 and 5 on 10.12.2022 and the sixth accused on 11.12.2022. The accused are continuing in custody from the date of arrest. Although, accused Nos. 7 and 8 were arrested, they were

subsequently enlarged on bail. The earlier applications filed by the appellants seeking bail were dismissed by this Court as per common order dated 01.02.2023 in B.A. No. 6 of 2023 and connected cases. While dismissing the bail applications, liberty was granted to the appellants to seek regular bail before the Special Court and the Special Court was directed to consider the bail applications within ten days of filing. Accordingly, the bail applications were considered by the Special Court and rejected as per common order dated 10.02.2023. Aggrieved, these Criminal Appeals are filed.

5. Senior Advs. S. Sreekumar and M. Ramesh Chander and Advs. E.A. Haris and T. Madhu argued for the appellants. I also heard Public Prosecutor P. Narayanan for the State and Adv. A Arunkumar for the mother of the deceased.

6. Learned Senior Counsel submitted that the statutory time limit of 90 days for

completing investigation stipulated in Section 167(2) Cr.P.C., was almost over when the appeals were filed. In order to deny default bail to the appellants, the investigating officer hastily submitted the final report. It is contended that, since the investigation is over, there is no justification in refusing bail to the appellants as the possibility of the appellants tampering with evidence or influencing the witnesses does not subsist. The appellants are falsely implicated due to political reasons and even going by the prosecution version, the deceased suffered injuries when he resisted the attempt of the accused to snatch his mobile phone which contained the video recording of the bathroom scenes.

7. It is contended that, even as per the findings in the postmortem report, the obstructive coronary artery disease found in the heart of the deceased was the reason for his

death. Even as per the prosecution case, dangerous weapons were not used and the injuries are only contusions. The appellants are youngsters with no criminal antecedents and their career and future prospects in life is being adversely affected by reason of their continued incarceration. Finally, it is submitted that the appellants are prepared to abide by any stringent condition imposed by this Court.

8. Learned Public Prosecutor strongly opposed, the prayer for bail pointing out the heinous manner in which Prijesh was beaten to death. Referring to the postmortem certificate it is submitted that the deceased had suffered 28 ante mortem injuries and the definite opinion of the forensic surgeon is that the death had occurred due to internal bleeding from the combined effects of the multiple contusions sustained.

9. It is submitted that the appellants hail

from influential families in the locality whereas the deceased belong to the economically to the scheduled caste and economically weaker Scheduled Caste section. As such there is every possibility of the appellants threatening and coercing witnesses, once they are enlarged on bail. Further, the possibility of the appellants absconding and going abroad clandestinely cannot also be ruled out. Moreover, grant of bail to the appellants will give a wrong message to the society.

10. Learned Counsel appearing for the mother of the deceased also opposed the prayer for grant of bail, contending that a false allegation of having recorded a bathroom scene was raised against her son after he was mercilessly beaten to death. It is submitted that the appellants hail from affluent families and grant of bail will embolden them to commit other crimes.

11. The available material reveals that, on

being informed about the deceased peeping and recording the bathroom scene of the first accused's mother, accused 1 to 3 went in search of the deceased, caught hold of him and snatched the mobile phone from his possession. In the process, they had beaten the deceased using hands and petiole. Some time later, accused 4 to 6 came to the spot and along with the other accused took the deceased to a bathroom nearby and thrashed him again. Thereafter, they fetched Vijayan, uncle of Prijesh, from his house and brought him to the spot. They wanted Vijayan to take Prijesh to his house and on Vijayan refusing, the accused themselves took Prijesh on a bike and abandoned him in a coconut garden near to his house. The allegations, if true, do indicate the commission of a heinous crime. The gravity of the alleged offence gets aggravated by the act of the appellants in having dumped an almost dead Prijesh. As per the postmortem

report, Prijesh had suffered 28 ante mortem injuries. The forensic surgeon has opined that Prijesh had died due to internal bleeding from the combined effect of the multiple contusions sustained by him. No doubt, the Surgeon has also indicated that the obstructive coronary artery disease of Prijesh could have contributed to his death. The said observation cannot have any impact on the conclusive opinion rendered.

12. The fact that the accused had brought Vijayan to the spot shows that they knew Prijesh and about his family background. If so, there is *prima facie* material to indicate that the offences were committed with the knowledge that the deceased belonged to the Scheduled Caste. The fact that the accused hail from affluent families, while the deceased and his relatives belong to the economically weaker section, is also a relevant factor.

13. The factors to be considered while

deciding bail applications is laid down by the Apex Court in various decisions, including **Prasanta Kumar Sarkar v. Ashis Chatterjee [(2010) 14 SCC 496]**, the relevant portion of which reads as under;

*"It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are:*

*(i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*

*(ii) nature and gravity of the accusation;*

*(iii) severity of the punishment in the event of conviction;*

*(iv) danger of the accused absconding or fleeing, if released on bail;*

*(v) character, behaviour, means, position and standing of the accused;*

*(vi) likelihood of the offence being repeated;*

*(vii) reasonable apprehension of the witnesses being influenced; and*

*(viii) danger, of course, of justice being thwarted by grant of bail."*



On careful consideration of the arguments, the materials available and keeping in mind the principles relating to grant of bail, I am of the definite opinion that the appellants are not entitled for bail at this stage. Hence, the impugned order does not warrant interference.

In the result, the appeals are dismissed.

**sd/-**

**V.G.ARUN  
JUDGE**

Scl/

**APPENDIX OF CRL.A 290/2023**

PETITIONER ANNEXURES

Annexure 1	TRUE COPY OF FIR IN CRIME NO.1067 OF 2022 OF CHANDERA POLICE STATION, KASARAGOD DISTRICT
Annexure 2	TRUE COPY OF THE POST-MORTEM CERTIFICATE DATED 07-12-2022
Annexure 3	TRUE COPY OF REPORT DATED 05-12-2022 FILED BY THE POLICE BEFORE THE SUB DIVISIONAL MAGISTRATE, ADDING SECTION 302 R/W 34 IPC
Annexure 4	TRUE COPY OF REPORT DATED 05-12-2022 FILED BY THE POLICE BEFORE THE SUB DIVISIONAL MAGISTRATE, IMPLICATING THE APPELLANTS AND ANOTHER AS IDENTIFIABLE ACCUSED AND THREE UNIDENTIFIABLE ACCUSED
Annexure 5	TRUE COPY OF REMAND REPORT DATED 07-12-2022 FILED BY THE 2ND RESPONDENT
Annexure6	CERTIFIED COPY OF ORDER DATED 19-12-2022 IN C.M.P.NO.5095 OF 2022 OF JUDICIAL FIRST CLASS MAGISTRATE COURT -I, HOSDURG
Annexure7	TRUE COPY OF ORDER DATED 01-02-2023 IN B.A.6 OF 2023 OF THIS HON'BLE COURT
Annexure 8	CERTIFIED COPY OF COMMON ORDER DATED 10-02-2023 IN CRL.M.P.NO.848 OF 2023 AND CRL.M.P.NO.865 OF 2023 OF SESSIONS COURT, KASARAGOD

Crl.Appeal Nos. 257, 289, 290 & 303 of 2023

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**APPENDIX OF CRL.A 303/2023**

PETITIONER ANNEXURES

Annexure1	PHOTOSTAT COPY OF THE ORDER OF THE COURT OF SESSIONS, KASARAGOD DIVISION IN CRL.M.P.865/2023 IN CRIME NO.1067/2022 OF CHANDERA POLICE STATION DATED 10.02.2023
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Crl.Appeal Nos. 257, 289, 290 & 303 of 2023

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**APPENDIX OF CRL.A 257/2023**

PETITIONER ANNEXURES

Annexure-1	THE TRUE COPY OF THE ORDER OF THIS HON'BLE COURT IN B.A.10526/2022 DATED 01-02-2023
Annexure-2	A CERTIFIED COPY OF THE ORDER IN CRL.M.P.848/2023 PASSED BY THE HON'BLE SESSIONS COURT, KASARAGOD DATED 10-02- 2023