

**I IN THE COURT OF THE SPECIAL JUDGE UNDER THE SCHEDULED
CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES)
ACT**

(SESSIONS JUDGE), ALAPPUZHA

Present:- Sri.K.K.Balakrishnan, Sessions Judge

Thursday, 20th day of March, 2025

Crl. M.P. No.346/2025 & Crl.M.P.No.412/2025

in S.C.No.707/2024

Crl. M.P. No.346/2025

Between:-

Vivek, Aged 27 years, S/o.Manoharan
Randarayil House, Changangary.P.O.,
Edathua Panchayath Ward No.15,
Edathua Village, Kuttanad Taluk,
Alappuzha District, Now residing at
Vypoothra House, Udaympoor Bhagom,
Udayampoor Panchayath, Ward No.1,
Manakkunnam Village, Kanayannoor
Taluk, Ernakulam District.

}
Petitioner/Accused
No.2

AND

State of Kerala represented by the
Public Prosecutor, Alappuzha

}
Respondent

Crl. M.P. No.412/2025

Between:-

Vivek, Aged 27 years, S/o.Manoharan
Randarayil House, Changangary.P.O.,
Edathua Panchayath Ward No.15,
Edathua Village, Kuttanad Taluk,
Alappuzha District, Now residing at
Vypoothra House, Udaympoor Bhagom,
Udayampoor Panchayath, Ward No.1,
Manakkunnam Village, Kanayannoor
Taluk, Ernakulam District.

}
Petitioner/Accused
No.2

AND

State of Kerala represented by the
Public Prosecutor, Alappuzha

}
Respondent

Crl.M.P.No.346/2025 filed by the Petitioner seeking exemption from personal appearance for enabling him to go Canada and Crl.M.P.No.412/2025 filed by the Petitioner to return his passport.

Petitions were presented on : 22.02.2025 & 01.03.2025

These petitions are coming on 17.03.2025 for hearing before me in the presence of Sri.B.Subhash, Advocate for petitioner; Public Prosecutor for the Respondent (State); the Court on 20.03.2025 passed the following:-

COMMON ORDER

Crl.M.P.No.412/2025 is filed by the petitioner, A2 in S.C.No.707/2024 on the file of this Court, to return his passport produced in this court in compliance of the condition passed in the bail order dated 22.02.2025 in Crl.M.P.No.347/2025.

2. The Edathua Police registered crime No.307/2024 against the petitioner, his father and brother, alleging offences punishable under Sections 341 and 323 read with Section 34 of IPC and under section 3 (2) (va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (in short 'SC/ST (PoA) Act'). Now the case is pending as S.C.No.707/2024 on the file of this court. The petitioner contended that he is studying for Post Graduation and also working in Canada. His residential address in that country is "82 SWEET WILLIAM STREET, KICHENER ON N2E 4C5, CANADA'. His Indian Passport number is T6883321. In order to harass the petitioner and his father, CW1 foisted this case against them. He has not committed any offence as alleged. He needs to return Canada to attend classes and doing his employment in that country. If he is not returned, he will lose his job in Canada and therefore, much hardships and loss would be caused to him and his dependents. It was submitted that in compliance of the bail order dated 22.02.2025 in Crl.M.P.No.347/2025, he had surrendered his original Indian passport bearing No.T6883321 before this court and the same is now in the safe custody of this court. He produced copy of passport, copy of offer letter, copy of Graduation Certificate and copy of work permit issued in favour of the petitioner by

that country to substantiate his case. Hence, he prayed to return back his passport and permit him to travel abroad for his job and study.

3. CrI.M.P.No.346/2025 is filed by the petitioner seeking exemption from personal appearance for enabling him to go Canada as contended above. He further submitted that he had authorised his counsel, Adv.Sri.B.Subhash, to appear for and on behalf of him in the above case. He shall not dispute his identity during trial. In the absence of him, his counsel shall appear in the case on behalf of him and shall conduct his case. Hence petitioner prays to exempt him from personal appearance in the above matter on all posting dates.

4. The investigating officer filed a report and opposed these petitions, contending that the petitioner herein, who is A2 in the crime, was willfully absconding after the incident. The charge-sheet was filed before court reporting that the petitioner is absconding. If the petition is allowed and the passport is returning to the petitioner, there is every likelihood of absconding of him and therefore, his presence could not be procured near future and hence trial will be disrupted.

5. Heard both sides.

6. Notice issued to the victim as stipulated under Section 15A of SC/ST (PoA) Act. On receipt of notice, the victim appeared in person. He filed objection to the petition contending as follows:

In the above case, the accused were released on bail and in compliance of the bail order, A2 surrendered his passport before the court. The petitioner herein filed this petition for releasing of his passport for the purpose of his employment abroad. The defacto complainant, who belongs to Scheduled Caste Community

and an employee of Chengakerri Sree Dharma Sastha Temple. The accused kicked him in front of public and stamped on his stomach. The petitioner herein was absconding and subsequently surrendered before this court. If the petitioner is permitted to go abroad, his presence could not be procured during trial of the case. This will prevent the case from being concluded in a time bound manner. Hence prayed to dismiss the petition. If the petition is allowed, strict conditions should be imposed for releasing the passport.

7. The learned Public Prosecutor seriously opposed the petitions by stating that if the petitioner is permitted to go abroad, there is sure chance for absconding of him and thereby the trial will be disrupted. So, prayed to dismiss the petitions. The learned counsel appearing for the petitioner submitted that if the passport is not released, the source of livelihood of the family of the petitioner will be ceased. The petitioner is ready to comply any conditions, if the petitions are allowed. So, according to the learned counsel, temporary release of passport will not affect any of the proceedings in this case and prayed to allow the petitions.

8. I have perused the materials brought before me. I am satisfied with the reasons stated in the petitions as well as the submissions of the learned counsel for the petitioner for seeking exemption from personal appearance in the above matter and to release his passport surrendered in compliance of condition in the order dated 22.02.2025 in CrI.M.P.No.347/2025. Considering the pendency of Sessions Case in this court, there is no possibility to commence trial in the case within one year. The petitioner and co-accused were released on bail by this court. Personal appearance of him in all posting dates of pre-trial proceedings in the matter is not necessary. The reason stated by the petitioner that he needs to go

abroad for the purpose of joining in his job and doing his Post Graduation is reasonable and no prejudice will be caused to any parties, if exemption is granted to him from personal appearance in the above matter and his passport is released for a limited period of one year. He has affirmed that his identity shall not be disputed in any of the proceedings of the case during the period of exemption granted. He has also stated that a counsel is specifically authorized and advised to appear and defend the case on behalf of him. The petitioner specifically stated the address of his employer and residential address in abroad in the form of affidavit. Considering the facts and circumstances of the case, for the interest of justice, the original Indian passport bearing No.T6883321 produced by the petitioner before this court in the above matter shall be released to him for a period of one year only to go Canada, for the purpose of his employment and study. He is directed to execute fresh bond for ₹2,00,000/- for releasing his passport with two solvent sureties each for the likesum. He is also directed to produce original Indian passport before this court on or before the date of completing one year from the date of release of passport. He shall appear in this case as and when directed without fail.

Hence, the petitions are allowed accordingly.

Dictated to the Confidential Assistant, directly typed by her, corrected and pronounced by me, on this the 20th day of March, 2025.

Sd/-

**Special Judge under the
Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act.
(SESSIONS JUDGE)
ALAPPUZHA**