

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE- II,
MAVELIKARA**

**Present: Sri. Anandhu.J.B, Judicial First Class Magistrate-II.
Dated this the 28th day of June, 2025**

CMP No.1397/2025 in CC.180/2025

Petitioner/ accused : A6. Abhijith.M.Nair, aged 22,
S/o Madhu.G. Nair, Thulasi
Mandhiram, Ezhamkulam, Adoor,
Pathanamthitta Dist.
(By Adv.Priya.S)

Counter Petitioner : State represented by the S.I of Police,
Nooranad in Cr.1108/2023
(By A.P.P., JFCM Court-II, Mavelikara)

Section of law : U/s. 228 of BNSS.

This petition coming on this day for consideration, the court passed the following:-

ORDER

1. Petition filed by the 6th accused in the above case u/s 228 of BNSS. He is charged with offences punishable u/ss.143, 147, 148, 149, 323, 341, 324, 294(), 326, 506(ii) and 201 of IPC and 4 r/w 3,7 of Kerala Prohibition of Ragging Act, 1998 in Crime No.1108/2023 of Nooranad police station.
2. **The averments of the petitioner are as follows:** The case of the petitioner is that he is innocent. Petitioner submitted that now he joined St.Joseph's Institutes of Management, Bangalore to pursue his MBA. Hence, petitioner could not attend the court on regular posting days of this case. He further states that he will not dispute his identity before the Court and he is ready to appear before the

court as and when called for. He seeks to be permitted to be represented by his counsel in his examination u/s 313 Cr.PC (351 of BNSS) also. Therefore, he seeks exemption from personal appearance before the court.

3. Copy Served to the learned Asst. Public Prosecutor.
4. The SHO, Nooranad filed a report opposing the application stating that WPC15346/24 is pending before the Hon'ble High Court of Kerala in connection with this case. It is further stated that if this petition is allowed, all other 12 accused would come with similar petition and it would delay the trial. The SHO, Nooranad seeks to dismiss the petition.
5. Heard both sides and perused the records.
6. Petitioner is the 6th accused in the case. He seeks to exempt him from regular appearance, since he is pursuing MBA at Bangalore. The allegations levelled against the petitioner are u/ss.143, 147, 148, 149, 323, 341, 324, 294(), 326, 506(ii) and 201 of IPC and 4 r/w 3,7 of Kerala Prohibition of Ragging Act, 1998. The prosecution has opposed the petition stating that there exists a public interest litigation before the Hon'ble High Court, with respect to this case. The learned counsel for the petitioner has produced a copy of one of the order in WPC 15346/2025 of the Hon'ble High Court. The petitioner herein is not a party in the writ petition.

7. This case is of the year 2025. Now, the charge is framed, read over and explained to the petitioner. From the affidavit, it is satisfied that if the petitioner is not exempted, it will cause great prejudice to him. The petitioner also undertakes that he will not dispute his identity in trial. Considering the petition and hearing the parties, I am of the opinion that if he is not exempted, it would cause hardship to him, especially his higher studies. The apprehensions raised by the prosecution are not sufficient to disallow the petition. Hon'ble Apex Court in **Bhaskar Industries Ltd. v. Bhiwani Denim And Apparels Ltd.**[2001 KHC 714] has held as follows;

19 The position, therefore, bogs down to this: It is within the powers of a Magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the Magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations to him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical or other good reasons the Magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice. However, the Magistrate who grants such benefit to the accused must take the precautions enumerated above, as a matter of course. We may reiterate that when an accused makes an application to a Magistrate

through his duly authorised Counsel praying for affording the benefit of his personal presence being dispensed with the Magistrate can consider all aspects and pass appropriate orders thereon before proceeding further.

8. Hence, considering the above dictum, I am of the view that this petition can be allowed.

9. In the result, petition is allowed as follows:-

- a. The petitioner is exempted from personal appearance for a period of one year.
- b. The petitioner shall file an affidavit stating that he will not take a plea that the evidence is recorded in his absence.
- c. The petitioner shall file an affidavit stating that he will not dispute his identity even when the evidence is recorded in his absence.
- d. He shall furnish his address in which he residing now.
- e. The petitioner shall be represented by his counsel during the trial in his absence.
- f. The petitioner shall appear before the court as and when directed.

(Dictated to the Confidential Assistant, data entered by her, corrected and pronounced by me in open court on this the 28th day of June, 2025)

sd/-

Judicial First Class Magistrate-II,
Mavelikara.