

**IN THE COURT OF THE FAST TRACK SPECIAL JUDGE, HARIPAD**

Present:- Hareesh G., Special Judge

Tuesday, the 17<sup>th</sup> day of February, 2026

**CRL.M.P. No.1/2026 IN S.C No.868/2025**

(Crime No.367/2025 of the Police Station at Kanakakkunnu)

**Petitioner/Accused** : Arunan, aged 62, S/o Divakaran, Arun Nivas, Puthiyavila Muri, Kandallor Village.

*(By Adv.Sri. Muhammed Thaha K.)*

**Cr.Petitioner/Complainant** : State of Kerala - represented by the Inspector SHO, Ksanakakkunnu Police Station.

*(By Special Public Prosecutor, Haripad)*

**Proceedings** : Application for discharge u/S.250 of Bharatiya Nyaya Suraksha Sanhita, 2023.

**Order** : Dismissed.

This petition having been finally heard on 16/02/2026 and the Court on this day passed the following:

**ORDER**

(1) This is an application filed u/S.250 of the Bharatiya Nagarik Suraksha Samhitha 2023 (for short, B.N.S.S.). Petitioner is the accused in the above numbered case. The said case is registered against the petitioner/accused alleging the commission of the offences punishable u/Ss.332(c), 74, 75(1)(i), 75(1)(iv) & 78 of Bharatiya Nyaya Sanhita, 2023, u/Ss.8 r/W 7, 10 r/W 9(k) & 10 r/W 9(l) of the

Protection of Children from Sexual Offences Act, 2012 and u/S.92(b) of Disability Act, 2016.

- (2) The facts and grounds stated in the present application are as follows:- The prosecution case against the accused is that the accused on 21/05/2025 and on 22/05/2025 sexually assaulted the victim, who was then a minor and also having intellectual disability. This case had its genesis on the counselling given by the victim; the police laid the final report on 10/07/2025. The case is founded mainly on the statement of the victim and her relatives and also on the records of the counseling. No scientific, forensic or independent evidence has been produced to connect the petitioner with the alleged offence. If at all the materials produced by the prosecution are accepted on its entirety that would not constitute the ingredients the offences alleged against the accused. There is no medical evidence in the case to corroborate the oral testimony of the victim. Mere finding that the accused is potent does not lead to the conclusion that he has committed the offence. Prosecution has not produced any scientific and forensic evidence. The allegations levelled in the FIR is repeated in the final report. The ingredients to attract the offence u/S.8 r/W 7 of the PoCSO Act are not prima facie made out. Section 92(b) of the Rights of Persons with Disabilities Act is incorporated without sufficient reason. At the time of considering the discharge, presumption u/S.29 of the PoCSO Act cannot be

invoked. There is no chance for convicting the accused, if at all the trial is proceeded. Hence, the accused is to be discharged.

- (3) Heard the counsel for the petitioner.
- (4) The prosecution allegation as revealed in the final report is as follows: The victim girl is having some intellectual disability and she was then aged 16 years at the time of the commission of the offence. The accused with his intention to sexually molest the victim at 04.45 pm on 21/05/2025, criminally trespassed into the house of the victim and pressed her breast while she was taking bath. Thereafter, at 08.10 am on 22/05/2025, in the courtyard of the victim's house, the accused kissed on her hand and thereby committed the offences punishable u/Ss.332(c), 74, 75(1)(i), 75(1)(iv) & 78 of Bharatiya Nyaya Sanhita, 2023, u/Ss.8 r/W 7, 10 r/W 9(k) & 10 r/W 9(l) of the Protection of Children from Sexual Offences Act, 2012 and u/S.92(b) of Disability Act, 2016.
- (5) In this case, the final report was filed before the court on 17/07/2025. On 03/09/2025, the accused was produced before the Addl. Sessions Court-1, Alappuzha (the Special Court for trial of offences under the PoCSO Act & Children's Court) and the said court transferred the case to this Court for trial and disposal. The accused was produced before this court on 02/07/2025 and he was granted bail on 24/10/2025. Then on 26/11/2025, the learned Special Public

Prosecutor opened the case u/S.249 of BNSS. Then the case was posted for hearing u/S.250 BNSS and the case was posted for framing charge. Then on 04/02/2026, the present application for discharge is moved.

- (6) As per Sec.250(1) of BNSS, the application for discharge is to be filed from the date of commitment of the case. As per Sec.250(1)(b) of BNSS, charge is to be framed within a period of 60 days from the date of first hearing. In this regard, the learned counsel for the accused relied on the decision of the Hon'ble High Court of Kerala in **CRL. REV. PET. No.879 OF 2024 (Sajith v. State of Kerala)**. In para 10 of the said decision, the Hon'ble High Court held '*..... Be it so, in sessions cases where committal doesn't arise, because of the original jurisdiction conferred upon the Special Courts referred herein above, the principle in Section 262(1) of BNSS can be followed till the legislature makes the starting point in such cases with clarity and certainty, by appropriate amendment to Section 250(1) of BNSS. Thus in such cases, the starting point of sixty days can be counted from the date of supply of copies of documents.*'
- (7) The application is moved mainly on the ground that the case rests solely on the oral evidence of interested witnesses and there is no scientific or forensic evidence produced in this case. The learned counsel for the petitioner argued that if at all the prosecution case is

accepted as such, there is little chance for a conviction and this case is a sheer abuse of process of the Court.

- (8) The argument advanced from the side of the petitioner's counsel is put to scrutiny on the basis of the available prosecution records.
- (9) As mentioned hereinabove, the prosecution allegation is that the accused committed sexual assault on the victim (pressing the breast of the victim). Thus, it is found that the medical evidence produced by the prosecution is sufficient. There is no need for forensic or other scientific evidence to prove the said allegation. The potency of the accused is also not a question to be decided in the facts and circumstances of the case. Above all, the case starts with the presumption that the accused has committed the offence and the burden is upon the accused to rebut the said presumption. In a case of these nature, it is to be borne in mind that a conviction can be entered solely on the basis of the testimony of the victim, if it is found reliable. Before taking evidence of the victim, it cannot be found that the prosecution case will not sustain and trial would be a futile exercise. The crystallised judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the Accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.

(10) Considering all these facts, it is found that no merit in the application, there is sufficient material to frame charge against the accused and therefore, the application is liable to be dismissed.

***In the result,***

***the application is dismissed.***

*Dictated to the Confidential Asst. typed by him directly on the computer corrected and pronounced by me in open court on this the 17<sup>th</sup> day of February, 2026.*

Sd/-  
Special Judge,  
Fast Track Special Court, Haripad.

-//True Copy//-

Special Judge,  
Fast Track Special Court, Haripad.