

IN THE COURT OF THE FAST TRACK SPECIAL JUDGE, HARIPAD

Present:- Hareesh G., Special Judge

Saturday, the 2nd day of May, 2026

Crl.M.P. No.1/2026 in S.C.No.1107/2025

(Crime No.361/2024 of Kanakakkunnu Police Station)

Petitioner/accused No.1 : Deepak, aged 27/24,
S/o Devakumar, Deepak
Bhavanam, Arattupuzha P/W-4,
Muthukulam South Muri,
Arattupuzha Village.

(by Adv.Sri.K. Dhanarajan)

Cr.Petitioner/Complainant : State of Kerala - represented by
Inspector of Police,
Kareelakulangara Police Station.

(by Special Public Prosecutor, Haripad)

Application : u/S.228 of Bharatiya Nagarik
Suraksha Sanhita, 2023.

Order : Application is allowed.

These Crl.M.P. having been finally heard on 29/04/2026 and the Court on this day passed the following:-

ORDER

1. This is an application filed u/S.228 of Bharatiya Nagarik Suraksha Sanhita, 2023.

2. The petitioner is the 1st accused in the above numbered case which is registered alleging commission of the offences punishable u/Ss.498(A) & 323 r/W S.34 of the Indian Penal Code and u/S.75 of the Juvenile Justice (Care and Protection of Children) Act.

3. The application is supported by an affidavit sworn by the petitioner/1st accused and gist of the facts stated in the said affidavit is as follows: The case is registered against the petitioner/1st accused alleging offences punishable u/Ss.498(A) & 323 r/w S.34 of the Indian Penal Code and u/S.75 of the Juvenile Justice (Care and Protection of Children) Act. The final report in the case was filed before the Judicial First Class Magistrate-1, Haripad. The petitioner's father and mother are also arraigned as accused in the final report. The case was committed to the Hon'ble Sessions Court, Alappuzha and the said court made over the case to this court.

4. The petitioner is working in Abu Dhabi and therefore, he could not appear before the court regularly. The petitioner was released on bail. The Judicial First Class Magistrate - 1,

Haripad in another case, viz. C.C. No.611/2025, permitted the petitioner to join in his company at Abu Dhabi. The petitioner wanted to join duty on 30/03/2026. The petitioner undertake that his absence will not cause any prejudice to the defacto complainant. The petitioner will not dispute his identity. The counsel for the petitioner will be present in the court on all posting dates and the petitioner has got no objection in adducing evidence on his absence. Hence, the court may be pleased to dispense with the presence of the 1st accused/petitioner before the court on all posting dates and he may be permitted to appear through his counsel. Hence, the application.

5. Upon receipt of the application, a report was called from the SHO, Kanakakkunnu. The SHO, Kanakakkunnu filed a report. As per the report, if the application is allowed, the petitioner will not co-operate with the trial of the case and it will prejudicially affect the trial of the case. The absence of the petitioner will prolong the trial of the case. Therefore, the application is to be rejected.
6. Heard both sides.

7. The petitioner's case is that he is working in M/s. Nasser Saeed Alhari & Partners Contracting Company LLC PO Box No.4265, Abu Dhabi and therefore, he wanted to join in his company. The petitioner seeks personal exemption from appearing before the court on all posting dates and he undertakes that he will not dispute his identity and he has got no objection in conducting his case in his absence.
8. As mentioned earlier, the prosecution opposed the prayer of the petitioner.
9. The prosecution allegations against the accused persons are as follows , the 1st accused married the defacto complainant on 16/01/2020; thereafter, the 1st accused/petitioner misappropriated the gold ornaments of the defacto complainant and subjected her to cruelty by demanding more dowry. On 23/05/2024, the 2nd accused pushed CW1 and in the incident, the daughter of CW1 who was in the hands of the CW1 sustained injury; as the child's forehead hit on the door frame of the kitchen. Thus, the accused have committed the aforesaid offences.

10. In this case, FIS was lodged by CW1 and after completing the investigation, CW12 laid the final report.
11. This is a case of the year 2025. In this case some time will take for the commencement of the trial. Thus, it is found that insisting personal appearance of the accused invariably in all posting date is not justifiable and reasonable.
12. S.317(1) of Cr.P.C. empowers the Judge or Magistrate to dispense with the personal attendance of the accused and to proceed with trial in his/her absence. In ***Noorjahan v. Moideen*, ILR 2000 (3) Ker. 433** : the Hon'ble High Court of Kerala has held that, in warrant cases, the Court has the discretionary power to exempt the personal appearance of the accused and to have the plea of the accused recorded through his counsel who is specifically authorised for that purpose. The decision in *Noorjahan (supra)* has been followed in ***Raju v. State of Kerala*, 2009 (3) KHC 14 : 2009 (2) KLD 101**. In ***Arun Baby v. State of Kerala*, 2021 (3) KHC 406 : ILR 2021 (3) Ker. 555** the Hon'ble High Court of Kerala has held that, if the Court is satisfied that, in the interests of justice, the personal attendance of the accused before it need not be insisted upon, then the Court has the power to dispense with his attendance. In ***Moosa Pattupara***

Vs State of Kerala [2022 KHC (2) 293] the Hon'ble High Court of Kerala has held that the principles for granting exemption from personal appearance of the accused can be applied to appropriate sessions case as well. Thus, it is found that the present application can be allowed on the following conditions and the petitioner can be exempted from personally appearing before the Court on all posting dates. In the result, the application is allowed on the following conditions.

- (i) The petitioner shall appear before Court on all material hearing dates, and the present application being allowed shall not be availed as an excuse for absence on any such dates.
- (ii) The petitioner shall not dispute his identity during the course of trial. The counsel engaged by the petitioner should appear before the Court on his behalf on each and every date of hearing and that the petitioner shall not object the recording of the evidence in his absence and that no adjournment shall be asked for on his behalf.

Dictated to the Confidential Asst. typed by her directly on the computer corrected and pronounced by me in open court on this the 2nd day of May, 2026.

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

-//True Copy//-

Special Judge,
Fast Track Special Court, Haripad.