

**IN THE COURT OF THE III ADDL. SESSIONS JUDGE /  
SPECIAL JUDGE (SPE/CBI)-I, ERNAKULAM**

**Present: Sri. P.K. Mohandas, III Addl. Sessions Judge/  
Special Judge (SPE/CBI)-I, Ernakulam**

Wednesday the 19<sup>th</sup> day of February, 2025/ 30<sup>th</sup> Magha, 1946

**Crl.M.P. No. 409/2025**

**In**

**SC No. 1650/2024**

**Petitioner/Accused No.6** : N. Asifkhan, S/o Nousharkhan, Asif Manzil,  
Kizhakkepuram P.O, Ayiroor, Varkala,  
Thiruvananthapuram -695310

**By Adv. M/s. Sri. John S. Ralf,  
Sri. Vishnu Chandran, Sri.Ralph R.John,  
Sri. Giridhar Krishnakumar, Sri.Geethu T. A,  
Sri.Mary Greeshma, Sri. Liz Johny and  
Sri.Krishnapriya Sreekumar.**

**Complainant/Respondent** : Central Bureau of Investigation,  
**Represented by Smt. Ramya Prasad,  
Public Prosecutor, CBI -I Court, Ernakulam.**

This petition is coming on for hearing before me on 12.2.2025 and  
the Court on 19.2.2025 passed the following:

**ORDER**

This is an application filed by the 6<sup>th</sup> accused u/s. 451 CrPC, seeking  
interim custody of his mobile phones.

2. The prosecution case is that the petitioner along with others  
committed criminal conspiracy and physically assaulted the deceased

Sidharthan J. S., a student of Veterinary and Animal Science College, Pookode, Wayanad on the intervening night of 16.02.2024 and 17.02.2024 inside the men's hostel and abetted him to commit suicide. The case was initially registered as Crime No. 77/2024 at Vythiri Police Station, Waynad. Following the notification dated 09.03.2024 issued by the Government of Kerala and the subsequent notification dated 05.04.2024 issued by the Government of India, the case was transferred to the CBI, Special Crime-II, New Delhi and re-registered as RC.0502024S0002 on 05.04.2024.

3. After the investigation, CBI filed final report before the Chief Judicial Magistrate Court, Ernakulam on 25.04.2024 against 19 accused, including the petitioner, for offence u/s.120B, 341, 323, 324, 342, 355, 306, 506 of IPC and u/s.4 and 3 of the Kerala Prohibition of Ragging Act, 1998, and the case was taken on file as C.P. No.1/2024. The case was committed to the Sessions Court as per the order dated 13.09.2024. The case was taken on file in the present number and made over to this court for trial and disposal.

4. The petitioner submits that he is arraigned as the 6<sup>th</sup> accused in the case and after his arrest, his three mobile phones were seized by the police. It include one Redmi NOTE 10 PRO (IMEI 1: 862407055827640/22, IMEI 2: 862407055827657/22, with SIM card and SanDisk Ultra 128 GB SD card), one iPhone 11 (IMEI 1: 35039491101799, IMEI 2: 1019491172691, with no SIM card), and one Nokia TA 1174 basic mobile phone (IMEI 1: 353111115561951, IMEI 2: 353111118561966) with a BSNL SIM card

(94481279909). The current market value of the phones comes approximately ₹1,40,000/- and all his contacts are stored in them. The phones were not used in the commission of the alleged offence. The petitioner is the absolute owner of the property. The petitioner is ready to abide by any conditions imposed while granting interim custody of the phone. As Condition (viii) of the bail order allows the jurisdictional court to modify or delete conditions, this court has the authority to entertain the petition.

5. The investigating officer filed objection stating that the mobile phones were seized during investigation. The data of mobile phones, memory cards and SIM card were extracted by Central Forensic Science Laboratory as per the order of the Court. The data stored in the devices are crucial in deciding the case. The same are to be exhibited during the trial. If the mobile phones are released to the custody of the petitioner, there is every chance of tampering the evidence.

6. I have heard the counsel appearing for the petitioner and the Public Prosecutor.

7. The learned Public Prosecutor submitted that further investigation of the case is progressing. According to her, the material evidence available in the mobile phones, memory card and SIM are to be preserved for the purpose of further investigation and trial. She submits that being the important piece of evidence, these articles are to be kept safe and cannot be released to the accused.

8. The learned counsel for the petitioner submitted that all the three mobile phones of the petitioner along with the memory card and a SIM card were seized by the police. At present the petitioner has no mobile phone and he finds it difficult to pull on the days. According to the learned counsel, the study materials of the petitioner are stored in the memory of the mobile phones and without such documents, the petitioner could not pursue his studies.

9. The mobile phones, memory card and SIM card used by the petitioner, who is an accused in this case was seized during investigation and produced before the court. The submission of the Prosecutor is that the data stored in these devices are crucial evidence and the same will be required at the time of trial and also for further investigation. It is true that the devices were sent to expert examination and the data are retrieved. But, the contents of the devices are the primary evidence in the case. The extracted data can only be secondary evidence. So, there is some force in the apprehension of the prosecution that if the mobile phones and other items are released to the petitioner, there is chances of tampering the evidence stored therein and the availability of the same at the time of trial cannot be ensured. Considering the facts of the case and other materials placed before me, I am of the view that it is not safe to release the mobile phones, SIM card and memory card to the custody of the petitioner at this stage. If the mobile phones or memory card contain any study materials as submitted by the counsel for the petitioner, copies of such documents can be provided to him from the extracted data

available before the court, on filing an application to that effect. So, at the present stage of the case, I am not inclined to release the mobile phones and other articles to the interim custody of the petitioner. The petition is only to be dismissed.

In the result, the petition is dismissed.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 19<sup>th</sup> day of February, 2025.

Sd/-

P. K. Mohandas

III Addl. Sessions Judge/  
Special Judge (SPE/CBI)-I

**Appendix: Nil**

Id/-

III Addl. Sessions Judge/  
Special Judge (SPE/CBI)-I  
(By Order)

//True Copy//

Sd/-

Sheristadar.