

IN THE COURT OF SESSION, KOZHIKODE DIVISION
Present:-Sri. N.R.Krishnakumar, 1st Addl. Sessions Judge
Thursday, the 12th day of February 2026

Criminal M.P. No. 02/26 in SC 687/2024

Between:-

Mujeeb Rahman, S/o. Muhammed,
Kavungal Nambilath, Cheruparamb House,
Kondotty, Malappuram District.

Petitioner/A1

And:-

State rep. by SHO, Perambra Police Station,
Kozhikode

Respondent

This petition coming on 5th day of February, 2026 for final hearing before me in the presence of Sri. Hasif Iqbal. K, Advocate for Petitioner and Sri. N. Shamsudheen, the Addl. Public Prosecutor for Respondent and having stood over to this day for consideration and the court passed the following:-

ORDER

This is an application for bail filed by **A1** (here in after will be referred to as accused) u/s 483 of BNSS.

2. The offence alleged against the accused is under sections 364, 354B, 354A(2), 376(2)(j), 302, 394, etc. of **IPC**. It is alleged that on 11.03.2024 at 09:35 hours, the accused with an intention to commit offence, gave lift to the victim woman on KL-58-A-6064 motorcycle with a promise to drop her at Muliyangal. When the motorcycle reached at Valoor on the side of Mookkanthod, the accused stopped the motorcycle and pushed the victim to the nearby canal. The accused then jumped into the canal and outraged the modesty of the victim and committed rape on her. He further committed murder of the victim woman and robbed her gold ornaments. He then escaped from the place and destroyed evidence and entrusted the gold ornaments to the other accused for sale.

3. The accused was arrested on 17.03.24 and ever since then he has been in custody. The investigation of the case is over and charge sheet filed. The case is now pending trial before this court.

4. It is contended that although the accused was taken by police in their custody on 16-03-2024, he was produced before the Magistrate only on the next day evening at 7.45 p.m, which is beyond 24 hours of custody. That apart, the police officials have failed to communicate ground of arrest to the accused and violated section 47 of BNSS. Therefore, in view of supreme court decision in **Mihir Rajesh Shah Vs. State of Maharashtra and Another reported in 2025 KHC (online) 6915**, the arrest and subsequent remand is illegal and the accused is liable to be released from custody. Whereas the prosecutor would submit that all legal requirements are complied with and only after satisfying the fulfillment of the procedure formalities the learned Magistrate remanded the accused to custody. The accused approached the Hon'ble High Court for bail and the High Court after considering entire aspects of the case dismissed his application. The accused is a habitual offender and he is involved in more than 52 cases. If the accused is released on bail, it will definitely affect the fair trial of the case.

5. I have examined the contention of the parties. The offence alleged against the accused is very serious. The accused earlier approached the Hon'ble High Court of Kerala for bail and filed bail application No.7157/24. In paragraph 7 of the order the Hon'ble High Court observed the following: "*On a perusal of the materials on record, prima facie I find that there are materials to substantiate the petitioner's culpability in the crime. In addition to the same, it is an undisputed fact that the petitioner is an accused in 52 crimes registered by various police stations in the state, which are narrated*

in detail in the bail objection report filed by the Investigating Officer". The Hon'ble High Court dismissed the bail application for the reasons mentioned in paragraph 12 of the order which is extracted below: "On a careful analysis of the facts, the rival submissions made across the Bar, and the materials placed on record, particularly on comprehending the nature, seriousness, and gravity of the offence alleged against the petitioner, the prima facie materials that substantiate that the petitioner's involvement in the crime, that the petitioner is an inveterate offender, the reasonable apprehension projected by the prosecution that the petitioner may tamper with the evidence, and, further, if the petitioner is released on bail, it would have a deleterious impact on the society, I am not satisfied that the petitioner is entitled to be released on bail at this stage. The application is meritless and is only to be dismissed".

6. Initially, the crime was registered as a missing case as the victim woman who left her house to accompany her husband to hospital for treatment did not reach the destination. Subsequently her dead body was found lying in a stream below the culvert at Mookkanthod. Though it was revealed as a case of homicide, there was no clue about the culprit. Subsequently, considering the *modus operandi* and examining numerous CCTV visuals, the investigating officer zeroed in the accused and on account of suspicion of his involvement in the offence, he was taken into the custody of the police on 16-3-24 at 2.00 pm. Then after questioning the accused, the investigating officer convinced of the involvement of the accused in the case and accordingly he arrested the accused on 17-3-24 at 00.30 hours. The arrest was intimated to his wife. The accused was produced before the jurisdictional Magistrate at 7.45 p.m on 17-03-2024. The learned Magistrate passed a detailed order to remand the accused to judicial custody. The relevant portion of the order reads as follows: *"His arrest is intimated to his wife. Section*

50 A of Cr.PC complied with. The accused stated that he has no disease or he is taking medicine for any disease. It is seen that with the arrest memo name and signature of independent witnesses is not mentioned. The SHO is directed to give explanation as to why name and signature of independent witness is not procured to see that the accused was arrested in their presence. His arrest was effected on 17-03-2024 at 12.30 p.m. Custody memo produced. The offence alleged against the accused are punishable u/s 364, 392, 394 and 302 IPC. The offences are triable by Court of Sessions. If he is released at this point of time, there is every chance for him to abscond. Hence accused is remanded to judicial custody". Subsequently, SHO Permabra has produced arrest memo containing the signature of wife of accused and two independent witnesses before the Magistrate Court.

7. Having regard to the facts stated above, it cannot be said that the accused was produced before the Magistrate beyond 24 hours of his arrest. The learned Magistrate considered all the aspects meticulously before remanding the accused to custody.

8. Of course, grounds of arrest was not communicated to the accused in writing. Communicating the grounds of arrest in writing is made mandatory by the Hon'ble Supreme Court in **Mihir Rajesh Shah Vs. State of Maharashtra and another in (2025 KHC (online) 6915)**. In the concluding paragraph, the Hon'ble Supreme Court has held the following:-

- (i) *The constitutional mandate of informing the arrestee the grounds of arrest is mandatory in all offences under all statutes including offences under IPC 1860.*
- (ii) *The grounds of arrest must be communicated in writing to the arrestee in the language he/she understands.*

- (iii) *In cases where, the arresting officer/person is unable to communicate the grounds of arrest in writing on or soon after arrest, it be so done orally. The said grounds be communicated in writing within a reasonable time and in any case atleast two hours prior to production of the arrestee for remand proceedings before the Magistrate.*
- (iv) *In case of non-compliance of the above, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.*

9. But it appears that the procedures as mentioned above is applicable to the arrest to be made after the decision. The paragraph 58 of the decision of the Supreme Court gives such an impression. Paragraph 58 is extracted below:

‘We are cognizant that there existed no consistent or binding requirement mandating written communication of the grounds of arrest for all the offences. Holding as above, in our view, would ensure implementation of the constitutional rights provided to an arrestee as engrafted under Article 22 of the Constitution of India in an effective manner. Such clarity on obligation would avoid uncertainty in the administration of criminal justice. The ends of fairness and legal discipline therefore demand that this procedure as affirmed above shall govern arrests henceforth.’

10. The Supreme Court pronounced this judgment on 6-11-2025. The arrest in this case was made on 17-03-2024. Decision of another co-equal bench of Supreme Court pronounced on 14-08-2025 also should be considered at this stage. Supreme Court in **State of Karnataka Vs. Sri Darshan etc.** in Criminal Appeals No.3528 to 3234 of 2025 after considering Pankaj Bensal

Vs. Union of India ((2024) 7 SCC 576, Prabir Purkayastha Vs. State (NCT of Delhi) ((2024) 8 SCC 254 and Vihaan Kumar Vs. State of Haryana 2025 SCC Online 456 has held that procedural lapses in furnishing grounds of arrest, in the absence of prejudice, do not *ipso facto* render custody illegal or entitle the accused to bail. In that case also, the grounds of arrest was not communicated to the arrestee in writing. The Supreme Court has held the following in para 20.1.7. *“In the present case, the arrest memos and remand records clearly reflect that the respondents were aware of the reasons for their arrest. They were legally represented from the outset and applied for bail shortly after arrest, evidencing an immediate and informed understanding of the accusation. No material has been placed on record to establish that any prejudice was caused due to the alleged procedural lapse. In the absence of demonstrable prejudice, such an irregularity is, at best, a curable defect cannot, by itself, warrant release on bail. As reiterated above, the High Court treated it as a determinative factor while overlooking the gravity of the charge under section 302 IPC and the existence of a prima facie case. Its reliance on Pankaj Bansal and Prabir Purkayastha is misplaced, as those decisions turned on materially different facts and statutory contexts. The approach adopted here is inconsistent with the settled principle that procedural lapses in furnishing grounds of arrest, absent prejudice, do not ipso facto render custody illegal or entitle the accused to bail”.*

11. In the case on hand, as already stated above, all other legal formalities are complied with and it appears that the accused was made aware of the grounds of arrest. There is nothing before the court show that some prejudice was caused to the accused because of the failure to communicate the grounds of arrest in

writing. If that be the case, the contention of the counsel for the accused in this regard is only to be rejected.

12. As already stated above, the Hon'ble High Court and this court dismissed the previous bail applications filed by the accused. There is no change in circumstances. Trial of the case will commence once FSL report is received. So, considering the gravity of the allegation against the accused and availability of materials to prove prima facie involvement of accused in the offence, I am not inclined to release the accused on bail. Hence the petition for bail is only to be dismissed.

In the result, the petition is dismissed.

(Typed by the Confidential Assistant directly on computer, corrected by me and pronounced in open court, this the 12th day of February, 2026).

Sd/-

ADDITIONAL SESSIONS JUDGE -I

No oral and documentary evidence

Sd/-

ADDITIONAL SESSIONS JUDGE -I

Fair/Copy of Order in
CMP 02/2026 in SC 687/24,
Dated:-12.02.2026.

