IN THE COURT OF SESSIONS, THALASSERY

Present: Sri. Vimal. J, Additional Sessions Judge-IV.

Monday, the 27th day of April, 2026/ 7th Vaishakha, 1948

Crl. M.P No.2/2026 IN S.C No. 1074/2016

Sri. Suraj.S , Judicial First Class Magistrate-Thalassery in C.P. No. 12/2016/2020, Cr. No. 623/2000 of Thalassery Police Station)

Nasar, S/o. Saboonhi, Luftha Manzil, Devarmoola(P.O), Thalappadi, Karnatak	Petitioner/ Accused
Vs	
State:SHO. Thalassery Police Station rep. By Addl. Public Prosecutor, Thalassery	Respondent/ Complainant

This petition coming on the 16th day of April 2026 for hearing before me in the presence of Sri. N.R.Shanavas, Advocate for petitioner,Smt. Reshma.A, Addl. Public Prosecutor, Thalassery for respondent; and having stood over for consideration till this day, the Court passed the following:

O R D E R

This is an application filed under Section 227 of the Code of Criminal Procedure. It is contended that even if the entire allegations in the final report are taken at face value, no offence as alleged is made out against the petitioner, who is arrayed as Accused No. 3. The petitioner is alleged to have committed the offences under sections 366, 342, 354, 376(g) of IPC.

2. The prosecution case, in brief is as follows:-

On 18.09.2000, at about 5.30 p.m., A1 Sukumaran, allegedly in furtherance of a conspiracy with accused Nos. 2 to 6 and sharing a common intention, took the complainant (CW1) along with her two-year-old child from a Municipal Park to a place near Mithilepeedika school. At the said place, it is alleged that A1 initially subjected her to sexual intercourse, and thereafter, two

other persons also committed rape upon her. Thereafter, the complainant was taken to Pranavam Lodge, Thalassery, where she was allegedly wrongfully confined and subjected to further sexual assault by, inter alia, a room boy and the hotel manager. The petitioner herein has been arrayed as an accused in the capacity of a room boy attached to the said lodge. Subsequently, the complainant was taken to Sea Palace Hotel, Thalassery, where it is alleged that she was again subjected to sexual intercourse. It is the further case of the prosecution that, thereafter, the complainant was allowed to return home. However, she disclosed the alleged incident to her husband only after a lapse of a few months. The First Information Report came to be registered on 13.10.2000, after about one month from the date of the alleged occurrence. Thus, the accused committed the above offences.

3. The petitioner herein is accused No.3 in the original case. He was absconding during the initial course of the trial. The trial proceeded against accused Nos. 1, 2, 4 to 7. The victim complainant passed away prior to the examination, during the trial. There was no other evidence to support the case of prosecution. Hence, all the remaining accused were acquitted under Section 232 of the Code of Criminal Procedure as per order dated 07.07.2007 in SC No.79/2003. The case against the present accused was split up. Subsequently, the present accused was arrested and produced before this Court.

4. The learned counsel for the petitioner would contend that even if the entire allegations in the final report are taken at face value, no offence as alleged is made out against the petitioner and therefore prayed that the petitioner may be discharged. The learned Additional Public Prosecutor, on the other hand, submitted that the wound certificate, the statement of the victim's mother, and the statement of the victim's husband are also part of the prosecution record and ought to be considered. It is contended that, taken together, these materials are sufficient to proceed against the accused.

5. The points that arise for consideration are as follows:

1. *Whether the materials placed on record by the prosecution disclose a prima facie case against the accused for framing charges against the accused?*
2. *Whether the statement of the victim recorded under Section 161 of the Code of Criminal Procedure, in view of her death can be relied upon as a material capable of being translated into legally admissible evidence for the purpose of framing charges?*
3. *Whether the remaining materials relied upon by the prosecution, are prima facie sufficient to frame charges against the accused?*
4. *Whether the accused is entitled to be discharged under section 227 of Cr.P.C?*
5. *Order?*

6. **Point No.1 to 5:-** The learned counsel for the accused would vehemently argue that in view of the death of complainant, the sole material witness, there exists no admissible or incriminating evidence to prima facie connect the accused with the crime. It is submitted that the statement of complainant recorded under Section 161 of the Code of Criminal Procedure is the only material that could possibly connect the accused to the alleged offences, and that said statement, being the statement of a deceased witness, cannot be adduced in evidence or relied upon for framing of charges. It is contended that since the complainant died, there is no material whatsoever on record on which a prima facie case can be made out against the accused for the purposes of framing charges.

7. The first question to be considered is whether the case diary statement of a dead witness can be relied for framing of charges. Before proceeding with

this issue, it would be appropriate to refer to the principles dealing with the power of discharge. The principles dealing with discharge of an accused has been considered by the Supreme Court on various occasions. In ***State of Bihar vs. Ramesh Singh 1977(4)SCC 39*** , the Apex Court after a detailed analysis of Section 227 and 228 enunciated the principles of discharge

> *"Reading the two provisions together in juxtaposition, as they have got to be, it would be clear that at the beginning and the initial stage of the trial the truth, veracity and effect of the evidence which the Prosecutor proposes to adduce are not to be meticulously judged. Nor is any weight to be attached to the probable defence of the accused. It is not obligatory for the Judge at that stage of the trial to consider in any detail and weigh in a sensitive balance whether the facts, if proved, would be incompatible with the innocence of the accused or not. The standard of test and judgment which is to be finally applied before recording a finding regarding the guilt or otherwise of the accused is not exactly to be applied at the stage of deciding the matter under S.227 or S.228 of the Code. At that stage the Court is not to see whether there is sufficient ground for conviction of the accused or whether the trial is sure to end in his conviction. Strong suspicion against the accused, if the matter remains in the region of suspicion, cannot take the place of proof of his guilt at the conclusion of the trial. But at the initial stage if there is a strong suspicion which leads the Court to think that there is ground for presuming that the accused has committed an offence then it is not open to the Court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is not in the sense of the law governing the trial of criminal cases in France where the accused is presumed to be guilty unless the contrary is proved. But it is only for the purpose of*

deciding prima facie whether the Court should proceed with the trial or not. ***If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.*** *An exhaustive list of the circumstances to indicate as to what will lead to one conclusion or the other is neither possible nor advisable. We may just illustrate the difference of the law by one more example. If the scales of pain as to the guilt or innocence of the accused are something like even at the conclusion of the trial, then, on the theory of benefit of doubt the case is to end in his acquittal. But if, on the other hand, it is so at the initial stage of making an order under S.227 or S.228, then in such a situation ordinarily and generally the order which will have to be made will be one under S.228 and not under S.227."*

8. In the celebrated decision of ***Union of India v. Prafulla Kumar Samal, 1979 (3) SCC 4 : AIR 1979 SC 366***, the Supreme Court speaking through Fazl Ali J. reviewing the authorities, enunciated the following principles:

(1) That the Judge while considering the question of framing the charges under S.227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under S.227 of the Code the Judge which under the present Code is a senior and experienced Court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.'

9. In view of the aforesaid legal principles, the accused can be discharged, if the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if it is fully accepted cannot show that the accused committed the offence. Further, the scheme of the Code of Criminal Procedure at the stage of Section 226 is instructive and determinative of the question that falls for consideration. As per Section 226, when the accused appears before the Court, the prosecution is required to open its case by describing the charge brought against the accused and stating by what evidence it proposes to prove the guilt of the accused. The word "proposes" used in the section is very important. It means that the prosecution should be in a position to actually place before the Court the evidence it intends to adduce. A proposal to adduce evidence is only meaningful if that evidence is capable of being tendered and received in law. The

prosecution cannot propose to adduce evidence which is not available or which cannot be tendered, or which the law does not permit to be placed on record before the Court. In ***Suresh Budharmal Kalani v. State of Maharashtra*** **(1998) 7 SCC 337** the Hon'ble Supreme Court observed that at the stage of framing charges the court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence and not upon further evidence (dehors those materials) that the prosecution may, adduce in the trial, which would commence only after the charges are framed and the accused denies the charges . To sum up, even at the stage of framing charges the court is required to confine its attention to only those materials collected during investigation which can be legally translated into evidence. The requirement in law is to have legally admissible materials for framing charge (vide ***Murukadas @ Murukan v. State of Kerala 2020 (2) KHC 541***).

10. The question therefore is not merely whether the statement of the complainant under Section 161 exists on the record of the court. The question is whether the prosecution can, in terms of Section 226 of Cr.PC propose to adduce that statement as evidence before this Court. The statement recorded under Section 161 of the Code of Criminal Procedure can be relied for the limited purpose of finding out if a prima facie case exists for framing charges, provided the same can be translated into legal evidence. It can be translated into legal evidence by examining such witness before the court . The statement of the complainant under Section 161 would have ripened into substantive evidence only when the complainant is examined as a witness before this Court. Admittedly, the complainant is no more. Therefore, she cannot be examined. The prosecution, therefore, cannot propose to adduce the evidence of the complainant, because that evidence simply does not exist in any form which can be translated into legally admissible evidence or receivable before this Court. The proposition that the prosecution may rely upon the Section 161 statement of

a deceased victim for the purpose of framing charges conflates the contents of a police case diary with legally admissible evidence. The two are fundamentally distinct.

11. The aforesaid legal position is in consonance with the law laid down by the Hon'ble Supreme Court. In ***Ramesh Singh (supra)***, wherein it was held that: *"**If the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused** even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial."* The test is the evidence which the prosecutor "proposes to adduce." Where the prosecution cannot, in law, propose to adduce the testimony of the victim because the victim is dead and her statement under Section 161 is not substantive evidence, the said document cannot be used to frame charges. The Court is not required to proceed to trial merely because a charge-sheet has been filed or because a Section 161 statement exists in the case diary. It must assess whether there is legally admissible material capable of being legally translated into evidence is available on record.

12. Apart from the above, I am of the view that to place reliance upon the statement of a deceased witness for the purpose of framing charges would also be contrary to Article 21 of the Constitution of India. Article 21 guarantees that no person shall be deprived of his life or personal liberty except in accordance with procedure established by law. The framing of a charge and the consequent subjection of an accused to the rigours of a criminal trial is a serious matter affecting personal liberty. In the case of ***State of Karnataka v. L.Muniswamy and Others*** **(1977) 2 SCC 699**, the three judge bench of the Hon'ble Supreme Court held that the order framing a charge affects a person's liberty substantially and therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge. The right not to be subjected to a

criminal trial in the absence of legally admissible evidence is an integral facet of the guarantee under Article 21. The expression “procedure established by law,” as interpreted by the 7 judges Constitution Bench of the Hon'ble Supreme Court in ***Maneka Gandhi v. Union of India*** **AIR 1978 SC 597** mandates that such procedure must be just, fair, and reasonable, and not arbitrary, fanciful, or oppressive. The mere prescription of some kind of procedure cannot even meet the mandate of Article 21. A procedure which permits the Court to rely upon the statement of a dead witness recorded under Section 161 of the Code and not falling within any of the well-accepted exceptions like Section 32 of the Indian Evidence Act, such as a dying declaration, despite the impossibility of translating the same into legally admissible evidence, cannot be characterised as fair, just, or reasonable procedure. It can only be characterized as a fanciful procedure which will lead to the framing of charges based upon evidence which cannot be legally transmitted or translated into legally admissible evidence during trial. Therefore, such a procedure can only be considered a fanciful one which affronts Article 21 of the Constitution. Further, permitting the prosecution to rely on such material would, in effect, sanction a procedure whereby an accused is compelled to face trial on the basis of material which can never be proved in accordance with law. I am of the view that accepting such a course would be contrary to the mandate of Article 21 and would amount to subjecting the accused to an arbitrary and legally impermissible process. In view of the aforesaid discussion, statement of CW1 should be eschewed from consideration since the same cannot be legally translated into evidence.

13. Now the question to be considered is whether there is any prima facie evidence to frame charges when the statement of the complainant is eschewed from consideration? CW2 was the receptionist of Pranavam Lodge during the relevant period. He gave a statement that on 09.02.2000, A1 Sukumaran came to the lodge along with a woman and a child and booked a room. Sukumaran

informed him that the room was required only for a short duration. CW2 further gave a statement that he left the lodge at about 08:30 a.m., after handing over charge to one Mehboob, and returned at about 03:00 p.m. He also produced the ledger of the lodge covering the period from 01.04.2000 to 16.10.2000.

14. CW3 was the Manager of Sea palace Hotel at Thalassery. He gave a statement that the hotel had 24 rooms. On 19.09.2000, one Madhu came to the hotel along with a woman and a 2-year-old child and booked a room. Room No. 208 was allotted to them. CW3 further gave a statement that he left for his residence in the evening after entrusting the charge of the hotel to one K.C. Mammooty. He also gave a statement that, on that day, one Majeed was working as the room boy in the hotel. CW3 identified the victim and also handed over the hotel ledger to the Circle Inspector of Police.

15. CW4, is the doctor of Thalassery Co-operative Hospital. CW5 was a pharmacist. They gave statements that the victim (CW1) had come to the hospital along with a 2-year-old child for consultation regarding the illness of the child. They further gave statements that Sukumaran and Prakashan had accompanied her.

16. CW6, an autorickshaw driver, gave a statement that Sukumaran and CW1 (the complainant) had travelled together in his autorickshaw to Venus Junction. CW7 and CW8 gave statements that they had seen CW1 sitting with her child near Darmadhom harbour. CW7 further gave a statement that he had purchased tea and bread for her, and CW8, the owner of the Milma booth, supported this version.

17. CW9 is the husband of the complainant (CW1). He gave a statement that he had married CW1 in the year 1997 against the wishes of his family and that they have one child. He further gave a statement that, as the construction of his new house was in progress, CW1 was residing with her mother at a place

called Naalam Mayyil. CW9 further states that on 29.02.2000 he received information from certain persons that his wife and child were seen at Dharmadam boat jetty and Koduvally. He went and enquired about the incident with CW1. He also gave a statement that the mental condition of CW1 was not good and therefore she was admitted to the hospital. Thereafter, according to him, after she recovered, a complaint was lodged on 13.10.2000 before the Thalassery Police Station. He further gave a statement alleging that A1 Sukumaran had kidnapped CW1 and committed rape on her. However, it is pertinent to note that CW9 admittedly had not witnessed the occurrence. He categorically admitted that the incident was revealed to him by CW1 only after about one month. In such circumstances, the evidence of CW9 is purely hearsay in nature and does not constitute substantive evidence. Further, CW9 has nowhere stated that CW1 had informed him about the involvement of accused Nos. 2 to 6. CW9 has not given any statement to the effect that accused No. 3, the room boy, had committed rape on CW1. Therefore, the statement of CW9 does not in any way prima facie indicate the role of the petitioner.

18. CW10 is the mother of CW1 victim. She stated that CW1 had married CW9, and that the marriage was a love marriage. She further stated that the victim had been suffering from a mental illness since 1995 and had been undergoing treatment at the Government Hospital, Thalassery, under Dr. Narayanan. According to CW10, on 16.09.2000, CW9 brought CW1 and the child to her residence, as their house was under renovation. On 18.09.2000, CW10 left for work at the Government Hospital, where she was employed as a sweeper. However, when she returned home at about 5.00 p.m., she did not find CW1 and the child there. On enquiry, her elder sister informed her that CW1 had gone to Koduvalli. CW10 therefore assumed that CW1 had proceeded to her husband’s house. CW10 further stated that the victim returned home on 20.09.2000 at about 7.30 a.m., and at that time, she informed CW10 about the

incident. CW10 nowhere stated that it was the petitioner who committed rape on CW1.

19. CW11 stated that he was employed as a room boy at Pranavam Lodge. On 19.09.2000, he was on duty from 3.00 p.m. The petitioner herein, Naser, was working as the room boy in the said lodge. He further stated that the first accused, Sukumaran, had taken a room in the lodge during the time when A3 Naser was on duty. By the time CW11 reported for duty at about 3.00 p.m. on 19.09.2000, the first accused Sukumaran had already vacated the room and left the lodge.CW11 also stated that he saw the receptionist, Sreedharan, handing over the ledger of the lodge to the Sub-Inspector.

20. CW17 is a room boy at Sea Palace Hotel, Thalassery. He stated that, on the relevant day, the room boy on duty was one Majid. He further stated that he saw the police preparing a mahazar in respect of Room No. 208 of the lodge.CW17 also stated that he has no personal knowledge of the incident and that he came to know about it only through newspapers.

21. CW25 is a doctor at the General Hospital, Thalassery. She examined CW1, the victim, on 14.10.2010. On examination, she did not notice any injuries on the body of the victim. She stated that the victim informed her that, at Pranavam Lodge, one Fasal and a room boy had possibly raped her. CW25 further stated that she did not notice any injuries on the private parts of the victim. She also opined that the victim had a history of prior sexual intercourse.

22. Apart from the above witnesses, the other witnesses have neither seen the occurrence nor identified the accused as the alleged offender. They were mainly cited as mahazar witnesses, for the limited purpose of proving the recoveries effected and the preparation of the scene mahazars.

23. On a careful consideration of the materials on record, excluding the

statement of CW1, it is evident that not a single witness has spoken to having seen the petitioner committing any overt act of rape or wrongful confinement of CW1. The only material against the petitioner is the statement of CW11, which shows that he was employed as a room boy in Pranavam Lodge prior to 3.00 p.m. on 19.09.2000. The mere employment as a room boy, by no stretch of imagination, can constitute the actus reus required for an offence under Sections 366 or 376 IPC. The statements of CW9 and CW10, does not in any way prima facie connected the petitioner to the above offence. The evidence of CW2, CW3, CW4, CW5, CW6, CW7 and CW8, even if accepted in its entirety, only establishes certain movements of CW1 and A1 Sukumaran and certain room bookings, but does not disclose the commission of any offence by the petitioner, much less his participation in the alleged offences. Further, the evidence of CW11, instead of inculpating the petitioner, merely places him on duty as a room boy and confirms that A1 Sukumaran had already left the lodge by 3.00 p.m., which is wholly insufficient to raise even a suspicion against the petitioner. I have also perused the wound certificate, the statement of the victim's mother, and the statement of the victim's husband. A careful scrutiny of these materials reveals that they offer no assistance to the prosecution in establishing a prima facie case. The wound certificate, at best, records clinical observations regarding injuries. It does not, in any manner, identify the accused as the perpetrator of the alleged acts. There is no prima facie evidence to indicate that the accused raped the complainant. The statements of the victim's mother and victim's husband, does not say that the petitioner raped CW1.Therefore the statements of the witnesses, even if fully accepted at face value, do not establish the commission of the offence by the accused, nor do they connect the accused in any manner to the events alleged. There is therefore no prima facie evidence on record that connects the petitioner to the commission of the alleged offences.

24. The position in the present case is thus one of a complete absence of

prima facie admissible evidence against the accused. Admittedly, no witness has seen the incident. The death of the complainant has deprived the prosecution of the only material that could reasonably connect the accused to the alleged crime. The co-accused who faced a full trial before this Court on the same set of facts, the same witnesses, and the same allegations were all acquitted under Section 232 of the Code because the prosecution was unable to prove the case due to the death of the complainant. As observed by the Supreme Court in ***Ramesh Singh (supra)***, the Court has to consider whether the evidence which the prosecution proposes to adduce if fully accepted would show the accused committed the offence. After the statement of the complainant is eschewed from consideration, there is absolutely no prima facie evidence on record.

25. The learned Public Prosecutor is unable to point out any material which would indicate grave suspicion against the accused. Even if the entirety of the remaining prosecution record is taken at face value, it does not support a finding of grave suspicion. The entire edifice of the prosecution case rested upon the testimony of complainant. That testimony is now permanently unavailable and the statement under Section 161, being inadmissible, cannot substitute for it. As observed in ***Ramesh Singh (supra),*** "if the evidence which the Prosecutor proposes to adduce to prove the guilt of the accused even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial." That is precisely the situation in the present case. There is no evidence on record that establishes or even reasonably suggests the accused's involvement in the offences charged. Therefore, to frame charges under these circumstances, in the total absence of any material which can be legally translated into evidence connecting the accused to the alleged offences would amount to an abuse of the process of this Court.

26. In view of the foregoing discussion, I am of the view that even if the entire material on record is taken at face value, it does not satisfy the threshold of grave suspicion necessary to frame a charge or to put the accused on trial. The continuation of proceedings against the accused would therefore be a futile exercise.

In the result, the accused is discharged under Section 227 of Cr.P.C.

(Dictated to the Confidential Assistant and typed by her, directly into the computer, corrected and pronounced by me in open court, on this the 27th day of April, 2026.)

sd/-

ADDITIONAL SESSIONS JUDGE- IV

sk/-

Fair/ Copy of Order in

Crl. M.P No 2/2026

In SCNo. 1074/2000

Dated: 27.04.2026
