

**IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE-II,
NEYYATTINKARA.**

Present:Smt. Nimmi Nair. M, Judicial First Class Magistrate-II, Neyyattinkara

Thursday, 4th day of June 2026

CMP.1/26

in
CC.710/16

Petitioner/ Accused no.1	:	Vijayan, S/o Kesavapanicker, Kushappura Veedu Narani, Kunnathukal. <i>(By advocate Deepu S)</i>
Counter petitioner	:	The State of Kerala represented by the Sub Inspector of Police, Parassala Police Station, in Crime No.621/16. <i>(By Sri.Saji. A.V, Assistant Public Prosecutor, Neyyattinkara)</i>
Order	:	The petition is allowed.

The petition has been heard on today and the court on this day passed the following:-

ORDER

1. This is a petition filed by the first accused under Section 262 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking discharge from the offence punishable under Section 401 of the Indian Penal Code.
2. The petitioner is the first accused in Crime No. 621/2016 of Parassala Police Station, which was registered for offences punishable under Section 401 IPC and Section 20(b)(ii)(A) of the NDPS Act. The prosecution case, in brief, is that on 08.04.2016 at about 1.15 a.m., while the police officials were on patrol duty through the Parassala–Karakonam Road, they found accused Nos.1 and 2 standing in front of Purakkal Jewellery. On suspicion, they were intercepted and searched. It is alleged that accused No.1 was found in possession of an iron rod, a mobile phone and 9 grams of ganja in two polythene covers and accused No.2 was found in possession of a hacksaw blade, two gold-coloured fancy bangles, a mobile phone and a bank passbook. After investigation, final report was laid against the accused.
3. The case was originally taken on file as C.C.710/16 for the offences punishable under sections 401 Indian Penal Code and Section 20(b)(ii)(A) of the Narcotic

Drugs and Psychotropic Substances Act. On 16.12.18, the learned predecessor directed the investigating officer to file a separate charge sheet for the offence under section 20(b)(ii)(A) of the Narcotic Drugs and Psychotropic Substances Act as the alleged offences are distinct and cannot be tried together. Thereafter, the investigating officer filed a separate charge sheet for the offence punishable under section 20(b)(ii)(A) of the Narcotic Drugs and Psychotropic Substances Act against the same accused before court. Later, the case was refiled as CC.716/25 against the accused nos.1 and 2 in CC.710/16.

4. The learned counsel for the petitioner contended that even if the entire prosecution case is accepted as true, the ingredients of Section 401 IPC are not made out. It is submitted that there are no materials to establish that the petitioner belonged to a gang of persons associated for the purpose of habitually committing theft or robbery. It is further contended that no records relating to previous convictions or involvement in theft cases have been produced and there is no material to show that accused Nos.1 and 2 constituted a gang of habitual offenders. It is also argued that there is no evidence of conspiracy, preparation or any overt act indicating an intention to commit theft. The learned counsel further pointed out that the arrest memo and inspection memo allegedly prepared prior to registration of the FIR contain the FIR number, thereby creating serious doubt regarding the prosecution version.
5. The learned Assistant Public Prosecutor opposed the petition contending that the statements of witnesses and documents collected during investigation disclose a prima facie case against the accused and that the matter requires trial.
6. I have heard both sides and perused the records.
7. Section 401 IPC provides punishment for belonging to a gang of thieves. The essential ingredient of the offence is that the accused must belong to a

wandering or other gang of persons associated for the purpose of habitually committing theft or robbery. Mere presence of a person at a particular place, even under suspicious circumstances, is insufficient to attract the offence unless there are materials indicating association with a gang habitually engaged in theft or robbery.

8. The materials available in the final report show only that accused Nos.1 and 2 were found standing in front of a Jewellery shop during night hours and that certain articles including an iron rod and a hacksaw blade were allegedly recovered from them. Apart from the said circumstance, there are no materials produced to prima facie establish that the accused belonged to a gang habitually committing theft or robbery.
9. Though the prosecution attempts to rely upon the alleged previous involvement of the first accused in a theft case, no records relating to such conviction, previous crime details, certified copies of judgments or any other materials have been produced along with the final report to prima facie establish habituality. There is also no material to show that accused Nos.1 and 2 were members of the same gang or had previously acted together in the commission of theft or robbery.
10. Significantly, the prosecution records do not disclose any circumstance indicating a pre-existing conspiracy or concerted action between the accused. There is no evidence showing that they were waiting for an opportunity to commit theft or that they had assembled for such purpose. The available materials merely create suspicion regarding their presence at the spot. Suspicion, however strong, cannot substitute the statutory ingredients required to constitute an offence under Section 401 IPC.
11. At the stage of considering discharge, the Court is required to examine whether the materials on record disclose sufficient grounds for proceeding against the

accused. In the present case, even if the prosecution materials are accepted at their face value, they do not disclose the essential ingredients necessary to constitute the offence under Section 401 IPC. No prima facie material is available to show that the petitioner belonged to a gang of persons associated for the purpose of habitually committing theft or robbery.

12. Therefore, this Court is of the view that there are no sufficient grounds for proceeding against the first accused for the offence punishable under Section 401 IPC.

13. In the result, the petition is allowed. The first accused is discharged under Section 262 of the Bharatiya Nagarik Suraksha Sanhita, 2023, from the offence punishable under Section 401 of the Indian Penal Code in C.C. No. 710/2016 arising out of Crime No. 621/2016 of Parassala Police Station.

(Dictated by me, transcribed and typed by Confidential Assistant and corrected by me and pronounced in the open court, on this the 4th day of June 2026)

Judicial First Class Magistrate-II,
Neyyattinkara.