

IN THE COURT OF THE JUDICIAL FIRST CLASS MAGISTRATE -II
MANANTHAVADY

Present:- Smt. Ambili.S, Judicial First Class Magistrate-II
Mananthavady.

Wednesday, this the 15th day of October, 2025
23rd day of Karthika, 1947

COMMON ORDER IN CMP Nos. 3027/2025 & 3029/2025
(In CC. 579/2017)

Petitioner/Accused : Christo George, Aged 29 years, S/o George,
Umbukattil (H), Mananthavady Village,
Mananthavady Taluk.

(By Adv. Biju Mathew)

Respondent/Complainant : State represented by the Sub Inspector of
Police, Mananthavady in Crime No. 722/2017.

(By Smt. Sukanya.P, A.P.P Gr- II)

Order : Petitions are allowed.

ORDER

These applications are filed under Section 228 of the BNSS, seeking exemption from the personal appearance of the petitioner/accused before this Court and permission to travel abroad.

2. **The brief averments in the petitions are as follows:** The petitioner is an accused in the above-mentioned case. The offences alleged against him are punishable under Section 341, 332, 353 r/w 34 of IPC, 117(e) of K.P Act and Sec. 3(2) (e) of PDPP Act. The petitioner submits that he intends to travel to the United Kingdom to visit his sister, who is employed there. In view of his proposed travel, he submits that it would not be possible for him to personally appear before this Court on each posting date. He has filed an affidavit undertaking that, during the course of the trial, his counsel will duly represent him on all scheduled hearing dates. Accordingly, the petitioner prays that this Court be pleased to dispense with his personal appearance before the Court during the trial, and permit him to travel abroad for the aforementioned purpose.

3. Notice on the application was duly served upon the learned Assistant Public Prosecutor.

4. This Court heard the submissions of the learned counsel for the petitioner/accused as well as the learned Assistant Public Prosecutor. The records of the case were also perused.

5. The learned counsel for the petitioner submitted that the petitioner seeks to visit his sister residing in the United Kingdom, and in view of this proposed travel, his personal appearance on every posting date may not be feasible. It is therefore requested that his presence be dispensed with under Section 228 of the BNSS and that he be permitted to be represented by his counsel during the trial. The petitioner also seeks leave to travel abroad for the said purpose.

6. The learned Assistant Public Prosecutor opposed the applications and submitted that the personal attendance of the petitioner is essential for the fair and effective disposal of the case. It was contended that exempting the petitioner's appearance may impede the smooth progress of the trial. In response, learned counsel for the petitioner submitted that the petitioner has already appeared before this Court and that the charge has been framed, read over, and explained to him. It is true that Section 308 of the BNSS mandates that evidence shall ordinarily be recorded in the presence of the accused. However, Section 228 of the BNSS carves out an exception and empowers the Court to dispense with the personal attendance of the accused and to permit representation through counsel, provided sufficient cause is shown to the satisfaction of the Court. While it is a settled principle of criminal jurisprudence that the trial of a cognizable offence should ordinarily be conducted in the presence of the accused, the law does recognize the Court's discretion to exempt such presence in justifiable and reasonable circumstances. Upon perusal of the affidavit filed along with the applications, it is, however, noted that there is specific averment to the effect that the petitioner/accused does not dispute his identity, and has no objection to the evidence being recorded in his absence. Nevertheless, considering the nature of the offence alleged against the petitioner, the current stage of the proceedings, and the reasons stated for travel, this Court is of the view that it would be appropriate and in the interest of justice to allow the applications, subject to certain conditions.

1. The petitioner shall appear before this Court as and when directed.
2. The petitioner shall appear before the Court for examination under Section 351 of the B.N.S.S., 2023, and at the time of delivery of judgment.
3. The petitioner shall be represented by his counsel on all other hearing dates.

(Pronounced by me in open court this the 15th day of October, 2025).

JUDICIAL FIRST CLASS MAGISTRATE-II
MANANTHAVADY

