

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR
&
THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

Thursday, the 19th day of February 2026 / 30th Magha, 1947

CRL.M.APPL.NO.1/2025 IN CRL.A NO.1079 OF 2025

SC 1104/2008 OF ADDITIONAL SESSIONS COURT - IV, THIRUVANANTHAPURAM
APPLICANTS/APPELLANTS:

1. RAFI, AGED 52 YEARS, S/O.LUKKUMAN, PALLIVILAKAM VEEDU, MADANVILA, MADANVILA DESOM, AZHOOR VILLAGE, THIRUVANANTHAPURAM, PIN - 695305.
2. RIAZ @ JOHNY, AGED 50 YEARS, S/O.SAINUDEEN, SIJI MANZIL, POOVATHUMOOLE, PERUMKULAM, MANANAKKU, KOTTARAM THURUTHU, THUNDUPURAYIDAM, MADANVILA, MADANVILA DESOM, AZHOOR VILLAGE, THIRUVANANTHAPURAM, PIN - 695305.

RESPONDENTS/RESPONDENTS:

STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM, PIN - 682031.

Application praying that in the circumstances stated therein the High Court be pleased to suspend the execution of the sentence and to stay the order for payment of fine amount imposed on the petitioner/appellant/accused vide judgement dated 05.04.2025 in SC No.1104/2008 by the Additional Sessions Judge IV, Thiruvananthapuram in the interests of justice.

This Application coming on for orders upon perusing the application and upon hearing the arguments of M/S.SASTHAMANGALAM S. AJITHKUMAR (SR.), SREEJITH S. NAIR, SATHEESH MOHANAN, MAHIMA, Advocates for the applicants and of the PUBLIC PROSECUTOR for the respondent, the court passed the following:

P.T.O.

Dr.A.K.JAYASANKARAN NAMBIAR & JOBIN SEBASTIAN, JJ.

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in
Crl. A. No.1079 of 2025

Dated this the 19th day of February, 2026

ORDER

Jobin Sebastian, J.

Crl.M.A. No. 1 of 2025

This application under Section 430(1) of the Bharatiya Nagarik Suraksha Sanhita, seeking suspension of sentence, has been filed by the 8th and 10th accused in S.C. No.1104/2008 on the file of the Additional Sessions Court-IV, Thiruvananthapuram, who stands convicted for offences punishable under Sections 294(b) and 302 IPC.

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

Sakeer, the deceased in this case, was an active member of DYFI, a youth wing of CPI(M), a political party. The accused were workers of a rival political party named Peoples Democratic Party. On 16.01.1995, Sakeer was elected as the Chairman of Government Law College, Thiruvananthapuram, and he reached his house on the said day at 11.00 p.m, after celebrating his victory. The next day, early morning at 12.45 a.m., the accused, due to political rivalry towards Sakeer, formed themselves into an unlawful assembly armed with weapons, trespassed into the house of Sakeer and attempted to commit murder of CW2, the father of Sakeer and caused grievous injuries to him. Thereafter, the accused proceeded to attack Sakeer after breaking open the door of the room where

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he was sleeping and accused Nos.1 to 3 inflicted cut injuries on him. While the Sakeer attempted to flee, the 8th accused caught hold of him. Despite this, Sakeer initially managed to escape from his house and entered the compound of PW19, but the accused chased him and inflicted cut injuries on him, causing his death. Hence, the accused are alleged to have committed the offences punishable under Sections 143, 147, 148, 450, 307, 302 r/w 149 of the IPC.

3. We heard Sri. Sasthamangalam S. Ajith Kumar, the learned Senior counsel appearing for the appellants and Sri. T. R. Renjith, the learned Public Prosecutor.

4. The learned counsel for the appellants contends that the trial court erred in properly appreciating the evidence adduced in the case and wrongly arrived at a finding of guilt against the accused in the absence of convincing evidence. According to the learned counsel, the trial court recorded a finding of guilt based on feeble evidence and insufficient circumstances presented by the prosecution. The learned counsel further urged that the evidence of the eyewitness is wholly unreliable and therefore, the trial court ought not have placed much reliance on the said evidence. It was further submitted that PW2, being the father of the deceased, is an interested witness, and therefore it would be unsafe to rely upon his testimony to record a finding of guilt against the accused. On these grounds, it is contended that the execution of the impugned sentence be suspended pending disposal of the appeal.

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5. Per contra, the learned Public Prosecutor opposed the application, contending that there is no scope for interference with the impugned judgment. According to the learned Public Prosecutor, the present case rests on direct ocular evidence and the testimony of PW2, the injured eyewitness, by itself is sufficient to sustain the conviction of the accused. The learned Public Prosecutor further submitted that, apart from the direct eyewitness accounts, there are other incriminating circumstances which clearly point towards the guilt of the accused. It was further argued that the gravity of the offence cannot be ignored while considering the present application and that no exceptional circumstance warranting suspension of sentence has been made out.

6. We have carefully considered the submissions advanced by the learned counsel on either side and have perused the materials placed on record.

7. A perusal of the impugned judgment, together with the materials on record, prima facie indicates that there is sufficient evidence to support the charges leveled against the accused. The oral testimony of PW2, the father of the deceased and also an injured in the incident, primarily formed the basis for the conviction, and at this stage, there appears to be no reason to disbelieve his evidence. Further, the evidence of other independent witnesses, as well as the testimony of PW19, in whose compound Sakeer was hacked to death, also contributed to the conviction in this case. Additionally, from the impugned judgment, it is discernible that the 1st applicant, who is arrayed as the 8th accused, had caught hold of the dhoti worn by the deceased when he attempted to escape from the accused

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by running away from his house. There is also evidence to show that the 2nd applicant, who is arrayed as the 10th accused, was a member of the unlawful assembly and was holding a lethal weapon at the relevant time. The trial court has already found that there is ample evidence to show that both applicants were members of the unlawful assembly and the offence was committed in prosecution of the common object of the said assembly. As the offence was committed in prosecution of the common object of an unlawful assembly, each member of the assembly is liable for acts done by any other member in prosecution of that common object. Consequently, the independent overt acts of the accused are of limited significance.

8. Moreover, while considering an application seeking suspension of sentence, it is no longer *res integra* that the appellate court cannot embark upon a re-appreciation or re-analysis of the evidence. In **Preet Pal Singh v. State of U.P.** [(2020) 8 SCC 645], the Apex Court held that:

“In considering an application for suspension of sentence, the appellate court is only to examine if there is such patent infirmity in the order of conviction that renders the order of conviction *prima facie* erroneous. Where there is evidence that has been considered by the trial court, it is not open to a court considering an application under Section 389 to reassess and/or re-analyse the same evidence and take a different view, to suspend the execution of the sentence and release the convict on bail”.

9. Keeping in mind the above, we have no hesitation in holding that while considering the present application for suspension of the sentence, a re-analysis or re-appreciation of evidence is impermissible and the same can be relegated to be considered at the time of final hearing of the appeal. As already noted, a bare perusal of the impugned judgment reveals that there is nothing to indicate that the finding of the trial court is

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erroneous. Likewise, since the appellants stands convicted by the trial court, the presumption of innocence is no longer available in his favour.

In the result, the petition is liable to be dismissed and accordingly stands dismissed.

Sd/-
DR. A.K.JAYASANKARAN NAMBIAR
JUDGE

Sd/-
JOBIN SEBASTIAN
JUDGE

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