



2026:KER:21851

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. SOUMEN SEN

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 11TH DAY OF MARCH 2026 / 20TH PHALGUNA,
1947

WA NO. 260 OF 2026

AGAINST THE ORDER DATED 10.12.2025 IN WP(C)
NO.43123 OF 2025 OF HIGH COURT OF KERALA

APPELLANT:

BLUE STAR ALUMINIUM & DOOR HOUSE REPRESENTED BY
ITS PROPRIETOR MR VEERAN KUTTY, AGED 51 YEARS
S/O MUHAMMED , RESIDING AT MASSIKKAL ,
CHELAKODE, THRISSUR DISTRICT , KERALA, PIN -
680587

BY ADV SHRI.MUHAMMED ZAIN SHABEER P.P.

RESPONDENTS:

- 1 THE FEDERAL BANK LTD,
REPRESENTED BY ITS AUTHORIZED OFFICER
CHERUTHURUTHY BRANCH, GROUND FLOOR,
SREEHARI ARCADE , CHERUTHURUTHY , THRISSUR
DISTRICT , KERALA, PIN - 679531
- 2 ADDITIONAL DIRECTOR GENERAL OF POLICE
MAHARASHTRA STATE CYBER , 102 & 103 , SECTOR 2 ,
MILLENIUM BUSINESS PARK , MAHAPE , NAVI MUMBAI ,
MAHARASHTRA EMAIL : IG.CBR-MAH@GOV.IN ,
PI2.CPAW-MAH@GOV.IN, PIN - 400710
- 3 ADDL R3.STATION HOUSE OFFICER ,
MAHARASHTRA STATE CYBER
102 & 103 , SECTOR 2 , MILLENIUM BUSINESS PARK ,
MAHAPE , NAVI MUMBAI , MAHARASHTRA, PIN - 400710



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- 4 ADDL.R4.STATION HOUSE OFFICER ,
 CHERUTHURUTHY POLICE STATION
 CHERUTHURUTHY PO, THRISSUR CITY,
 KERALA, PIN - 679531

- 5 ADDL.R5.STATE OF KERALA
 REPRESENTED BY ITS PUBLIC PROSECUTOR, HIGH COURT
 OF KERALA, ERNAKULAM . (ADDL.R3, ADDL.R4 &
 ADDL.R5 ARE IMPEADED IN W.P.(C) 43123/2025 AS
 PER ORDER DATED 15.12.2025 IN IA 1/2025), PIN -
 682035

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
11.03.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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JUDGMENT

Dated this the 11th day of March, 2026

Soumen Sen, C.J.

The writ appeal arises out of the orders dated 10 December 2025 and 15 December 2025.

2. Mr.Yashwant Shenoy, the learned counsel appearing on behalf of the appellant submitted that Paragraph 9 of the order dated 10 December 2025 and Paragraph 2 of the order dated 15 December 2025 are contrary to law and the judgment of the Division Bench in **Shaji P.R. v. State of Kerala**¹. The grievance of the appellant appears to be that the direction passed by the learned Single Judge on 10 December 2025 in Paragraph 9, whereby the Registry of this Court was directed to ensure that the SHO of the Police Station which covers the area of the petitioner's address should be made a party in all the writ petitions pertaining to the de-freezing of bank accounts, before numbering the same, until further orders, is contrary

¹ 2006 KHC 819, ILR 2006 (3) Ker. 251



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to the ratio of the judgment passed by the Division Bench in **Shaji P.R.** (Supra). It is submitted that unless the Rules are amended, the learned Single Judge could not have directed the addition of a party in a writ petition before it is registered.

3. In **Shaji P.R.** (Supra), the Division Bench considered the practice and procedure to be followed in relation to the filing of the pre-arrest bail or anticipatory bail prescribed under Section 438 of the Code of Criminal Procedure, and Section 437 which deals with filing of bail applications by a person who is arrested or detained alleging non-bailable offence. The practice and procedure to be followed in this regard are stated in paragraph 5 of the said judgment, which is reproduced below:

“5) Procedure for filing pre arrest bail or anticipatory bail applications are prescribed under S.438 of the Code of Criminal Procedure and S.437 deals with filing of bail applications by a person who is arrested or detained alleging non bailable offence. S.439p also deals with the procedure to be complied with while granting bail applications. Apart from the statutory provisions in the Cr.P.C, Kerala High Court Rules and also



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Criminal Rules of Practice, Kerala, prescribe procedure for filing applications in criminal court. R.30 to 36 of Chap.5 of Criminal Rules of Practice, Kerala, deals with appointment of Pleader and a Pleader can attend and plead for a party before a criminal court by filing a memo of appearance in accordance with R.31 of Criminal Rules of Practice, Kerala, instead of filing vakkalath. In the memo of appearance, there shall be a declaration by the advocate that he has been duly instructed on behalf of the party whom he claims to represent. R.31 of the Criminal Rules of Practice, Kerala reads as follows:

"31. Pleader to file memo of appearance. -- Every pleader as defined in clause(9) of S.2 of the Code, other than a public prosecutor, appearing either on behalf of the complainant or the accused shall file a memorandum of appearance containing a declaration that he has been duly instructed by, or on behalf of, the party whom he claims to represent.

Explanation. -- For the removal of doubts it is hereby clarified that Public Prosecutors and Assistant Public Prosecutors when they appear in Abkari cases and other complaints filed by any public servant under any law for the time being in force, need file only a memorandum of appearance containing a declaration that he has been duly instructed to appear in the case by such public servant or complainant, as the case may be."

R.32 deals with form of vakkalath. R.33 provides for filing of special vakalath when an accused is being exempted from appearance. R.34 requires that for changing the pleader, a written consent of the earlier pleader or, in the absence, permission should be required. By virtue of the powers under



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Art.227 and 235 of the Constitution of India, Kerala High Court has framed rules. Chap.13 prescribes procedure to be followed in criminal cases. There are established methods for rule making authority and every statutory rules are framed after due consultation and deliberations and it is finally approved by the Government before publishing in the gazette. Apart from the above, by virtue of powers under Art.227 of the Constitution of India, High Court is issuing circulars prescribing the procedure to be followed when there is lacunae in the rules. Art. 227(2) of the Constitution is as follows:

"227. Power of superintendence over all courts by the High Court. --

* * *

(2) Without prejudice to the generality of the foregoing provisions, the High Court may --

(a) call for returns from such courts;

(b) make and issue general rules and prescribe forms for regulating the practice and proceedings of such courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such courts."

Circulars are issued by the High Court under Art.227(2) after discussing the matter in threadbare in Full Court meetings of Judges and not on the facts of a particular case or on the exercise of discretionary powers of a learned Single Judge on the facts of a particular criminal case."



Thereafter, the issue was answered in paragraph 8, which reads as follows:

“Some of the directions issued by the learned Single Judge in Vishnu's case are covered by the Criminal Rules of Practice, Kerala, and the question is whether an application for bail by the accused in custody or persons apprehending arrest be accompanied by an affidavit as directed in Direction Nos. (ii), (iii) and (v). Can a mandatory rule of procedure be prescribed by the learned Single Judge to be followed by all courts while considering facts of a particular case? It is true that in a particular case, a court dealing with application for bail, if satisfied, can insist such conditions on the facts of those cases. A question of law in issue decided by the court after contest shall be followed by the subordinate courts as it constitute a binding precedent, but, general directions of statutory nature cannot be made. Life and liberty of a person is protected under Art.21 of the Constitution and it is a valid right. Hussainara v. State of Bihar (AIR 1979 SC 1360). Art.21 is as follows:

"21. Protection of life and personal liberty. -- No person shall be deprived of his life or personal liberty except according to procedure established by law."

A procedure prescribed by law is necessary and conditions cannot be prescribed except by law fettering the right to apply for pre arrest



bail. Importance and need of fair procedure established by law is also emphasised in the decision of the Apex Court in Smt. Maneka Gandhi v. Union of India and another (AIR 1978 SC 597). Procedure can be prescribed only by statute or rules made thereunder or as authorised by Constitution, Statute, or Rules. Facts of each case may differ. Decisions and observations made in a judgment cannot be treated as Statute. In Union of India and another v. Major Bahadur Singh (2005 AIR SCW 6113), it was held as follows:

"Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes."

Their Lordships also adhered to several English decisions. In *London Graving Dock Co. Ltd. v. Morton* (1951 AC 737), Lord MacDermot observed:

"The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of



interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge."

In *Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said:

"Lord Atkin's speech is not to be treated as if it was a statute definition. It will require qualification in new circumstances."

Megarry, J. in 1971 (1) WLR 1062 observed:

"One must not, of course, construe even a reserved judgment of Russell LJ. as if it were an Act of Parliament."

And in *Herrington v. British Railways Board* (1972 (2) WLR 537) Lord Morris said:

"There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case."

In the absence of Statutes or Rules, judicial discretion should be given considering circumstantial flexibility and facts of each case. In each case, if any particulars or affidavits are needed, at the judicial discretion, that can be insisted by the court, but, a mandatory procedure to be followed in all cases cannot be prescribed as that of a



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statutory rule while considering the facts of a particular case even though some of such directions may be in the best interest of administration of criminal justice and needs immediate attention of the rule making authority.”

4. The Division Bench in **Shaji P.R.** (Supra) considered the general directions to be followed by the High Court or criminal courts while filing criminal proceedings, as indicated by the learned Single Judge in the **State of Kerala v. Vishnu**² in paragraphs 34, which was reproduced in paragraph 1 of the aforesaid judgment and reads thus:

“34. Though I am not cancelling the pre arrest bail granted to the respondent, I am of the view that certain directions are to be issued to prevent such incidents in future. This Court and the Criminal Courts shall follow the following matters while filing the criminal proceedings.

(i) Every pleader appearing for the accused or complainant shall file a memorandum of appearance containing a declaration specified in R.31 of the Criminal Rules of Practice. If the pleader is instructed by any person other than the accused, his name and address shall be stated in the memo itself. If the pleader is appearing for more than one



accused/complainant, such details in respect of all accused/ complainants shall be stated in the memo. If necessary, the pleader may file separate memo of appearance for each person. The words which are not necessary shall be scored off.

(ii) If proceedings is filed for and on behalf of person under custody and upon the instruction by a person who claims to represent the person under custody the application shall be accompanied by an affidavit. The deponent shall state that he has been authorised by the applicant/applicants to file the application or proceedings and the applicant/applicants has/have not filed any similar petition for the same relief either before that Court or any other Court and the same is pending. He should also state that during the pendency of that application or proceedings in application for same relief shall be filed either before that Court or any other Court.

(iii) The Registry of this Court as well as the offices of the lower Courts shall at the time of filing of proceedings insist that every application or proceedings filed by a person who is not under custody shall be accompanied by an affidavit sworn to by that person himself. In case there are more than one applicant, each one of them shall file separate affidavits or a joint affidavit sworn to by all persons together in accordance with law.

(iv) The affidavit/affidavits filed shall be in proper form and attested as provided under R.37 to 46 of the Criminal Rules of Practice. The



affidavit/affidavits shall contain an averment to the effect that the application is filed as per his/their own instructions.

(v) If the petitioner is under legal disability or prevented by sufficient cause, the person who instructs the pleader shall file an application for leave supported by an affidavit as stated in clauses (iii) and (iv) above.

(vi) The Sessions Judges shall insist for the production of the Case Diary and verify the same before passing orders. The investigating officer shall be directed to file a statement in the proceedings and the same shall form part of the records.

(vii) This Court and Sessions Courts shall communicate copies of the orders to the lower courts concerned forthwith.

(viii) The application for permanent exemption shall be accompanied by a special Vakkalath as provided under R.33 of the Criminal Rules of Practice and an affidavit/affidavits sworn to by the applicant/applicants claiming permanent exemption.

(ix) The application or proceedings filed claiming custody objects shall be accompanied by a special Vakkalath as provided under R.35 of the Criminal Rules of Practice and also an affidavit/affidavits of the person/persons claiming custody."



5. The Co-ordinate Bench was of the opinion that the general directions given in clauses (iii), (iv) and (v) by the learned Single Judge prescribed a mandatory procedure to be followed by the courts even though on the facts of that case such directions may have been warranted. It was observed that, in appropriate cases, based on the facts of the particular case, such affidavits could be insisted upon by criminal courts. However, the question as to whether a general direction is to be issued needs to be considered by the rule-making authority. Therefore, no bail application can be rejected by the office at the threshold merely on the ground that it was not accompanied by an affidavit. The observations of the learned Single Judge have to be read in the context in which they were made.

6. In the case at hand, the learned Single Judge was hearing the writ petition seeking a directions to the respondent/Bank to defreeze the bank account of the petitioner. The learned Single Judge noted that every day



the Court has been dealing with nearly 200 cases involving financial cyber fraud with respect to bank accounts. Sometimes, Banks freeze the accounts based on the requisitions received by the Banks from the Police Authorities, and sometimes the Banks freeze the accounts based on their own suspicion. The requisitions from the Police Authority usually include for full debit freeze and/or for full credit freeze or for debit freeze/hold/lien for specified amounts. Several requisitions are received from the National Cyber Crime Reporting Portal (NCCRP). Some of those requisitions are issued without showing the details of the police station that is to conduct the investigation of the crime. In most of the writ petitions, it was noted that the prayer of the petitioner was to de-freeze his account, stating that he has no involvement in the alleged crime, and that he got part of the amount involved in the crime out of a genuine business transaction without knowledge of the crime. Surprisingly in most of the writ petitions, the details



of such a genuine transaction, or even the nature of the business of the petitioner are not stated. Many writ petitions are filed by persons who have just crossed the majority. In several cases, Banks report huge numbers of transactions involving corers of rupees within a short span after opening the accounts, which do not match the details furnished to the Banks by the account holders. Considering the wide powers exercised by the Court under Article 226 of the Constitution of India, it has been rightly observed by the learned Single Judge that when the court has reason to believe that the petitioner has been operating this account for facilitating cyber fraud, the Court has ample power to deny any relief while exercising jurisdiction under Article 226 of the Constitution of India. The learned Single Judge has expressed the concern about the AI-generated writ petitions being filed before the Court which do not contain the even the basic facts.



7. The learned Single Judge has further recorded instances where the Advocates are not even able to answer or explain the queries put by the Court with reference to the pleadings in the writ petitions. A new subject roster has to be made to deal with huge number of cases concerning cyber fraud. The learned Single Judge has also noticed that in certain cases, the account holders are keeping mule accounts for facilitating financial cyber fraud. In certain cases, the account holders are innocent persons who receive money from others which are legally due to them, which may be a part of the money involved, without knowledge of the said crime. In most of the cases, the requisitioning authorities located outside the State of Kerala do not respond to the notices issued to them by this Court in the writ petitions. The Court can consider only the pattern of the transactions to decide the cases. The Court has rightly observed that the Court is not in a position to identify the wrongdoers and the victims of the cyber frauds without the



assistance of the requisitioning authorities. The abstinence of the requisitioning authorities from appearing despite notice to them makes the situation more worse and allows the escape of the culprits resulting in loss of money to the victims of the financial cyber fraud. The necessity for issuing such directions was captured in paragraph 7 of the said judgment, which reads as follows:

“7. In *Usman v. S.I. of Police* (2003 (2) KLT 594), a learned Single Judge gave five directions to be followed by all criminal courts and, therefore, directed the Registrar to communicate the judgment to all the officers concerned for strict compliance. One such direction was that one shall not approach the High Court directly under S.438 and 439 of the Code of Criminal Procedure except in exceptional matters, without and before approaching the Sessions Court which has concurrent jurisdiction for granting identical relief. The above direction was set aside in *Balan v. State of Kerala* (2003 (3) KLT 472). The Division Bench on a reference from another learned Single Judge held that provisions of S.438 and 439 do not call for a restricted interpretation and each case should be examined on its own merits. The Division Bench held as follows:

"17. In view of the above, we are of the opinion that the provisions of S.438 and 439 do not call for a restricted interpretation. The citizen has the



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right to choose. His application should be considered. Each case should be examined on its own merits. If it is found that the ground for grant of bail is not made out, the Court has the full jurisdiction to deny relief. Equally, if a case is made out, the citizen's liberty should not be allowed to be curtailed."

Another direction issued by the learned Single Judge in Usman's case (supra) held that every application for bail or anticipatory bail must be disposed on the respective courts on the date of receipt of application itself and at any rate such applications should be disposed of within the outer limit of three working days of their filing without fail. In *Martin v. State of Kerala* (2004 (2) KLT 1037), a Division Bench of this Court (one of us Kosby, J., was a party) on reference held that a mandatory order prescribing an outer limit like a legislative direction cannot be issued while considering the facts of the particular case and the directions are only directory or advisory and what is meant is that bail applications shall be disposed of as expeditiously as possible. "

Thereafter, the conclusions are contained in paragraph 9, which reads as follows:

"9. In *Ramachandra Rao v. State of Karnataka* (2002 (2) KLT 189 SC), a Constitution Bench of the Supreme Court held as follows:

"28. Prescribing periods of limitation at the end of which the Trial Court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our opinion, cannot be done by judicial directives and within the arena of the judicial law making power available to



constitutional courts however liberally we may interpret Art.32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible Courts can declare the law they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the Legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated in a given case or set of cases depending on facts brought to the notice of court. This is permissible for judiciary to do. But, it may not, like Legislature enact a provision akin to or on the lines of Chap.36 of the Code of Criminal Procedure, 1973."

The power of the Apex Court under Art.32, 141 and 142 of the Constitution is also not vested in the High Court. Therefore, we are of the opinion that general directions given in (iii), (iv) and (v) by the learned Single Judge as mandatory procedure to be followed by all courts are outside the jurisdiction of the courts even though on the facts of this case, such a direction was warranted. In appropriate cases, on the facts of such case such affidavits can be insisted by the criminal courts. Whether a general direction is to be issued is to be considered by the rule making body. Therefore, no bail application can be rejected by the office at the inception or threshold merely on the ground that it is not accompanied by an affidavit. The registry is directed to number the bail application and post in the appropriate court."



In the aforesaid background, the question that arises is whether the learned Single Judge was justified in issuing the direction in paragraph 9 of the order dated 10.12.2025.

8. Mr.Yashwant Shenoy, the learned counsel is correct in submitting that the impleadment of a party is at the discretion of the writ petitioner. However, while deciding a particular matter, the court may insist appearance of any particular party for the proper adjudication of the dispute. In the instant case, having regard to the nature and enormity of the cyber crimes and the concerns expressed in the order of the learned Single Judge, we are of the view that the direction issued in paragraph 9 does not call for any interference. In matters relating to such crimes, the SHO concerned would be a proper and necessary party for the purpose of adjudication of the dispute.

9. The direction issued by the learned Single Judge is intended for better and smooth administration of justice,



which is of paramount consideration, as opposed to the technical objection that has been raised. We are surprised that such submission has been made without considering that the presence of the said SHO is important for effective adjudication of petitions concerning cyber crimes.

10. Hence, we are not inclined to interfere with the said order. The judgment in **Shaji P.R.** (Supra) is clearly distinguishable on facts. However, we clarify that the Registry shall continue to follow the said direction until any amendment to the Rules is made, if considered necessary by the Rule Committee of the High Court.

11. In fact, on 13.02.2026, in JPP No.1 of 2026, we had issued the following direction:

“2. The Registry is directed not to accept any writ petition or other petition in which a prayer is made for defreezing of the bank accounts, unless the Station House Officer (SHO) of the Police Station having jurisdiction over the area of the petitioner’s address is impleaded as a party respondent. In all such matters, before any order is passed, the learned Public Prosecutor shall ascertain the proper identity of the writ petitioner through the SHO of the



concerned Police Station and insist upon the filing of an affidavit by the SHO establishing the identity of the writ petitioner. ”

However, by order dated 25.02.2026, the said direction was modified to the extent that the filing of an affidavit by the SHO shall not be necessary.

12. Insofar as the order dated 15.12.2025 is concerned, we find substance in the submissions made by Mr.Yeswant Shenoy. We are of the view that the arguing counsel may not be required to file a Vakalathnama, since an arguing counsel is appointed by the Advocate-on-Record for the purpose of arguing the matter.

13. In view of Order III Rule 4(5) of the Code of Civil Procedure read with Rule 17 of the Rules of the High Court of Kerala, 1971 and the Rules framed by the High Court of Kerala under Section 34(1) of the Advocate's Act 1961 regarding the conditions of practice of Advocates, it is no longer obligatory or necessary for any pleader engaged to plead on behalf of a party by another pleader who has been



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duly appointed to act in Court on behalf of such party to file a separate vakalathnama.

14. The writ appeal is disposed of.

15. The impugned order dated 15.12.2025 stands modified to the aforesaid extent.

Sd/-
Soumen Sen
Chief Justice

Sd/-
Syam Kumar V.M.
Judge

ds 11.03.2026