



2026:KER:41181

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 10TH DAY OF JUNE 2026 / 20TH JYAISHTA, 1948

CRL.A NO. 389 OF 2026

CRIME NO.268/2026 OF Sooranadu Police Station, Kollam

AGAINST THE ORDER DATED 03.03.2026 IN BA NO.6 OF 2026 OF
SPECIAL COURT- OFFENCES UNDER SC/ST (POA) ACT,1989,KOTTARAKKARA

APPELLANT/ACCUSED:

SAJITH
AGED 34 YEARS
S/O.BABU UNNITHAN, VALLIYETHU PADINJATTATHIL
(MANGALASSERIL), AMBALATHUMBHAGAM, PORUVAZHY, KOLLAM
DISTRICT., PIN - 690520
BY ADVS.
SRI.K.R.VINOD
SMT.M.S.LETHA
SHRI.ISMAIL SHAHAR
SMT.BHAVANA SAJAN

RESPONDENTS/STATE AND COMPLAINANT:

- 1 STATE OF KERALA
REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
KOCHI, PIN - 682031
- 2 ARUN RAJ
AGED 42, S/O.ANANDAN, PUTHENVILAYIL VEEDU, EAST SIDE OF
THAVANOORKAVU TEMPLE, PORUVAZHY, KOLLAM DISTRICT, PIN -
690520
R1 BY SR.PUBLIC PROSECUTOR SRI.VIPIN NARAYAN.
R2 BY ADVS.
SRI.K.J.MANU RAJ
SMT.GOPIKA ANIL

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 03.06.2026,
THE COURT ON 10.06.2026 DELIVERED THE FOLLOWING:

**CR****JUDGMENT**

Dated this the 10th day of June, 2026

This appeal is at the instance of the sole accused in Crime No.268/2026 of Sooranadu Police Station, Kollam, seeking the following prayer:

“To set aside Annexure A3 order and grant an order of pre-arrest bail in F.I.R.No.268/2026 of Sooranadu Police Station, directing the Investigating Officer therein to release the petitioner on bail, in the event of his arrest, in the interest of justice.”

2. Heard the learned counsel for the appellant/accused and the learned Public Prosecutor in detail and also heard the learned counsel appearing for the de facto complainant, who is the victim.

3. In this case, the prosecution alleges commission of offences punishable under Sections 126(2), 296(b), 115(2), 118(1) and 117(2) of the Bharatiya Nyaya Sanhita, 2023 (for short, ‘the BNS’ hereinafter) and under Sections 3(1)(s) and 3(2)(va) of the Scheduled Castes and



the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, 'the SC/ST (POA) Act' hereinafter), by the appellant/accused.

4. The prosecution case is that, at about 9.00 p.m. on 15.02.2026, the appellant/accused who does not belong to Scheduled Caste or Scheduled Tribe community, abused the de facto complainant, who belongs to Scheduled Caste community, by calling his caste name, while he was standing in front of Thavanoorkavu Temple at Ambalathumbhagom in Poruvazhy Village, while watching the festival program. Thereafter, the appellant/accused wrongfully restrained the de facto complainant in front of SBI and abused him by using filthy words and beat on his forehead and left ear by using an iron bangle. Then, the appellant/accused kicked on the chest of the de facto complainant and when the de facto complainant fell down, the appellant/accused kicked and pressed on his right leg causing fracture on the right great toe and thereby, committed the above offences.

5. The learned counsel for the appellant/accused argued that, in this case, apart from the offences under the SC/ST (POA) Act, all



other offences are bailable and, insofar as the offences under Sections 3(1)(s) and 3(2)(va) of the SC/ST (POA) Act are concerned, going by the FIS given by the de facto complainant two days after the occurrence, viz., on 17.02.2026 (the date of occurrence being 15.02.2026), any personal knowledge regarding the caste of the de facto complainant could be found *prima facie* and therefore, the said offences are not made out *prima facie*. According to the learned counsel, in the statement of the de facto complainant, the appellant/accused was a resident of Ambalathumbhagom also is incorrect and that would show that the caste identity of the de facto complainant was not known to the appellant/accused and therefore, none of the offences under the SC/ST (POA) Act is made out *prima facie* and in such view of the matter, the bar under Section 18 of the SC/ST (POA) Act, has no application in the present case. Therefore, the learned counsel pressed for grant of anticipatory bail to the appellant/accused after upsetting the order impugned.

6. The de facto complainant appeared through counsel and



filed a written objection. Paragraph Nos.2, 3, 5, 6, 7 and 9 of the objection are relevant and the same are extracted hereunder:

“2. It is submitted that, on 15.02.2026 while watching the festival in front of the Thavanoorkavu Temple, at about 9 pm, I was abused by the accused, who called me by my caste name in a filthy manner, further towards the incident, I was wrongfully restrained by the accused in front of SBI Bank Sasthamnada, wherein the appellant abused me using filthy words, and brutally assaulted me in front of several persons including my own sister.

3. The allegations raised by the appellant are herein denied, and are even false and misleading, the intend of which being to evade the ongoing investigation which comprise of serious offences such as assault and caste based abuses, which attracts offences punishable under the Bharatiya Nyaya Sanhita, 2023 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

5. The contention made by the appellant that he was unaware of my caste is false and denied. I and the appellant are natives of Ambalathumbhagom in Poruvazhy Village, hence it is plausible that we belong to the same locality and are familiar to each other prior to the occurrence of the said incident. Throughout the course of the incident and the



utterance of caste name during the assault establishes the very fact of the appellant's knowledge with respect to my caste Identity.

6. It is submitted that, the very allegation of the appellant claiming myself to be a drunkard and has sustained injuries due to drunken dancing and accidental falling is absolutely false and denied. The said contention has been made up by the appellant solely for the purpose of escaping the criminal liability following his actions. Moreover, by doing so the appellant is trying to tarnish my reputation by calling me a habitual drunkard without any material whatsoever. The injuries that the respondent suffered were a direct consequential action of physical assault from the appellant.

7. It is further submitted that, the contention of the appellant with respect to delay in lodging the complaint is unsustainable. Myself being a daily wage worker belonging to the Scheduled Caste Community was under physical and mental trauma after the incident. The accused had punched me on my forehead and left ear using an iron bangle and kicked me on the chest, even fracturing my toe. Due to the injuries sustained, I had to undergo immediate medical treatment, making me Incapable of filing the complaint forthwith, resulting in a short delay of 2 days to file the same.



Moreover, the complaint has been properly explained and does not in manner effect the credibility of the prosecution case, particularly in offences arising under the SC/ST (Prevention of Atrocities) Act.

9. It is respectfully submitted that the appellant is involved in several criminal cases of similar nature within the jurisdiction of various police stations. The past offences of the appellant show a clear pattern of criminal behavior and a threat to public peace. The said behavior and repeated Involvement in criminal activities disentitles him from seeking the relief of anticipatory bail. Granting pre-arrest bail to a habitual offender can seriously cause prejudice to the ongoing investigation and can adversely affect the confidence of the vulnerable sections of the society in the administration of justice.”

7. The learned counsel appearing for the de facto complainant zealously opposed grant of anticipatory bail to the appellant/accused contending that the offences are made out *prima facie* and now, the de facto complainant has been undergoing treatment for the injuries he sustained consequential to the occurrence. Therefore, grant of anticipatory bail will definitely impede the investigation.



8. The learned Public Prosecutor also shared the argument advanced by the learned counsel appearing for the de facto complainant while opposing grant of anticipatory bail to the appellant/accused highlighting the necessity of arrest and custodial interrogation of the appellant/accused.

9. On perusal of the case diary along with the report filed by the Investigating Officer, the prosecution case is that, at about 9.00 p.m. on 15.02.2026, the appellant/accused who does not belong to Scheduled Caste or Scheduled Tribe community, abused the de facto complainant, who belongs to Scheduled Caste community, by calling his caste name, while he was standing in front of Thavanoorkavu Temple at Ambalathumbhagom in Poruvazhy Village, while watching the festival program. Thereafter, the appellant/accused wrongfully restrained the de facto complainant in front of SBI and abused him by using filthy words and beat on his forehead and left ear by using an iron bangle. Then, the appellant/accused kicked on the chest of the de facto complainant and when the de facto complainant fell down, the



appellant/accused kicked and pressed on his right leg causing fracture on the right great toe. It is true that even though the occurrence was on 15.02.2026 and FIS was recorded only on 17.02.2026, after a delay of two days as submitted by the learned counsel for the appellant/accused. Here the medical records produced by the prosecution would show that soon after the occurrence, the de facto complainant was taken to hospital and he was under treatment, and the same was the reason for the delay in lodging the FIS and registration of FIR. On perusal of the treatment certificate issued from the Govt.T.D. Medical College, Alappuzha, dated 26.03.2026, the de facto complainant sustained injuries and he was treated in the ENT, General Surgery, and Orthopaedics Departments. He had sustained a 2 cm × 1 cm laceration over the left eyebrow, which was sutured, and a scratch injury, and was given oral antibiotics. Apart from that, he also sustained a fracture of the right great toe.

10. In this appeal, the question to be considered is whether *prima facie* the offences are made out? In the statement of the de



facto complainant, two persons were cited as witnesses to the occurrence. Apart from that, the Dy.S.P. recorded statement of Sri.Vinod K., S/o.Kochu Kittan who also witnessed the occurrence. Since the occurrence was in the temple premises where the festival has been going on, at this stage, it could not be held that the place is not a place within public view, though it is submitted by the learned counsel for the appellant/accused that in order to attract offences under Sections 3(1)(r) and 3(1)(s) of the SC/ST (POA) Act, the abuse or insult must be made in any place within public view, after referring the decision of the Apex Court in **Hutu Ansari @ Futu Ansar v. State of Jharkhand** reported in [2025 KHC 7246]. Similarly, in the decision in **Raju Joseph v. State of Kerala** reported in [2024 KHC 7090] where this Court considered the impact of Section 8(c) of the SC/ST (POA) Act, particularly, the presumption of knowledge and held as under:

“S.8(c) of the SC/ST Act would show that if the accused was having personal knowledge of the victim or his family, the Court shall presume that the accused was



aware of the caste or tribal identity of the victim, unless the contrary is proved. Thus, the knowledge of the accused regarding the victim's caste or tribal identity is a matter for which presumption under S.8(c) of the SC/ST Act would apply and the said presumption is rebuttable by adducing evidence. Keeping the law in the above line, when the statements of CW2 and CW6 are read, here the petitioners and the victim are known to each other, being residents of Pallikkara Punnathara East Kara. In the statements, the caste of the accused, who are not members of Scheduled Caste or Scheduled Tribe community, is disclosed and the caste of the second witness as a member of Hindu Pulaya community also disclosed. Therefore, the knowledge regarding the caste identity of the second witness is a matter of presumption and the accused has the right to rebut the same. But the procedure of rebuttal should have to be exercised during trial and the standard of proof in such reverse burden, indubitably is preponderance of probability.”

11. In fact, as regards the knowledge of the caste identity of the victim by the accused, Section 8(c) of the SC/ST (POA) Act provides a presumption in favour of the prosecution unless the contrary is



proved. Here, the specific case of the prosecution as stated by the de facto complainant is that, he was abused by calling his caste name and he is a member of the said caste. When a person specifically calls another person by his caste name, the caste identity of the victim and the knowledge of such caste identity on the part of the accused are, *prima facie*, presumed in terms of Section 8(c) of the SC/ST (POA) Act. Therefore, the contention raised by the learned counsel for the appellant/accused that in this case, the appellant/accused has no knowledge regarding the caste identity of the de facto complainant, is found to be unsustainable. Similarly, inasmuch as the offences under Sections 3(1)(r) and 3(1)(s) of the SC/ST (POA) Act are concerned, the mandate of law is that the abuse shall be within public view. It is well settled law that a public place will be a place within public view where the presence of the public would be available and inevitable for various reasons. At the same time, a private place is a place normally general public do not have right of access without permission. No doubt, for the purpose of Sections 3(1)(r) and 3(1)(s) of the SC/ST (POA) Act, the



abuse must occur in a place within public view. Thus, when the place of occurrence is a private place, the same is of no significance when considering the said place within public view within the mandate of Sections 3(1)(r) and 3(1)(s) of the SC/ST (POA) Act and the relevant consideration is; whether the place irrespective of a private place, at the time of occurrence where third parties/public people present to overhear the abusive remarks to make annoyance to the member of the Scheduled Caste/Scheduled Tribe. When abuse within the meaning of Sections 3(1)(r) and 3(1)(s) of the SC/ST (POA) Act if committed in the presence of third parties/public people in a private place, the place to be reckoned as a place within public view for the purpose of the said offences. Here, as already pointed out, three persons given statements that they overheard the abuse, particularly, the occurrence alleged to be during a temple festival while the de facto complainant was engaged in watching the program. If so, the abuse and annoyance alleged by the prosecution and the de facto complainant, which occurred at a temple during festival while the de facto complainant was watching



program therein, definitely a place within the public view and in such a case, the contention raised by the learned counsel for the appellant/accused that the abuse was not in a public place, would not sustain. It is equally well settled that when *prima facie* offence under the SC/ST (POA) Act is made out, grant of anticipatory bail is totally prohibited, though it has been clarified by the judgments of the Apex Court as well various High Courts that when the allegations would not make out *prima facie* the offences alleged under the SC/ST (POA) Act, grant of anticipatory bail is not prohibited.

12. The above discussion would lead to the conclusion that *prima facie* the offences under Sections 3(1)(r) and 3(1)(s) of the SC/ST (POA) Act are made out, thereby the bar under Section 18 of the SC/ST (POA) Act would squarely attract. That part, the other offences are also made out *prima facie* supported by the statement of victim as well as witnesses and also in terms of the medical records placed by the prosecution. Therefore, the learned Special Judge is right in dismissing the anticipatory bail application filed by the



appellant/accused and the said order is liable to be confirmed.

In the result, this appeal is dismissed and the order impugned is confirmed. The appellant/accused is directed to surrender before the Investigating Officer and to co-operate with the investigation, failing which, the Investigating Officer is at liberty to proceed with the investigation including the arrest of the appellant/accused, as per law.

Registry is directed to forward a copy of this judgment to the Special Court, forthwith.

Sd/-
A. BADHARUDEEN
JUDGE

Bb

APPENDIX OF CRL.A NO. 389 OF 2026

PETITIONER' S ANNEXURES

Annexure A1	THE COPY OF F.I.R.NO.268/2026 OF SOORANADU POLICE STATION
Annexure A2	THE HANDWRITTEN COPY OF FI STATEMENT GIVEN BY THE 2ND RESPONDENT TO POLICE
Annexure A3	THE CERTIFIED COPY OF THE ORDER IN B.A.NO.6/2026 OF SPECIAL COURT FOR SCHEDULED CASTE/SCHEDULED TRIBE (POA) ACT CASES, KOTTARAKKARA

RESPNDENTS' ANNEXURES : NIL