

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE C.S. SUDHA

Friday, the 11th day of April 2025 / 21st Chaithra, 1947

CRL.M.APPL.NO.2/2025 IN CRL.A NO.445 OF 2020

**SC 642/2014 OF SPECIAL COURT FOR ATROCITIES AGAINST WOMEN AND CHILDREN (ADDL.
SESSIONS COURT - I), KASARAGOD**

APPLICANT/APELLANT:

**BALAMURALI N., AGED 35 YEARS,
S/O. SUBRAMANYA BHAT, MALLADUKKA (H),
NEERCHAL P.O., KASARAGOD - 671321.**

RESPONDENT/RESPONDENT:

**INSPECTOR OF POLICE
KASARGOD POLICE STATION, KASARGOD, PIN-671 121,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM - 682031.**

Application praying that in the circumstances stated therein the High Court be pleased to grant interim bail to the Applicant, in S.C.No.642 of 2014 of Additional District and Sessions Court - I, (For the trial of cases relating to Atrocities and Sexual Violence against Women and Children), Kasaragod, for 1 month from 27.03.2025 to enable the Applicant to seek admission in Sri Dharmasthala Manjunatheshwara Law College, Manglore, in the interest of justice. Otherwise, it will cause irreparable loss and hardships to the Applicant.

This Application coming on for orders upon perusing the application and upon hearing the arguments of M/S.P.MARTIN JOSE, SRI.P.PRIJITH, SRI.THOMAS P.KURUVILLA, SRI.R.GITESH, SRI.MANJUNATH MENON, SRI.SACHIN JACOB AMBAT, SHRI.HARIKRISHNAN S., SHRI.CYRIAC TOM, SRI.AJAY BEN JOSE, SMT.HANI P.NAIR, Advocates for the applicant and of Senior Government Pleader Shri Vipin Narayan, for the respondent, the court passed the following:

P.T.O.

C.S.SUDHA, J.

Crl.M.A.No.2 of 2025
in
Criminal Appeal No.445 of 2020

Dated this the 11th day of April 2025

ORDER

This is an application moved under Section 430 of the BNSS, 2023 by the appellant/accused seeking interim bail for a period of one month to enable him to seek admission in a Law College at Mangalore.

2. In the application it is alleged thus: - The applicant attended the Common Law Admission Test-2025 (CLAT-2025) conducted by the Consortium of National Law Universities, National Law School of India University, Bengaluru, Karnataka. He cleared the test and secured all India rank of 34,397. The applicant intends to seek admission in Sri Dharmasthala Manjunatheshwara Law College, Mangalore under the management quota. On enquiry with the college authorities, the applicant has been informed that the admission process for the

academic year 2024-2025 would start from 01/04/2025. The admission is based on merit from the scores of the qualifying exam or course-level entrance exam which is the score of the CLAT exam. The applicant has been informed that for admission under the management quota, the marks of the applicant for his degree would also be considered. The applicant has to obtain various certificates from the college and University from where he did his degree course and to do the necessary documentation for his admission. This Court in **Pattakka Suresh Babu v. State of Kerala, 2024 (1) KHC 55** has permitted two life convicts to pursue LLB considering their right to education. The said judgment has been confirmed by the Apex Court in the appeal filed by the Bar Council of India (BCI). That being the position, the applicant may be granted interim bail for a period of one month starting from 27/03/2025 for seeking admission for LLB in the aforesaid college.

3. The application is opposed by the learned Public Prosecutor who has filed a memo along with the statement of the

Superintendent of Central Prison & Correctional Home, Kannur. In the statement it is contended that as per Rule 258(13) of the Kerala Prisons and Correctional Services Management Rules, 2014 (the Rules), prisoners are permitted to join educational courses through private, open universities or distance education, subject to the availability of resources and infrastructure within the prison. However, as per letter No. G2-23235/2023/PrHQ dated 13/10/2023, the Kerala Prisons Headquarters has issued a directive explicitly prohibiting prisoners from joining regular course programs. The said order is binding on all the prison facilities in Kerala and has set a clear restriction on the approval of regular courses for inmates.

3.1. It is also stated that the Central Prison and Correctional Home, Kannur where the applicant is presently housed, has more than 1,050 inmates, with approximately 200 inmates eligible for educational opportunities including online LLB courses. However, there is a significant shortage of staff in the prison, making it extremely difficult to manage, monitor, and

supervise online educational programs effectively. There is no dedicated device(s) or secure internet access for prisoners to undertake online studies. There is a lack of monitoring system to ensure that the internet is used solely for educational purposes, raising concerns about potential misuse, which could even affect the security of the prison. Granting access to online educational facilities could lead to unauthorized access of the internet for illegal communications or other illicit activities. It is difficult to effectively supervise online learning, which inmates may exploit for unauthorized purposes, thereby compromising security. There is need for additional staff and resources which are currently unavailable at the prison to ensure proper monitoring and security of online courses. If the applicant's request is granted, it would set a precedent for other prisoners to seek similar privileges, which would be difficult to meet given the prison's limited resources. Due to severe infrastructural and staffing limitations, the prison would be unable to accommodate all such requests. Moreover, a prisoner cannot enjoy all the rights enjoyed by free

citizens and it is necessarily lost as an incident of confinement. When court grants permission for an online LLB course, it is essential to keep in mind the logistical, security and resource challenges faced by the prison authorities. Given the acute shortage of staff, inadequate infrastructure and the potential for misuse, allowing the applicant to pursue an online LLB course would not be feasible or in the best interest of prison security and order. Many inmates, including dangerous criminals, are now trying to apply for regular courses as a devious tactic to get interim release and to facilitate travel outside the prison. Unless a policy decision is taken at the Government level, the jail authorities find it difficult to provide regular educational facilities for the convicts. Keeping in view the practical constraints the request may not be acceded to, and so the application may be dismissed.

4. It was submitted by the learned counsel for the applicant/accused that merely because the latter has been convicted, his right to education cannot be curtailed. Though the

applicant may not be able to pursue his studies as a day scholar, he may be permitted to do the course online. *Per contra*, it was submitted by the learned public prosecutor referring to the statement filed that with the present amenities available in the prison, it is impossible to provide facility to enable the applicant to pursue his education online. It was also pointed out that taking advantage of the dictum in **Pattakka Suresh Babu** (*Supra*), high security prisoners like the ones convicted for offences under the Unlawful Activities (Prevention) Act, 1967 (UAPA) are also coming forward with such requests. If the request of the applicant is allowed, this Court would be setting a precedent which would be sought by such prisoners also, making it impossible and impractical for the jail authorities to meet all such requests.

5. Heard both sides.

6. In **Pattakka Suresh Babu** (*Supra*), two life convicts sought suspension of the execution of the sentence and to be released on bail for pursuing higher studies. Both the convicts appeared for the entrance examination for the LLB Course

conducted by the Kerala Law Entrance Commissioner and had come out successful. One of the convicts secured admission for the three-year LLB Course, while the other secured admission for the five-year LLB Course. This Court as per interim orders, directed the college authorities to complete the admission process through online mode. After completing the admission process, when the classes were about to commence, the applications were moved by the convicts for suspension of their sentence. The BCI *suo motu* got themselves impleaded in the applications. It was contended by the BCI that only candidates who passed a regular course of LLB from a recognized University would be entitled to enroll as an advocate placing reliance on Rules 2 (xxiii) and 12 of the Bar Council of India – Rules of Legal Education, 2008. It was submitted on behalf of the University concerned relying on the UGC (Open and Distance Learning Programmes and Online Programmes) Regulation, 2020, that attending LLB course through online mode was prohibited. The principals of the colleges concerned took a stand that if the Court passed an order,

considering the peculiar facts of the case, they would be prepared to permit the applicants to attend classes online.

6.1. The Bench held that a convict is entitled to basic human rights and has the right to live with dignity in jail. The prisoners' right to education is a human right grounded in the right to dignity. A prisoner has as much a right to pursue study as a person free from the confines of jail. The aims of imprisonment include reformation and rehabilitation apart from deterrence. Holding so, the convicts were permitted to attend the course through online mode. The jail superintendents of both the jails concerned and the principals of the colleges in which the convicts had succeeded in getting admission were directed to make necessary arrangements to enable the convicts to attend the classes online. It was also directed that when the physical presence of the convicts is insisted by the college/university for attending moot court, seminar, workshop, internship programme, examination or any other practical training, the jail superintendent was directed to release them on interim bail for the required

period on executing a bond with two solvent sureties. The convicts were given the liberty to file applications to the said effect before the jail superintendent with supporting document from the college/university.

7. Aggrieved by the directions given, the BCI took up the matter before the Apex Court. The order dated 21/03/2025 in SLP (Criminal) Diary No.11532/2025 reads thus:

“Besides inordinate delay of 394 days, we are satisfied that the order passed by the High Court granting permission to Pattakka Suresh Babu, respondent No.2 (in SLP arising out of Criminal Misc. Application No.3/2023 in Criminal Appeal No. 740/2018) and V. Vinoyi, respondent No.2 (in SLP arising out of Criminal Misc. Application No. 2/2023 in Criminal Appeal No. 1099/2018) to join LLB classes through online mode, in the peculiar facts and circumstances of this case, does not warrant any interference. The Special Leave Petitions are accordingly dismissed on the ground of delay as well as on merits.

3. However, question of law sought to be raised by the Bar Council of India is kept open.” (Emphasis supplied)

8. Thereafter, the Apex Court as per order dated 15/07/2025 in Criminal Appeal No.2930 of 2024 (SLP (CRL.) No. 5998/2024) is seen to have suspended the sentence of the aforesaid convicts. Therefore, there was never an occasion for the jail authorities to implement the directions in **Pattakka Suresh Babu** (*Supra*) and to provide facility for providing online education to the life convicts.

9. Article 21A of the Constitution of India makes only elementary education a fundamental right and not higher or professional education. The Apex Court in **Farzana Batool v. Union of India, 2021 KHC 7069: 2021 SCC Online SC 3433** held that while the right to pursue higher (professional) education has not been spelt out as a fundamental right in Part III of the Constitution, it bears emphasis that access to professional education is not a governmental largesse. Instead, the State has an affirmative obligation to facilitate access to education, at all levels.

10. It is true that merely because a person has been

convicted, he does not become a non-person. A convict is certainly entitled to live with dignity, which includes his right to education also. But as held by the Apex court in **Charles Sobraj v. Supdt. Central Jail, Tihar, New Delhi: 1978 KHC 611: 1978 (4) SCC 104**, prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement.

11. In **Mohd. Giasuddin v. State of A. P.: 1977 KHC 630: 1977 (3) SCC 287**, the appellant was a young man of 28 years convicted and sentenced for the offence punishable under Section 420 IPC. He prayed for release on probation or under S.360 of the Code as he had no criminal antecedents. However, considering the manner in which he had cheated the victims in the case, his request was rejected as over ambitious. At the same time, it was held that a contrite convict, yet in his twenties, deserved clement treatment. A just reduction of the sentence was justified, and incarceration for 18 months was found to be adequate. But the Apex court held that this period of 18 months “*had to be converted into a spell of healing spent in an intensive care ward*”

*of the penitentiary” and how could this be achieved? First, by congenial work which gives job satisfaction - not jail frustration, nor further criminalisation. Holding so, the State Government was directed to see that **within the framework of the Jail Rules**, the appellant was assigned work not of a monotonous, mechanical, degrading type, but of a mental, intellectual, or like type, mixed with a little manual labour. Quoting Gandhiji in Harijan: Feb. 6, 1947: *"Intellectual work is important and has an undoubted place in the scheme of life. But what I insist on is the necessity of physical labour. No man, I claim, ought to be free from the obligation: it will serve to improve even the quality of his intellectual output"*, the Apex court held that this would ensure that the prisoner did work more or less of the kind he was used to, which work the jail, certainly, would be able to find for him, even on its own administrative side - though under proper safeguards.*

12. Here it would be apposite to refer to the dictum in **Charles Sobraj** (*Supra*). The petitioner therein complained of the barbaric, inhuman treatment and intentional discrimination meted

out to him. The allegations led the Apex court to examine the limits and purpose of judicial jurisdiction, and to apply the principles so laid down to the facts of the case. It was held that the court is reluctant to intervene in the day-to-day operation of the State penal system; but undue harshness and avoidable tantrums, under the guise of discipline and security, gained no immunity from court writs. It was held thus-

14. Starry abstractions do not make sense except in the context of concrete facts. That is why we agree with the propositions of law urged by Dr. Ghatate but disagree with the distress and discrimination his client wails about. True, confronted with cruel conditions of confinement, the Court has an expanded role. True, the right to life is more than mere animal existence, or vegetable subsistence (Mohammed Giasuddin v. State of Andhra Pradesh, 1978 (1) SCR 153: (AIR 1977 SC 1926). True, the worth of the human person and dignity and divinity of every individual inform Arts.19 and 21 even in a prison setting. True, constitutional provisions and municipal laws must be interpreted in the light of the normative laws of nations, wherever possible and a prisoner does not forfeit his Part III rights. But what are the facts here?

15. Charles Sobraj is no longer an under trial, having to serve two sentences of long imprisonment. He is given all the amenities of 'B' class prisoner. He goes on hunger strike but

medical men take care of him. Ward I, where he is lodged, gives him the facilities of wards XIII and XIV where he wants to be moved. He has a record of one escape and one attempt at suicide and Interpol reports of many crimes abroad. There are several cases pending in India against him. Even so, the barbarity of bar fetters inflicted on him by a qualmless jail staff was abandoned under orders of this Court. Now, he seeks the other extreme of coddling as if a jail were a country club or good hotel. Give me finer foreigners as companions, he demands. Don't keep convict cooks and warders as jail mates in my cell, he rails. Remove me from a high security ward like Ward I to a more relaxed ward like Ward 14 or 13, he solicits. These delicate and genteel requests from a prisoner with his record and potential were turned down by the Superintendent and the reasons for such rejection, based on security, rules and allergy of other inmates to be his risky fellow inmates have been stated on oath. We cannot be critical of the Administration if it makes a classification between dangerous prisoners and ordinary prisoners. In the present case, the Superintendent swears, and it is undisputed, that the petitioner is not under solitary confinement. We further aver that a distinction between undertrials and convicts is reasonable and the petitioner is now a convict. In fact, lazy relaxation on security is professional risk inside a prison.

16. The Court must not rush in where the jailor fears to tread. While the country may not make the prison boss the sole sadistic arbiter of incarcerated humans, the community may be

in no mood to hand over central prisons to be run by courts.
Each instrumentality must function within its province....”

13. As held by the Apex court, prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Hence, they will not be able to enjoy all rights like a free citizen. When directions are given to the jail authorities it will have to be within the framework of the Jail Rules. Courts must be reluctant to intervene in the day-to-day operation of the State penal system as prisons cannot be run by courts as each instrumentality must function within its province. As pointed out by the learned Public Prosecutor, to implement the requests of such nature in the prisons in Kerala, necessary infrastructure will first have to be put in place. This is an area where a policy decision will have to be taken by the Government. It is well settled that in policy matters, courts generally do not intervene.

14. Having thus reminded myself of the contours of jurisdiction of this court, let me consider whether there are

provisions in the Rules presently in force to deal with the request of the applicant. I refer to Rule 258(13) of the Rules which says that prisoners are permitted to join educational courses through private, open universities or distance education subject to the availability of resources and infrastructure within the prison. I also refer to Rule 259 which says that if a prisoner expresses a desire to continue his studies in college for the purpose of completing a degree course, the Government may, under subsection (6) of Section 432 Cr.P.C, grant him a temporary release by suspending the execution of his sentence for such period as may be necessary for that purpose. Any rules made by the government in this regard shall also apply to such release. The aforesaid Rules still remain in the Statute book and as long as the said Rules have not been held to be unconstitutional or against the provisions of any law or Rules in force, there is no reason why the said Rules cannot be invoked by the convicts.

15. Coming to the case on hand, the applicant herein, a teacher, is alleged to have committed penetrative sexual assault on

few of his own students aged between 8 to 12. He was found guilty of the offences punishable under Sections 376 (2)(f) IPC and Section 5 (f) read with Section 6 and Section 9 (f) read with Section 10 of the Protection of Children from Sexual Offences Act, 2012 and has been convicted accordingly. This Court as per order dated 31/08/2021 in Crl.M.A.No.1 of 2021, dismissed his application for suspension of sentence taking into account the nature and gravity of the offences committed by him. But he still does not lose his right under Rules 258(13) or 259. That being the position, the applicant/accused can resort to any of the aforesaid remedies presently in force.

The application is disposed of accordingly.

Post on 02/12/2025.

Sd/-
C.S. SUDHA
JUDGE

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