CNR : KLHC010812692026

2026:KER:84411

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

WEDNESDAY, THE 4TH DAY OF NOVEMBER 2026 / 13TH KARTHIKA, 1948

CRL.MC NO. 8940 OF 2026

CRIME NO.54/2026 OF PAYYOLI POLICE STATION, KOZHIKODE AGAINST THE ORDER DATED 24.10.2026 IN CMP 5/2026 IN SC NO.414 OF 2026 OF FAST TRACK SPECIAL COURT, KOYILANDY

PETITIONER/RESPONDENT/ACCUSED:

ABDUL RAFEEK @ RAFEEK
AGED 51 YEARS
S/O. IBRAHIM HAJI, CHANGAROTH HOUSE,
MEMUNDA P.O., KOZHIKODE DISTRICT, PIN - 673104

BY ADVS.
SRI.SHARAN SHAHIER
SRI.P.VIJAYA BHANU (SR.)

RESPONDENTS/STATE & PETITIONER/VICTIM:

1 **STATE OF KERALA**
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031

2 **XXXXXXXXXX**
XXXXXXX XXXXXX

XXXXX
Addl.R3 **XXXXXXX XXXXXX**

(IS IMPLEADED AS PER ORDER DATED 02.11.2026 IN CRL.M.A.NO. 2/2026 IN CRL.M.C. NO. 8940/2026)

BY ADVS.
SHRI T. ASAF ALI, DIRECTOR GENERAL OF PROSECUTION - R1
SHRI MAAROOF- R2
SMT. K.K.PREETHA- ADDL.R3

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 02.11.2026, THE COURT ON 04.11.2026 PASSED THE FOLLOWING:

"C.R."

O R D E R

This Crl. M.C. has been filed challenging the order passed by the Fast Track Special Court, Koyilandy, in C.M.P. No. 5 of 2026 in S.C. No. 414 of 2026, whereby the bail granted to the petitioner, who is the first accused in the said case, was cancelled.

2. The petitioner is the first accused in Crime No. 54 of 2026 of Payyoli Police Station, Kozhikode, in which the final report has been filed alleging offences punishable under Sections 332(a), 49, 64(2)(m) and 65(2) read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short, 'the BNS'), and Section 6(1) read with Sections 5(l), 5(p) and 5(m), Section 12 read with Sections 11(iii) and 11(vi), and Section 16 read with Section 17 of the Protection of Children from Sexual Offences Act, 2012 (for short, 'the POCSO Act'). The case is now pending as S.C. No. 414 of 2026 on the file of the Fast Track Special Court, Koyilandy.

3. The crux of the prosecution's allegation is that the first accused committed aggravated penetrative sexual assault repeatedly upon a 9-year-old minor girl after showing her pornographic videos and offering her gifts. The mother of the victim, who allegedly facilitated and abetted the commission of the offence, has been arrayed as the second accused.

When the crime was registered, the petitioner was abroad and, therefore, could not be arrested during the investigation. Consequently, the final report was filed before the jurisdictional court showing the first accused as absconding. Upon submission of the final report, the learned Additional Sessions Judge made over the case to the Fast Track Special Court, Koyilandy, which took cognizance of the offences and issued summons to the petitioner. Pursuant to the summons, the petitioner appeared before the court and was enlarged on bail. The bail was granted mainly taking note of the fact that the petitioner had appeared in response to the summons issued by the court and that the final report had already been filed. Subsequently, the Circle Inspector of Police filed two applications before the Special Court. One was an application seeking further investigation, pointing out that certain material aspects of the case remained unexplored as the petitioner had remained abroad during the investigation. The other application sought cancellation of the bail granted to the petitioner, contending that his custodial interrogation is necessary to facilitate his potency examination, effect recovery of further evidence, and prevent the possibility of his absconding again. Upon considering the application and the materials placed on record, the learned Special Judge cancelled the bail granted to the petitioner. The said order is under challenge in this Crl. M.C.

4. Heard Sri. P. Vijayabhanu, the learned Senior Counsel for the petitioner, Sri. T. Asaf Ali, the learned Director General of Prosecution, Sri. Maaroof, who appeared for the survivor of this offence, and Smt. K. K. Preetha, the learned counsel for the additional third respondent.

5. The main contention advanced by the learned Senior Counsel for the petitioner is that the bail granted to the petitioner could not have been cancelled solely on the ground that further investigation was required in the case. According to the learned Senior Counsel, the cancellation of bail is unjustified, particularly in the absence of any material showing that the petitioner violated any of the conditions imposed while granting bail or otherwise misused the liberty granted to him. The learned Senior Counsel further submitted that the steps proposed to be undertaken as part of the further investigation, including the potency examination of the petitioner, recovery of his mobile phone and collection of other evidence, could be carried out without cancelling the bail, particularly when the petitioner is willing to cooperate with the investigation, undergo the potency examination and surrender the mobile phone used by him during the relevant period. Likewise, it was pointed out that the prompt appearance of the petitioner before the trial court immediately on getting summons itself rules out any possibility of his abscondance in the future. The learned senior counsel

further submitted that even if the prosecution entertains any apprehension regarding the chance of abscondance, the petitioner is willing to surrender his passport, if so directed by the court. Hence, the learned Senior Counsel contended that the petitioner could not be deprived of his liberty merely because the investigating agency proposes to undertake certain further investigative steps after the filing of the final report. On these premises, it was urged that the order passed by the learned Special Judge cancelling the bail granted to the petitioner warrants interference.

6. Per contra, the learned Director General of Prosecution submitted that the allegations in the case are extremely grave, involving the alleged penetrative sexual assault on a minor child aged only 9 years. The learned DGP pointed out that the petitioner had remained abroad throughout the investigation and, consequently, the investigating agency could not subject him to effective interrogation. According to the learned DGP, several vital pieces of evidence are yet to be collected, including the mobile phones used by the accused. It was further pointed out that the victim was allegedly taken to different places and subjected to repeated sexual assaults and that the places to which she was taken also had to be identified through a detailed interrogation of the accused. The learned DGP urged that these aspects of the investigation could be effectively pursued only by subjecting

the accused to custodial interrogation after cancelling the bail granted to him. The learned DGP further contended that directing the accused to produce his mobile phones by issuing a summons under Section 94 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, 'the BNSS'), corresponding to Section 91 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.'), would amount to testimonial compulsion and would certainly violate Article 20(3) of the Constitution of India, particularly when the prosecution has a specific case that the mobile phones contain incriminating material against the accused. Hence, according to the learned DGP, the order passed by the learned Special Judge cancelling the bail to facilitate further investigation is justified and warrants no interference.

7. The learned counsel appearing for the survivor and the additional third respondent also advanced arguments in support of the submissions made by the learned DGP.

8. At the outset, it is to be borne in mind that the considerations governing the grant of bail and those governing its cancellation are not identical. An order cancelling bail cannot be passed mechanically merely on the ground that the investigating agency proposes to conduct further investigation. Ordinarily, cancellation of bail may be justified by compelling circumstances, such as the accused tampering with evidence, intimidating

witnesses, misusing the liberty granted to him or otherwise acting in a manner that would prejudice the fair conduct of the investigation or trial.

9. In **Dolat Ram and others v. State of Haryana**, [(1995) 1 SCC 349], the Hon'ble Supreme Court explained the distinction between rejection of bail and cancellation of bail and observed that very cogent and overwhelming circumstances are necessary for cancelling bail already granted. However, the Court also recognised that the possibility of the accused absconding or evading the due course of justice is also a relevant consideration. Likewise, in **Puran v. Rambilas**, [(2001) 6 SCC 338], the Hon'ble Supreme Court made it clear that an order granting bail passed by ignoring material and evidence on record, particularly in heinous crimes and without assigning proper reasons, could be set aside as perverse.

10. Therefore, it cannot be said that the power to cancel bail is confined only to cases where the accused has subsequently misused the liberty granted to him or violated the conditions of bail. In the present case, the investigating agency sought cancellation of bail on the ground that such cancellation is highly necessary for conducting a full-fledged and effective investigation. According to the investigating agency, since the accused had remained abroad throughout the initial stage of the investigation, an effective investigation could not be conducted, and certain vital pieces of

evidence are yet to be collected. The prosecution further highlighted that the victim-minor-girl was taken to different places and, therefore, the circumstances in which she was taken, the persons who facilitated the same, the places where the alleged acts occurred, and other surrounding circumstances required careful investigation.

11. Although the learned Senior Counsel for the petitioner opposed this contention by submitting that, even according to the version of the victim, she was subjected to sexual assault only at two places, and that the contention regarding the need to investigate other locations to which the victim was allegedly taken was merely a ruse to cancel the bail, this court is unable to accept the said contention. Having regard to the victim's tender age, it would be unsafe at this stage to assume that the available account necessarily provides an exhaustive description of every place to which she was allegedly taken. The investigating agency has to undertake the necessary steps to verify the circumstances and identify the relevant locations, in accordance with law. At this juncture, it is pertinent to note that the mother of the victim is also an accused in the present case. The ordeal and plight of a minor girl who was allegedly sexually exploited by the petitioner with the help of her mother cannot go unnoticed. Therefore, the identification of the places, preparation of site plans and mahazars, and

examination of persons connected with those locations cannot be treated as merely formal or inconsequential. The investigating agency is entitled to explore the relevant circumstances and collect further evidence, subject to the limitations imposed by law.

12. Having regard to the nature of the offences alleged and the fact that the accused had remained abroad throughout the investigation without cooperating with the investigating agency, this Court is of the view that custodial interrogation of the petitioner during the course of further investigation is highly necessary. The investigating agency cannot be deprived of a legitimate opportunity to undertake effective interrogation merely because the accused expressed a willingness to cooperate with the investigation. This Court is not oblivious to the fact that the investigating agency can question the accused even while he is on bail. However, questioning an accused who enjoys the protection of an order of bail and subjecting him to custodial interrogation are not equivalent. The distinction lies in the degree of control available to the investigating agency and its ability to undertake effective interrogation, confrontation and investigation into matters that may lead to the discovery of relevant facts and materials.

13. In **Central Bureau of Investigation v. Anil Sharma**, [(1997) 7 SCC 187], the Hon'ble Supreme Court observed that custodial

interrogation is qualitatively different from questioning a person who is protected by an order of anticipatory bail. The Court emphasised that effective interrogation may be necessary to elicit information and discover materials that might otherwise remain concealed. Though the said decision arose in the context of anticipatory bail, the underlying distinction between ordinary questioning and custodial interrogation is relevant while considering the necessity of custodial interrogation in the facts of the present case.

14. From the impugned order as well as the submissions made by the learned DGP, it is discernible that one of the main steps to be undertaken in the further investigation is the recovery of the mobile phones allegedly used by the accused in the commission of the offence. There is a specific allegation that the accused had shown pornographic videos to the victim, a minor girl, taken her to different places, and sexually assaulted her. Undisputedly, the recovery of the mobile phones is of vital significance in this case.

15. Now, the crucial question that arises for consideration is whether the accused can be directed to produce the said mobile phones by issuing a summons or written order under Section 94 of the BNSS, which corresponds to Section 91 of the Cr.P.C. Section 94(1) of the BNSS empowers a Court or the officer in charge of a police station to require the production of any

document or other thing considered necessary or desirable for the purpose of an investigation, inquiry, trial or other proceedings. However, the power to issue such a summons or notice for facilitating the production of a document or thing is subject to the protection guaranteed under Article 20(3) of the Constitution of India, which declares that no person accused of any offence shall be compelled to be a witness against himself.

16. In **State of Bombay v. Kathi Kalu Oghad**, [AIR 1961 SC 1808], the Hon'ble Supreme Court has clearly distinguished testimonial evidence from physical or medical evidence and held that obtaining physical or medical evidence, which does not involve compelling a person to furnish testimonial evidence, would not attract the constitutional prohibition against testimonial compulsion. Therefore, a direction to undergo a potency test, provide a voice sample or furnish fingerprints, being measures intended to obtain physical or medical evidence rather than testimonial evidence, would not amount to testimonial compulsion and, by itself, would not violate the protection guaranteed under Article 20(3) of the Constitution of India.

17. In **State of Gujarat v. Shyamlal Mohanlal Choksi**, [AIR 1965 SC 1251], the Hon’ble Supreme Court examined whether an accused person could be directed to produce documents under Section 94(1) of the Cr.P.C. The majority held that Section 94(1), on its true construction, did not apply

to an accused person. The expression employed in the provision could not be interpreted as authorising the compulsory production of documents by the accused himself. The Court considered the statutory scheme, the consequences of non-compliance with a production order and the constitutional protection against self-incrimination, and concluded that the legislature did not intend to include an accused within the scope of the provision for compelling production. In paragraphs 17, 18 and 19 of the said judgment, it was observed that;

> *"17. It was for the first time by the Constitution under Art.20(3), that a limited protection has been conferred upon a person charged with the commission of an offence against self-incrimination by affording him protection against testimonial compulsion. The fact that in certain provisions like Ss. 161, 175, 342 and 343 of the Code of Criminal Procedure limited protection it the matter of answering questions which might tend to incriminate or expose him to a criminal charge or to penalty or forfeiture has been granted, may indicate that in the interpretation of other provisions of the Code, an assumption that the protection against self-incrimination was implicit has no place.*
>
> *18. Failure to comply with an order under S.94 of the Code of Criminal Procedure may undoubtedly expose a person to penal action under S.485 of the Code, and he may be prosecuted under S.175 of the Indian Penal Code. In my judgment, refusal to produce a document or thing on the ground that the protection guaranteed by Art.20(3) would since the enactment of the Constitution be infringed thereby would be a reasonable excuse for non-production within the meaning of S.485 of the Code of Criminal Procedure and an order which is in violation of Art.20(3) requiring the person to produce a document would not be regarded as lawful within the meaning of S.195 of the Indian Penal Code. But, apart from the protection conferred by Art.20(3), there is no reservation which has to be implied in the application of S.94(1).*
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> *19. ……..Whether in a given case the guarantee of protection against testimonial compulsion under Art.20(3) is infringed by an order of a Court acting in exercise of power conferred by S.94(1) must depend upon the nature of the document ordered to be produced. If by summoning a person who is accused before the Court to produce documents or things*

> *he is compelled to be a witness against himself, the summons and all proceedings taken thereon by order of the Court will be void. This protection must undoubtedly be made effective but within the sphere delimited by the judgment of this Court in Kathi Kalu Oghad's case. It needs, however, to be affirmed that the protection against what is called testimonial compulsion under Art.20(3) is against proceedings in Court; it does not apply to orders which may be made by a police officer in the course of investigation. The Court cannot, therefore, be called upon to consider whether the action of a police officer calling upon a person charged with the commission of an offence to produce a document or thing in his possession infringes the guarantee under Art.20(3) of the Constitution."*

18. Likewise, in **V. S. Kuttan Pillai v. Ramakrishnan and Another**, [(1980) 1 SCC 264], the Hon'ble Supreme Court considered the scope of Section 91(1) of the Cr.P.C. in the light of Shyamlal Mohanlal Choksi (cited supra). The Court reiterated that a summons requiring production of a document or thing under Section 91(1) cannot be issued against a person accused of an offence. The Court also considered the distinction between compelling an accused to produce documents and obtaining documents through a search conducted in accordance with the statutory provisions. A search warrant issued under Section 93 of the Cr.P.C. stands on a different footing from a summons requiring the accused personally to produce documents. Consequently, the prohibition against compelled production by an accused does not invalidate the independent statutory powers of search and seizure.

19. Similarly, in **Gopalakrishnan Nayanar v. Sasidharan Nambiar,** [1996 KHC 21], the Hon'ble Division Bench of this Court

considered whether a person against whom allegations of an offence had been made in a complaint could be directed to produce documents under Section 91 of the Cr.P.C. while an inquiry under Section 202 Cr.P.C. was pending. The Court held that a person against whom offences are alleged in a complaint is an accused person notwithstanding the fact that the inquiry contemplated under Section 202 of the Cr.P.C. has not been completed. Therefore, an order under Section 91 Cr.PC. cannot be issued against such a person.

20. In **Kurian v. Joseph and Others**, [2021 (2) KHC 124], this Court considered whether the complainant could invoke Section 91(1) Cr.P.C. to require the accused to produce the original sale deed before the Court. Following Shyamlal Mohanlal Choksi and the Division Bench decision in Gopalakrishnan Nayanar (cited supra), the Court held that a direction under Section 91(1) of the Cr.P.C. could not be issued to an accused for production of an incriminating document. The Court further observed that, where the statutory requirements were satisfied, a general search warrant under Section 93(1)(c) of Cr.PC. could be issued for obtaining the document. The Court referred in this context to V. S. Kuttan Pillai v. Ramakrishnan (cited supra) and Jayadeva Panicker v. Velayudhan, [1986 KLT 1303]. The judgment maintains the distinction between compulsory production by the

accused and lawful recovery of documents through other statutory procedures.

21. In **Rajesh T.K. v. State of Kerala**, [2023 KHC OnLine 9993], this Court examined the validity of notices issued to accused persons under Section 91 of the Cr.P.C. Referring to V. S. Kuttan Pillai (cited supra) and the earlier Hon'ble Supreme Court decisions, this Court reiterated that the expression person in Section 91(1) does not include a person accused of an offence for the purpose of compelling production of documents or things. Compelling an accused to produce documents through such a notice would be contrary to the statutory interpretation adopted by the Hon'ble Supreme Court and the constitutional protection against testimonial self-incrimination. In paragraph 5 of the said judgment, it was observed that;

> "5. *In these cases, the challenge is against the notice issued under S.91 of the Code to the accused. The Apex Court in V. S. Kuttan Pillai v. Ramakrishnan and Others (1980) 1 SCC 264, after referring to the law laid down in Shyamlal Mohanlal v. State of Gujarat (AIR 1965 SC 1251), M. P. Sharma and Others v. Satish Chandra, District Magistrate, Delhi and Others (AIR 1954 SC 300), Swarnalingam Chettiar v. Assistant Inspector of Labour, Karaikudi (AIR 1955 Mad. 716), State of Bombay v. Kathi Kalu Oghad and Others (AIR 1961 SC 1808) have concluded that it is indisputable that the expression "person" in S.91(1) does not take within its sweep a person accused of an offense. In other words, a summons issued to an accused person to produce a thing or document considered necessary or desirable for the purpose of an investigation, inquiry or trial would imply compulsion, and the document or thing so produced would be compelled testimony and would be violative of the constitutional immunity against self-incrimination."*

22. In view of the authoritative pronouncements of the Hon'ble Supreme Court and this Court, it is evident that Section 94(1) of the BNSS, which corresponds to Section 91(1) of the Cr.P.C., cannot be invoked to compel an accused to produce documents or other things which would incriminate him, for an investigation, inquiry or trial.

23. The principles laid down in Shyamlal and V.S. Kuttan Pillai (cited supra) have consistently been followed by this Court and, therefore, continue to govern the interpretation of Section 94 of the BNSS. It is true that the mere production of a physical object does not invariably amount to testimonial compulsion. However, when the investigating agency seeks to compel the accused to produce his mobile phone, particularly when it is alleged to contain incriminating materials against him, such compulsion would violate the protection guaranteed under Article 20(3) of the Constitution of India.

24. Therefore, I am of the view that the investigating agency cannot compel the accused to produce the mobile phone by resorting to Section 94 of the BNSS. In the circumstances of the present case, custodial interrogation of the accused assumes significance, particularly to ascertain how many mobile phones were used by him, when the prosecution has a specific case that he had been using several mobile phones, and to facilitate

the recovery of the same. As already stated, the prosecution has a grievance that the investigating agency was handicapped in conducting an effective investigation as the accused remained abroad throughout the investigation. According to the prosecution, several material aspects concerning the circumstances in which the minor victim was taken to different places and subjected to sexual assault remain to be investigated.

25. The willingness expressed by the learned Senior Counsel for the petitioner to produce one mobile phone would not, by itself, establish that custodial interrogation of the petitioner is unnecessary. In the present case, the learned DGP submitted that the petitioner had been using several mobile phones and that the production of one of them would not suffice for the purpose of the investigation. Moreover, the further investigation in this case does not appear to be confined to obtaining possession of the mobile phone. Its object is also to ascertain the circumstances surrounding the alleged commission of the offences and to collect all relevant evidence in accordance with law. More importantly, the prosecution has pointed out that the places to which the minor victim was allegedly taken have to be identified and investigated.

26. Having regard to all these circumstances, I am of the view that this is a case in which custodial interrogation of the petitioner is highly

warranted to facilitate an effective further investigation and to unearth the relevant facts and circumstances involved in this case. Hence, I find no illegality or impropriety in the order passed by the learned Special Judge cancelling the bail granted to the petitioner.

Resultantly, this Crl. M.C. fails and is accordingly dismissed.

Sd/-
JOBIN SEBASTIAN
JUDGE

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APPENDIX OF CRL.MC NO. 8940 OF 2026

Annexure 1	**A TRUE COPY OF THE FINAL REPORT IN CRIME NO.54/2026 DATED 15.06.2026**
Annexure 2	**A TRUE COPY OF THE ORDER IN C.M.P. NO. 3 OF 2026, IN SC 414/2026 DATED 29/9/2026 PASSED BEFORE THE FAST TRACK SPECIAL COURT KOYILANDY**
Annexure 3	**A TRUE COPY OF C.M.P. NO. 4 OF 2026 IN SC 414/2026 FILED BY THE C I OF POLICE KOYILANDY DATED 5/10/2026 FILED BEFORE THE FAST TRACK SPECIAL COURT KOYILANDY**
Annexure 4	**A TRUE COPY OF C.M.P. NO. 5 OF 2026 IN SC 414/2026 FILED BY THE C I OF POLICE KOYILANDY DATED 5/10/2026 FILED BEFORE THE FAST TRACK SPECIAL COURT KOYILANDY**
Annexure 5	**A TRUE COPY OF THE COUNTER STATEMENT FILED BY THE PETITIONER IN C.M.P. NO. 4 OF 2026 & C.M.P. NO. 5 OF 2026 IN SC 414/2026 DATED 12/10/2026 FILED BEFORE THE FAST TRACK SPECIAL COURT KOYILANDY**
Annexure 6	**A FREE COPY OF THE ORDER DATED 24.10.2026 IN C.M.P. NO. 5 OF 2026 IN SC NO. 414/2026 PASSED BY THE FAST TRACK SPECIAL COURT KOYILANDY**
Annexure 7	**A TRUE COPY OF THE ENDORSEMENT ON THE PASSPORT SHOWING EXIT ON 14.01.2026**
Annexure 8	**A TRUE COPY OF THE FLIGHT TICKET OF THE PETITIONER FOR 14.01.2026**
Annexure A9	**A TRUE COPY OF THE E-MAIL DATED 28.10.2026, ALONG WITH THE ORDER**

RESPONDENT ANNEXURES

ANNEXURE R1(A)	**TRUE COPY OF ORDER IN BA.1911 OF 2026**
ANNEXURE R1(B)	**TRUE COPY OF THE REPORT**
ANNEXURE R1(C)	**TRUE COPY OF WARRANT DATED 09.06.2026**
ANNEXURE R1(D)	**TRUE COPY OF THE LOOKOUT NOTICE**

ANNEXURE R1(E)	**TRUE COPY OF THE STATEMENT OF VICTIM**
ANNEXURE R1(F)	**TRUE COPY OF STATEMENT OF DOCTOR YUMNAPAREEKUTTY DATED 26.10.2026**
ANNEXURE R1(G)	**TRUE COPY OF STATEMENT RECORDED UNDER SECTION 183 OF BNSS**