



2026:KER:20618

:1:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 9TH DAY OF MARCH 2026 / 18TH PHALGUNA, 1947

BAIL APPL. NO. 14647 OF 2025

CRIME NO.1087/2025 OF Kuttipuram Police Station, Malappuram

AGAINST THE ORDER DATED 12/12/2025 IN CRMC NO.1362 OF
2025 OF SESSIONS COURT, MANJERI

PETITIONER/4th ACCUSED:

VINEESH
AGED 39 YEARS
S/O VELAYUDHAN, ERAKATH
HOUSE, AYANKALAM, THAVANUR, MALAPPURAM DIST, PIN -
679573

BY ADVS.
SRI.M.DEVESH
SRI.M.ANUROOP
SHRI.MURSHID ALI M.
SMT.JYOTHIS MARY
SMT.S.K.SREELAKSHMY

RESPONDENT/DEFACTO COMPLAINANT:

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

SRI.K.A.NOUSHAD SR.PP.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.02.2026, ALONG WITH Bail Appl.567/2026 AND CONNECTED CASES,
THE COURT ON 09.03.2026 DELIVERED THE FOLLOWING:



2026:KER:20618

:2:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 9TH DAY OF MARCH 2026 / 18TH PHALGUNA, 1947

BAIL APPL. NO. 567 OF 2026

CRIME NO.44/2026 OF Vazhakkad Police Station, Malappuram

PETITIONER/ACCUSED:

FASALURAHMAN T K
AGED 39 YEARS
S/O ABBAS, THEKKINIYAKATH, MUNDUMUZHI, VAZHAKKAD,
MALAPPURAM DISTRICT., PIN - 673640

BY ADVS.
SRI.P.SAMSUDIN
SHRI.JASNEED JAMAL
SMT.LIRA A.B.
SMT.DEVIKA E.D.

RESPONDENT/STATE:

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

SRI.K.A.NOUSHAD, SR PP.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.02.2026, ALONG WITH Bail Appl. 14647/2025 AND CONNECTED
CASES, THE COURT ON 09.03.2026 DELIVERED THE FOLLOWING:



2026:KER:20618

:3:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 9TH DAY OF MARCH 2026 / 18TH PHALGUNA, 1947

BAIL APPL. NO. 757 OF 2026

CRIME NO.696/2025 OF Kalpakanchery Police Station, Malappuram

PETITIONER/ACCUSED:

AYOOB A ,
AGED 37 YEARS
S/O: HAMZA A, ALUNGAL HO, KADANANGADI, THIRUNAVAYA,
MALAPPURAM, KERALA, PIN - 676301

BY ADVS.
SHRI.SADIQALI. M
SMT.NAJIYA NAZRIN P.N.
SMT.SANDRANAD C. S.
SMT.AMISHA RAJESH V.
SHRI.MOHAMED SHAFI M.

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY STATION HOUSE OFFICER KALPAKANCHERRY
POLICE STATION, MALAPPURAM, PIN - 682031

BY ADV.K.A.NOUSHAD, SR PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
17.02.2026, ALONG WITH Bail Appl. 14647/2025 AND CONNECTED
CASES, THE COURT ON 09.03.2026 DELIVERED THE FOLLOWING:



2026:KER:20618

:4:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 9TH DAY OF MARCH 2026 / 18TH PHALGUNA, 1947

BAIL APPL. NO. 14165 OF 2025

CRIME NO.983/2025 OF Kuttipuram Police Station, Malappuram

PETITIONER/ACCUSED NO.2:

HABEEB RAHMAN,
AGED 32 YEARS
S/O.MAMMUKKUTTY, AREKKATTU PARAMBIL HOUSE,
THRIKKANNAPURAM POST, THAVANUR, MALAPPURAM, PIN -
679573

BY ADVS.
SHRI.NEERAJ KRISHNA KUMAR
SMT.HASNA JABIL

RESPONDENT/STATE:

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

SRI.K.A.NOUSHAD, SR PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
18.02.2026, ALONG WITH Bail Appl. 14647/2025 AND CONNECTED
CASES, THE COURT ON 09.03.2026 DELIVERED THE FOLLOWING:



2026:KER:20618

:5:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 9TH DAY OF MARCH 2026 / 18TH PHALGUNA, 1947

BAIL APPL. NO. 14273 OF 2025

CRIME NO.1039/2025 OF Mukkom Police Station, Kozhikode

Bail Appl. NO.12996 OF 2025 OF HIGH COURT OF KERALA

PETITIONER/2ND ACCUSED:

NAJAD MON. N
AGED 32 YEARS
S/O RAYIN KUTTY, THAYATHAYIL HOUSE,
KUNIYILKIZHUPARAMB P.O., AREACODE, MALAPPURAM
DISTRICT, PIN - 673639

BY ADVS.
SRI.NAVANEETH.N.NATH
SMT.ABHIRAMI S.
SHRI.ABDUL LATHEEF P.M.

RESPONDENTS:

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

BY ADV.SRI.M.C.ASHI, SR. PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.02.2026, ALONG WITH Bail Appl. 14647/2025 AND CONNECTED
CASES, THE COURT ON 09.03.2026 DELIVERED THE FOLLOWING:



2026:KER:20618

:6:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 9TH DAY OF MARCH 2026 / 18TH PHALGUNA, 1947

BAIL APPL. NO. 14311 OF 2025

CRIME NO.1038/2025 OF Kuttipuram Police Station, Malappuram
AGAINST THE ORDER DATED 03.11.2025 IN Bail Appl.
NO.13213 OF 2025 OF HIGH COURT OF KERALA

PETITIONER/ACCUSED NO.2:

MOHAMED FAZIL M,
AGED 35 YEARS
SON OF ABU, MELETHIL HOUSE, RANGATTOOR, NADUVATTOM,
MALAPPURAM, PIN - 679571

BY ADVS.
SRI.P.M.ZIRAJ
SHRI.IRFAN ZIRAJ

RESPONDENT/COMPLAINANT:

- 1 STATE OF KERALA
REP. BY PUBLIC PROSECUTOR, HONOURABLE HIGH COURT OF
KERALA AT ERNAKULAM, PIN - 682031
- 2 THE SUB INSPECTOR OF POLICE
KUTTIPURAM POLICE STATION,
MALAPPURAM DISTRICT, PIN - 679571

BY SRI.M.C.ASHI, SR PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.02.2026, ALONG WITH Bail Appl. 14647/2025 AND CONNECTED
CASES, THE COURT ON 09.03.2026 DELIVERED THE FOLLOWING:



2026:KER:20618

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 9TH DAY OF MARCH 2026 / 18TH PHALGUNA, 1947

BAIL APPL. NO. 14315 OF 2025

CRIME NO.1038/2025 OF Kuttipuram Police Station, Malappuram

AGAINST THE ORDER DATED 03.11.2025 IN Bail Appl.
NO.13216 OF 2025 OF HIGH COURT OF KERALA

PETITIONER/ACCUSED NO.1:

MOHAMMED THASNEEM,
AGED 30 YEARS
SON OF MOIDEENKUTTY M, MELETHIL, NADUVATTOM P.O.,
MALAPPURAM, PIN - 676571

BY ADVS.
SRI.P.M.ZIRAJ
SHRI.IRFAN ZIRAJ

RESPONDENT/COMPLAINANT:

- 1 STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR, HONOURABLE HIGH COURT OF
KERALA AT ERNAKULAM, PIN - 682031
- 2 THE SUB INSPECTOR OF POLICE,
KUTTIPIRAM POLICE STATION,
MALAPPURAM DISTRICT, PIN - 679571

BY SRI.K.M.NOUSHAD, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.02.2026, ALONG WITH Bail Appl. 14647/2025 AND CONNECTED
CASES, THE COURT ON 09.03.2026 DELIVERED THE FOLLOWING:



2026:KER:20618

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 9TH DAY OF MARCH 2026 / 18TH PHALGUNA, 1947

BAIL APPL. NO. 14502 OF 2025

CRIME NO.875/2025 OF Vazhakkad Police Station, Malappuram

PETITIONER/ACCUSED:

MUHAMMED HISHAM,
AGED 20 YEARS
S/O KOYAKUTTY C, CHELA KANNI HOUSEVAZHAYUR EAST
(PO), ,MALAPPURAM DISTRICT, PIN - 673633

BY ADVS.
SRI.JAMSHEED HAFIZ
SMT.T.S.SREEKUTTY
SMT.FATHIMA NASREEN S.

RESPONDENT/STATE:

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

SRI.M.C.ASHI, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.02.2026, ALONG WITH Bail Appl. 14647/2025 AND CONNECTED
CASES, THE COURT ON 09.03.2026 DELIVERED THE FOLLOWING:



2026:KER:20618

:9:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

MONDAY, THE 9TH DAY OF MARCH 2026 / 18TH PHALGUNA, 1947

BAIL APPL. NO. 14503 OF 2025

(CRIME NO.875/2025 OF VAZHAKKAD POLICE STATION, MALAPPURAM

PETITIONER/ACCUSED:

MANSOOR K.T
AGED 35 YEARS
S/O MUHAMMEDKOYA, EDAPPOTHIL VEEDU, KAYALAM P.O,
MAVOOR, KOZHIKODE DISTRICT, PIN - 673661

BY ADVS.
SRI.JAMSHEED HAFIZ
SMT.T.S.SREEKUTTY
SMT.FATHIMA NASREEN S.

RESPONDENT/STATE:

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

SRI.M.C.ASHI, SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
11.02.2026, ALONG WITH Bail Appl. 14647/2025 AND CONNECTED
CASES, THE COURT ON 09.03.2026 DELIVERED THE FOLLOWING:



:10:

"C.R."

ORDER

[Bail Appl. Nos.14647/2025, 567/2026, 757/2026,
14165/2025, 14273/2025, 14311/2025, 14315/2025,
14502/2025, 14503/2025]

The central issue in this batch of pre-arrest bail applications is whether an offence under Sections 303(2) or 305(e) of Bharatiya Nyaya Sanhita, 2023, relating to theft, can be invoked for the illegal removal or transportation of river sand when the very same act is charged under Sections 20 and 23 of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001.

2. The issue was, in fact, answered in the negative by three Single Benches of this Court - ***Mohammed Noufal v. State of Kerala***, [2021 SCC OnLine Ker 5858], ***Mohammed Salih v. State of Kerala*** (BA No.7522/2024 dated 1/10/2024) and ***Sirajudheen K.K. v. State of Kerala and Another*** (BA No.6548/2025 dated 2/6/2025). The first among the three orders (***Mohammed Noufal***) was rendered by me. It was held that when there is special law covering the question of theft of river sand, the offence under Section 379 of the IPC, which is non-bailable in nature, would not get attracted. It was followed in the subsequent two orders - ***Mohammed Salih*** (supra) and ***Sirajudheen K.K*** (supra).



3. The learned Senior Public Prosecutor, Sri. M. C. Ashi, at the outset, submitted that all the above three orders are *per incuriam*, as they were rendered without noticing the relevant provisions in Section 22 of the Sand Act and the binding precedent of the Supreme Court on the point, and thus have no binding effect. In view of the said submission, I directed the learned counsel for the applicants as well as the learned Public Prosecutors who are appearing for the State to advance arguments in detail.

4. Heard the learned counsel for the applicants and the learned Senior Public Prosecutors in extenso.

5. The prosecution allegation in all the crimes against the applicants is that they transported river sand belonging to the Government without complying with the provisions of the Kerala Protection of River Banks and Regulation of Removal of Sand Act, 2001 (for short, 'the Sand Act'). Accordingly, they were prosecuted for the offences punishable under Sections 20 and 23 of the Sand Act, as well as under Section 303(2)/305(e) of the Bharatiya Nyaya Sanhita, 2023 (for short, 'the BNS'). The learned counsel for the applicants argued that the applicants were wrongly charged for the offence under 303(2)/305(e) of BNS, as at best there was a violation of Section 23 of the Sand Act, which is punishable under Section 20 thereof. The learned counsel further argued that the Sand Act,



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being a special statute regulating the removal of river sand, prosecution for an offence under Section 303(2) or 305(e) of the BNS is not maintainable. According to the learned counsel, where there is a special statute dealing with a special subject, resort cannot be taken to a general statute. Since the offence under Section 23 r/w Section 20 of the Sand Act is bailable in nature, and the offence under Section 303(2)/305(e) of BNS is not maintainable, the applicants are entitled to pre-arrest bail, submitted the counsel. Reliance was placed on *Mohammed Noufal* (supra), *Mohammed Salih* (supra) and *Sirajudheen* (supra). On the other hand, the learned Public Prosecutors argued that the offence under Section 23 r/w Section 20 of the Sand Act is different from the offence under Section 303(2) or 305(e) of the BNS, and hence initiation of prosecution for the offence under the BNS in addition to the offence under the Sand Act is not barred. The learned Public Prosecutors further argued that Section 22 of the Sand Act specifically permits the prosecution under any other law for any act or omission made punishable under the Sand Act. On facts, the learned Public Prosecutors submitted that the alleged incident occurred as a part of the intentional criminal acts of the applicants, and if they are released on bail at this stage, it will affect the course of the investigation. In support of the submissions, the learned Public



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Prosecutors relied on the judgments of the Supreme Court in *State (NCT of Delhi) v. Sanjay* [(2014) 9 SCC 772], *State of Maharashtra and Another v. Sayyed Hassan Sayyed Subhan and Others* [(2019) 18 SCC 145], *Kanwar Pal Singh v. State of Uttar Pradesh and Another* [(2020) 14 SCC 331], *Jayant v. State of Madhya Pradesh* [(2021) 2 SCC 670] and that of this Court in *Shihad M.P. v. State of Kerala* (2023 (7) KHC 571).

6. The Sand Act was brought in to protect riverbanks and river beds from large-scale dredging of river sand, to protect their biophysical environment system, regulate the removal of river sand and for matters connected therewith or incidental thereto. The Preamble to the Act pointedly shows that the ultimate object sought to be achieved and the requirement that ought not to fail is to provide regulatory measures as part of environmental management. Section 20 of the Sand Act provides the penalty for contravention of the provisions of the Act or the Rules made thereunder. Section 21 provides the penalty for abetment of any offence punishable under the Act. Section 22 provides that nothing in the Act shall prevent any person from being prosecuted under any other law, for the time being in force, for any act or omission made punishable under the Act. Taking cognisance of any offence punishable under the Sand Act stands governed by Section 25,



which says that the Court can take cognisance of the offence either on a police report under Section 173(2) of Cr.P.C (Section 193(3) of BNSS) or upon a written complaint by an officer referred to in Section 23 of the Sand Act or by a Geologist.

7. There cannot be any doubt that the same set of facts can constitute offences under two different statutes. An act or an omission can amount to and constitute an offence under the BNS/IPC and at the same time an offence under any other law. Section 26 of the General Clauses Act, 1897 dictates that where an act or omission constitutes an offence under two or more enactments, the offender may be prosecuted and punished under any one of them. However, the person shall not be punished twice for the same offence. The Supreme Court in ***State of Rajasthan v. Hat Singh and Others*** [(2003) 2 SCC 152] discussed Section 26 of the General Clauses Act and the doctrine of double jeopardy, to observe that prosecution under the two Acts is permissible if the ingredients of the provisions are satisfied on the same facts. While considering a dispute about the prosecution of the respondent therein for offences under the Mines and Minerals (Development and Regulation) Act, 1957 (for short, 'the MMDR Act') and the IPC, the Supreme Court in ***Sanjay*** (supra) held that there is no bar in prosecuting the persons under the IPC where the offences



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committed by persons are penal and cognizable. There, the challenge to the prosecution on the ground that there can be no multiplicity of offences under the different enactments was resolved and answered by relying on Section 26 of the General Clauses Act. The Supreme Court, taking the view that offences under the IPC and the offences under the MMDR Act are distinct and different, held that it is permissible to lodge/initiate the proceedings for the offences under the IPC as well as under the MMDR Act together. In *Kanwar Pal Singh* (supra), the Supreme Court, following *Sanjay* (supra) and relying on Section 26 of the General Clauses Act, held that since the ingredients constituting offences under the MMDR Act and Sections 378 and 379 of the IPC are different, prosecution under both the enactments is permissible. In *Jayant* (supra), the Supreme Court considered the question whether the provisions of the MMDR Act explicitly or impliedly exclude the provisions of the IPC when the act of an accused is an offence both under the IPC and under the provisions of the MMDR Act. The Supreme Court also considered the question whether once the proceedings have been compounded under the MMDR Act, further proceedings under the IPC would lie. It was held that the offences under the MMDR Act or any Rule made thereunder and offences under the IPC are different and distinct offences, and hence the criminal proceedings for the



offences under Section 379/414 of the IPC can be proceeded further in a case where the violator is permitted to compound the offences under the MMDR Act on payment of penalty. In *Sayyed Hassan* (supra), the Supreme Court interpreting Section 55 of the Food and Safety Standards Act, 2006 (for short, 'the FSS Act') that provides for a penalty to be imposed for noncompliance with the requirements of the Act, Rules or Regulations or Orders issued thereunder by the Food Safety Officer held that non compliance of the provisions of the Act or Rules or Regulations or Orders cannot in any manner interdict a prosecution under the IPC in the absence of same being expressly or impliedly barred. The view taken by the High Court that prosecution under the IPC is barred was reversed by the Supreme Court in that case. The argument that Section 55 of the FSS Act was a specific provision made in a special enactment and therefore prosecution could not have been laid under the IPC was rejected. The finding of the High Court in that case that Section 55 of the FSS Act is the only provision that can be resorted to for non-compliance with the orders passed under the FSS Act, as the same was a special enactment, was also rejected. Relying on *Sayyed Hassan* (supra), this court in *Shihad* (supra) held that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties. It was further held



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that there is no bar to a trial or conviction of an offender under two different enactments, but the bar is only to the punishment of the offender twice for the offence.

8. The contention of the learned counsel for the applicants that where there is a special Act dealing with a special subject, resort cannot be taken to General Act has no force in view of the ratio in *Sanjay* (supra), referring to Section 26 of the General Clauses Act, that the offence under Section 4 r/w Section 21 of MMDR Act is different from the offence under Section 379 of the IPC and thus they are two 'different' and not the 'same offence'. Here also, the facts are identical. A cursory comparison of Section 23 r/w Section 20 of the Sand Act with Section 303(2)/305(e) of the BNS also would show that they are not the same offence and the ingredients are totally different. Section 23 of the Sand Act puts a restriction in removing sand from any Kadavu or transporting sand therefrom without complying with the provisions of the Sand Act or the Rules made thereunder. Section 20 of the Sand Act is a penal provision according to which whoever contravenes any of the provisions of the Sand Act or Rules made thereunder shall be punished with imprisonment for a term or with fine. The contravention of Section 23 of the Sand Act or Rules made thereunder constitutes an offence punishable under Section 20 of



the Sand Act, whereas dishonestly removing sand from the river, which is the property of the Government or local authority, out of their possession, without the consent constitute an offence of theft under Section 303(2) or 305(e) of the BNS. As stated already, Section 26 of the General Clauses Act permits prosecution for 'different offences' but bars prosecution and punishment twice for the 'same offence' under two or more enactments.

9. The Sand Act does not explicitly or impliedly exclude the provisions of the IPC. On the other hand, Section 22 thereof specifically permits prosecution under any other law for any act or omission made punishable under the Act. It means that if the act or omission resulting in the violation of Section 23 of the Sand Act also amounts to an offence punishable under any other law, including the IPC, the offender can be prosecuted under both the enactments. Relying on Section 22 of the Sand Act, the Division Bench of this Court in *Sujith v. State of Kerala* (2012 (2) KLT 547) held that, in addition to proceeding under the Sand Act, the prosecution under the IPC can also be initiated.

10. The learned counsel for the applicants placed much reliance on the decision rendered by me in *Mohammed Noufal* (supra), and the subsequent two orders of two other Single Benches of this Court, as referred to above. As rightly argued by the learned



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Public Prosecutors, the decision rendered by me in ***Mohammed Noufal*** (supra) was without noticing the relevant statutory provisions i.e., Section 22 of the Sand Act and Section 26 of the General Clauses Act, as well as the binding precedents mentioned above. The subsequent two orders in ***Mohammed Salih*** (supra) and ***Sirajudheen*** (supra) were rendered simply following my order in ***Mohammed Noufal*** (supra). The above mentioned statutory provisions or binding precedents were not brought to the notice of the Court in ***Mohammed Salih*** (supra) and ***Sirajudheen*** (supra) also.

11. This Court is convinced that a mistake was made in the aforementioned order in ***Mohammed Noufal*** (supra). However, realising a mistake afterwards does not allow this Court to deviate from the binding precedents mentioned above, and usually a reference to the Division Bench would have been necessary. But in this case, the said prohibition does not apply since relevant provisions (Section 22 of the Sand Act and Section 26 of the General Clauses Act) and the binding precedent of the Supreme Court and of this Court on the point (***Sanjay, Sayyed Hassan, Kanwar Pal Singh, Jayant, Sujith and Shihad***) were neither noticed nor considered by this Court, which permits this Court to differ from its earlier view [See ***Joby v. District Collector***, 2017 (1) KLT 183]. A decision is considered *per incuriam* if it is made in ignorance of a



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binding precedent or a relevant statutory provision that significantly affects the outcome. A decision made *per incuriam* has no binding precedent force.

12. To persist with an error is not virtuous; correcting it is a duty of judicial integrity. The strength of a Judge lies not in the claim of infallibility, but in the courage to admit error and the humility to correct it when conscience and law reveal a truer course. Therefore, when a Single Judge renders a judgment without recognising a binding precedent and relevant statutory provisions, the same Judge is justified in subsequently differing from that earlier view. For these reasons, I am persuaded by my judicial conscience to differ from my earlier view in ***Mohammed Noufal*** (supra).

13. The conclusion of the above discussions and findings is that the order in ***Mohammed Noufal*** (supra), which held that when there is a special law (Sand Act) covering the question of theft of river sand, the offence under Section 379 of the IPC would not apply, and the subsequent two orders in ***Mohammed Salih*** (supra) and ***Sirajudheen*** (supra) that followed ***Mohammed Noufal*** (supra) are *per incuriam*, as they were made without considering the relevant statutory provisions and binding precedents on the matter, and therefore need not be followed. Consequently, I hold



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that a person can be prosecuted for illegal removal or transportation of river sand for the offence of theft under Section 303(2) or 305(e) of the BNS in addition to the offence under Section 23 r/w Section 20 of the Sand Act.

14. Now let me consider each bail application on merits.

(i) **BA 14647/2025**

The applicant is the accused No. 4 in Crime No. 1087/2025 of Kuttippuram Police Station, Malappuram. The offences alleged are under Sections 305(e), 336(3) and 340 (2) r/w 3(5) of the BNS, Sections 20 and 23 of the Sand Act and Section 132 r/w Section 179 of the Motor Vehicles Act, 1988. The river sand was allegedly transported in the lorry bearing Regn. No. KL-22D-3115. According to the prosecution, the accused Nos. 2 and 3 were in the lorry and on seeing the police party, they did not stop the vehicle. Admittedly, the applicant was not in the lorry. It is the prosecution's version that the applicant was escorting the lorry in another vehicle. The investigation is almost over, and the lorry has already been seized. Considering the allegation made against the applicant, his custodial interrogation seems unnecessary. Hence, I am of the view that the applicant is entitled to get pre-arrest bail.

(ii) **BA No.14273/2025**



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The applicant is the accused No. 2 in Crime No. 1039/2025 of Mukkom Police Station, Kozhikode. The offences alleged are under Section 303(2) of the BNS and Section 20 of the Sand Act. The prosecution allegation is that the police party found three tipper lorries bearing Regn.Nos.KL-10-W 8010, KL-57-0865 and KL-46-6357 parked near the Cheruvady Idavazhikadavu riverbed. On inspection of the lorries, river sand was found therein. The applicant was not in the spot or in the lorries. The accused No.1, who was present in one of the lorries, was arrested. It appears that the applicant has been arrayed as an accused since he is the owner of the lorry bearing Regn.No.KL-57-0865. The lorries and river sand were already seized. The investigation is almost over. The applicant has no criminal antecedents. Considering the allegation made against the applicant, his custodial interrogation seems unnecessary. Hence, I am of the view that the applicant is entitled to get pre-arrest bail.

(iii) **BA Nos.14165/2025, 14503/2025, 567/2026 and 757/2026**

All these bail applications can be considered together since the facts are almost similar. The applicant in BA No.14165/2025 is the accused No.2 in Crime No.983/2025 of Kuttippuram Police Station, Malappuram. The offences alleged are punishable under Sections 303(2) of the BNS, Sections 20 and 23 of the Sand Act and



:23:

Sections 132 r/w 179 of the Motor Vehicles Act, 1988. The applicant in BA No. 14503/2025 is the accused No.3 in Crime No. 875/2025 of Vazhakkad Police Station, Malappuram. The offences alleged are punishable under Sections 305(e) r/w 3(5) of the BNS, Sections 20 and 23 of the Sand Act and Section 179 of the Motor Vehicles Act, 1988. The applicant in BA No.567/2026 is the accused No.1 in Crime No.44/2026 of Vazhakkad Police Station, Malappuram. The offences alleged are punishable under Sections 305(e) r/w 3(5) of the BNS, and Sections 20 and 23 of the Sand Act. The applicant in BA No.757/2026 is the accused in Crime No.696/2025 of Kalpakancherry Police Station, Malappuram. The offences alleged are punishable under Sections 303(2) of the BNS and Sections 20 and 23 of the Sand Act.

In all these cases, the lorries belonging to the applicants were found to be transporting river sand illegally. None of the applicants was present in the lorries at the time of the seizure. The applicants are arrayed as accused only for the reason that they were the owners of the lorry. The investigation is almost over, and the lorries were recovered. Considering the allegation made against the applicants, their custodial interrogation seems unnecessary. Hence, I am of the view that the applicants are entitled to get pre-arrest bail.



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(iv) **BA No.14502/2025**

The applicant is the accused in Crime No.875/2025 of Vazhakkad Police Station, Malappuram. The offences alleged are under Sections 305(e) r/w 3(5) of the BNS and Sections 20 and 23 of the Sand Act. The prosecution allegation is that the applicant illegally transported mined river sand in the lorry bearing Regn.No. KL-11-M 5142. The applicant was driving the lorry at the time of the incident. When the police party intercepted him, he somehow escaped from the scene with the lorry. Perusal of the case diary reveals that the allegations against the applicant are serious in nature, and it *prima facie* shows a premeditated criminal act on his part. The investigation is in a preliminary stage. The custodial interrogation of the applicant is necessary for the investigation. Moreover, the applicant has criminal antecedents. He is involved in four other crimes of similar nature. Considering the gravity of the offence, stage of the investigation and the criminal antecedents of the applicant, I am of the view that this is not a fit case where the extraordinary jurisdiction vested with this Court under Section 482 of BNSS could be invoked. Therefore, the applicant is not entitled to get pre-arrest bail.

(v) **BA Nos.14311/2025 and 14315/2025**

The applicants are the accused Nos. 1 and 2 in Crime



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No.1038/2025 of Kuttippuram Police Station, Malappuram. BA No.14315/2025 is filed by accused No.1, and BA No.14311/2025 is filed by accused No.2. The offences alleged are punishable under Sections 305(e), 132 and 110 r/w 3/5 of the BNS and Sections 20 and 23 of the Sand Act. The prosecution allegation is that the applicants illegally transported the river sand without a permit or license. Apart from the offence under Section 305(e) of the BNS, the applicants are alleged to have committed offences punishable u/s 132 and 110 of the BNS as well. The case diary would reveal that the de facto complainant, a police officer attached to Kuttippuram Police Station, while standing on a public road at Pazhur to prevent illegal sand mining, noticed a lorry transporting sand from Bharathapuzha. The de facto complainant signalled the vehicle to stop, but the driver drove the lorry towards him. The de facto complaint, however, managed to move aside and thus avoided the hit. It is alleged that, but for his timely action, the vehicle would have caused his death. The allegations against the applicants are very serious in nature and it *prima facie* show a premeditated act on their part. Moreover, the applicants have criminal antecedents. They are involved in other crimes of similar nature. Considering the gravity of the offence, stage of the investigation and the criminal antecedents of the applicants, I am of the view that this is



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not a fit case where the extraordinary jurisdiction vested with this Court under Section 482 of BNSS could be invoked. The bail applications are, accordingly, dismissed.

15. In the result, BA Nos. 14647/2025, 14273/2025, 14165/2025, 14503/2025, 567/2026 and 757/2026 are allowed on the following conditions.

(i) The applicants shall be released on bail in the event of their arrest on executing a bond for Rs.1,00,000/- (Rupees One lakh only) each with two solvent sureties for the like sum each to the satisfaction of the arresting officer/investigating officer, as the case may be.

(ii) The applicants shall fully cooperate with the investigation, including subjecting themselves to the deemed police custody for discovery, if any, as and when demanded.

(iii) The applicants shall appear before the investigating officer between 10.00 a.m. and 11.00 a.m. every Saturday until further orders. They shall also appear before the investigating officer as and when required.

(iv) The applicants shall not commit any offence of a like nature while on bail.

(v) The applicants shall not attempt to contact any of the prosecution witnesses, directly or through any other person, or



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in any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation.

(vi) The applicants shall not leave the State of Kerala without the permission of the trial Court.

(vii) The application, if any, for deletion/modification of bail conditions or cancellation of bail on the grounds of violating the bail conditions shall be filed at the jurisdictional court.

BA Nos.14502/2025, 14311/2025 and 14315/2025 are dismissed.

Sd/-

DR. KAUSER EDAPPAGATH

JUDGE

Rp



APPENDIX OF BAIL APPL. NO. 14647 OF 2025

PETITIONER ANNEXURES

Annexure A1	THE TRUE COPY OF THE FIR IN CRIME NO. 1087/2025 OF KUTTIPPURAM POLICE STATION DATED 10-11-2025
Annexure A2	.THE TRUE COPY OF THE ORDER DATED 12/12/2025 IN CRL MC 1362/2025 ON THE FILES OF THE COURT OF SESSIONS MANJERI



2026:KER:20618

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APPENDIX OF BAIL APPL. NO. 567 OF 2026

PETITIONER ANNEXURES

Annexure A1	TRUE COPY OF FIR IN CRIME NO. 44/2026 OF VAZHAKKAD POLICE STATION DATED 21-01- 2026.
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APPENDIX OF BAIL APPL. NO. 757 OF 2026

PETITIONER ANNEXURES

Annexure A1	A TRUE COPY OF THE FIR IN CRIME NO.696/2025 OF KALPAKANCHERRY POLICE STATION, MALAPPURAM
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APPENDIX OF BAIL APPL. NO. 14165 OF 2025

PETITIONER ANNEXURES

Annexure A1	THE TRUE COPY OF THE FIR IN CRIME NO.983/2025 OF KUTTIPURAM POLICE STATION, MALAPPURAM DATED 04.10.2025
Annexure A2	A TRUE COPY OF THE ORDER IN CRL M.C NO 1289/2025 DATED 21.11.2025 PASSED BY THE HON'BLE SESSIONS COURT, MANJERI



APPENDIX OF BAIL APPL. NO. 14273 OF 2025

PETITIONER ANNEXURES

Annexure-A A TRUE COPY OF THE FIR DATED 17/10/2025
IN CRIME NO.1039/2025 OF MUKKOM POLICE
STATION

Annexure-B A TRUE COPY OF THE BAIL ORDER DATED
06/11/2025 IN CRIMINAL MISCELLANEOUS CASE
NO.1705/2025 PASSED BY THE HON'BLE
SESSIONS COURT KOZHIKODE DIVISION



APPENDIX OF BAIL APPL. NO. 14311 OF 2025

PETITIONER ANNEXURES

Annexure 1	TRUE COPY OF THE FIRST INFORMATION REPORT IN CRIME NUMBER 1038 OF 2025, DATED 22.10.2025
Annexure 2	TRUE COPY OF THE ORDER DATED 31.12.2021 IN BA NO. 9571 OF 2021
Annexure 3	TRUE COPY OF ORDER DATED 23.11.2023 IN B.A 9429 OF 2023
Annexure 4	TRUE COPY OF ORDER DATED 25.01.2024 IN B.A NO.360 OF 2024
Annexure 5	TRUE COPY OF ORDER DATED 01.10.2024 IN B.A NO.7522 OF 2024
Annexure 6	TRUE COPY OF ORDER DATED 02.06.2025 IN B.A NO.6548 OF 2025
Annexure 7	TRUE COPY OF THE ORDER OF THIS HONORABLE COURT DATED 3.11.2025 IN B.A.NO.13213 OF 2025
Annexure 8	TRUE COPY OF THE ORDER DATED 24.11.2025 IN CRL.M.C.NO.1285/2025 ON THE FILE OF COURT OF SESSION MANJERY DIVISION MALAPPURAM DISTRICT



APPENDIX OF BAIL APPL. NO. 14315 OF 2025

PETITIONER ANNEXURES

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| Annexure 1. | TRUE COPY OF THE FIRST INFORMATION REPORT
IN CRIME NUMBER 1038 OF 2025, DATED
22.10.2025 |
| Annexure 2. | TRUE COPY OF THE COMMUNICATION ISSUED BY
THE FIRST CLASS JUDICIAL MAGISTRATE
COURT-1 TO THE SUPERINTENDENT OF DISTRICT
HOSPITAL DATED 25. 11. 2024 |
| Annexure 3. | TRUE COPY OF THE ORDER DATED 31.12.2021
IN BA NO. 9571 OF 2021 |
| Annexure 4. | TRUE COPY OF ORDER DATED 23.11.2023 IN
B.A 9429 OF 2023 |
| Annexure 5. | TRUE COPY OF ORDER DATED 25.01.2024 IN
B.A NO.360 OF 2024 |
| Annexure 6. | TRUE COPY OF ORDER DATED 01.10.2024 IN
B.A NO.7522 OF 2024 |
| Annexure 7. | TRUE COPY OF ORDER DATED 02.06.2025 IN
B.A NO.6548 OF 2025 |
| Annexure 8. | TRUE COPY OF THE ORDER OF THIS HONORABLE
COURT DATED 3.11.2025 IN BAIL APPLICATION
NUMBER 13216 OF 2025 |
| Annexure 9. | TRUE COPY OF THE ORDER DATED 24 .11. 2025
IN CRIMINAL MC NUMBER 1267 OF 2025 ON THE
FILE OF THE SESSIONS COURT. MANJERI,
MALAPURAM DISTRICT |



2026:KER:20618

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APPENDIX OF BAIL APPL. NO. 14502 OF 2025

PETITIONER ANNEXURES

Annexure .1	TRUE COPY OF THE FIR IN CRIME NO. 875/2025 OF VAZHAKKAD POLICE STATION DATED 13.11.2025
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APPENDIX OF BAIL APPL. NO. 14503 OF 2025

PETITIONER ANNEXURES

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| Annexure .1 | TRUE COPY OF THE COMPLAINT FILED BY THE
PETITIONER BEFORE THE SUPERINTEND OF
POLICE, MALAPPURAM VIA E-MAIL DATED
07.12.2025 |
| Annexure .2 | TRUE COPY OF THE COMPLAINT FILED BY THE
PETITIONER BEFORE THE COMMISSIONER OF
POLICE KOZHIKODE VIA E-MAIL DATED
07.12.2025 |