



2026:KER:75844

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE JOBIN SEBASTIAN

TUESDAY, THE 29<sup>TH</sup> DAY OF SEPTEMBER 2026 / 7TH ASWINA, 1948

CRL.REV.PET NO. 1007 OF 2026

CRIME NO.228/2024 OF Punalur Police Station, Kollam

AGAINST THE ORDER DATED 21.08.2026 IN SC NO.314 OF 2025  
OF FAST TRACK SPECIAL COURT, PUNALUR

REVISION PETITIONER/PETITIONER/ACCUSED:

KAMAL RAJ  
AGED 20 YEARS  
C/O ASHA, R/O KAMAL BHAVAN, PANAYAMCHERI,  
ARAMPUNNA, ELAMBAL, KOLLAM, PIN - 691322

BY ADVS.  
SHRI.HARIKRISHNAN M.S.  
SRI.SHAKTHI PRAKASH  
SRI.K.DHRUV KUMAR

RESPONDENT/RESPONDENT/COMPLAINANT:

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

PP-SRI.V.R.RAMLAL

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION  
ON 26.09.2026, THE COURT ON 29.09.2026 DELIVERED THE  
FOLLOWING:

**'C.R'****ORDER**

The revision petitioner herein is the sole accused in S.C. No.314 of 2025 on the file of the Fast Track Special Court (POCSO Act Cases), Punalur. In the said case, the revision petitioner contended that he suffers from intellectual disability and is, consequently, incapable of making his defence. It was, therefore, contended that, in view of Section 368 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), further proceedings in the said case are liable to be postponed.

2. Considering the said contention, the learned trial Judge conducted a detailed enquiry in accordance with Section 368 of the BNSS and found that the accused is fit to stand trial. Aggrieved by the said finding, the present revision petition has been filed.

3. I heard Sri. Harikrishnan M.S., the learned counsel appearing for the revision petitioner, and Sri. V.R. Ramlal, the learned Public Prosecutor. I have also perused the records.

4. The learned counsel for the revision petitioner submitted that the finding of the learned trial Judge that the accused is fit to stand trial is vitiated by non-application of mind and improper appreciation of the medical evidence. According to the learned counsel, the learned trial Judge failed to give due consideration to the report of the Medical Board, wherein it is stated



that the accused has an IQ of 35, and the report of the psychiatrist, which states that the accused has a social age of only ten years. The learned counsel further submitted that the report of the Medical Board itself records that the accused had developmental difficulties from early childhood, significant academic, social and adaptive difficulties, persistent difficulty in learning, understanding and applying academic concepts, required assistance throughout his schooling, and had used a scribe for examinations.

5. It was further submitted that, despite the aforesaid findings, the Medical Board opined that the accused is fit to stand trial on the premise that he was able to understand the allegations, answer questions and communicate with his advocates. According to the learned counsel, the opinion of the Medical Board is internally inconsistent with its factual findings, particularly as it observed that the accused suffers from lifelong developmental impairment and significant deficits in adaptive functioning. On these premises, it was contended that Annexure A7 order dated 21.08.2026 in S.C. No.314 of 2025 on the file of the Fast Track Special Court (POCSO Act Cases), Punalur, whereby the accused was found capable of making his defence and fit to stand trial, is liable to be set aside.

6. Before considering the rival contentions, it is necessary to advert to the statutory scheme governing the issue. When an accused raises a plea that, on account of unsoundness of mind, he is incapable of making his



defence, the Court is required to conduct an appropriate enquiry into the mental condition of the accused and his capacity to make his defence. If, upon such enquiry, the Court finds that the accused is incapable of making his defence, further proceedings are liable to be postponed in accordance with law. The procedure to be followed in conducting such an enquiry is provided under Section 368 of the BNSS.

7. As contemplated under the said provision, the accused may be referred to a psychiatrist or clinical psychologist for evaluation, and the concerned psychiatrist or clinical psychologist is required to furnish a report regarding the mental condition and capacity of the accused. The proviso to Section 368(2) further provides that, where the accused is aggrieved by the information furnished by the psychiatrist or clinical psychologist, as the case may be, to the Magistrate or Court, he may prefer an appeal before the Medical Board constituted in the manner provided therein.

8. The governing consideration under Section 368 of the BNSS is not merely whether the accused has a low IQ, intellectual disability, poor academic performance or a lower social age. The decisive question is whether the mental condition or disability of the accused is of such a nature as to render him incapable of entering upon his defence. Thus, the enquiry is directed towards determining whether the accused possesses the requisite capacity to understand the nature and substance of the proceedings,



comprehend the accusation against him and meaningfully participate in his defence.

9. The relevant indicators of such capacity include the ability to understand the nature of the proceedings and the substance of the accusation, to comprehend questions put to him, to provide relevant and coherent answers, and to communicate relevant facts and instructions to his advocate. The mere presence of an intellectual disability or a low IQ, by itself, will not make a person incapacitated to stand trial.

10. Keeping the above principles in mind, reverting to the facts of the present case, it can be seen that, after the accused took the stand that he was incapable of making his defence on account of intellectual disability, the learned trial Judge conducted an enquiry and postponed the proceedings. The accused was thereafter directed to be examined by a psychiatrist at the District Hospital, Kollam.

11. The psychiatrist, based on the evaluation conducted, opined that the accused is fit to stand trial. The report of the psychiatrist reads as follows:

*"The accused had no perceptual abnormality and denied depressive cognitions. There was no deletions elicited. He was oriented in time, place and person. At the time of the examination, attention arose and concentration sustained, though he had sub-average intelligence. His IQ, as per the assessment done by the Psychologist, was 56. His social age was 10 years as per Vineland Social Maturity Scale Assessment. He can understand the nature and purpose of the court proceedings and understand the charges against him and he can communicate with the Advocate effectively. "*



12. Aggrieved by the said report of the psychiatrist, the accused preferred an appeal challenging the said findings before the Medical Board comprising the Head of the Department of Psychiatry, Government Medical College, Thiruvananthapuram, and two faculty members in Psychiatry. The Medical Board conducted a detailed evaluation regarding the fitness of the accused to stand trial. The accused was admitted to the Government Medical College Hospital, Thiruvananthapuram, from 18.05.2026 to 28.05.2026 for a comprehensive evaluation. Thereafter, the Medical Board prepared an Annexure A5 report, which reads as follows:

*"History revealed developmental difficulties since early childhood with impairments in academic performance, social functioning and adaptive skills. He had persistent difficulty in learning, understanding and applying academic concepts and required assistance throughout his schooling, including the use of a scribe during examinations. Over time, he acquired basic adaptive and self-care skills, and he is able to perform routine daily activities independently. There was a history of occasional irritability and anger outbursts in response to unmet demands. IQ assessment was done by the Clinical Psychologist and found to be 35 (Moderate Intellectual Development Disorder).*

*During the assessment, the patient was able to understand the allegations charged against him. He was able to comprehend questions and provide relevant and coherent answers. He is capable of communicating with his advocate and conveying information relevant to his defense. He demonstrated awareness that statements made by him during legal proceedings may have consequences and could be considered by the Court. He was able to understand the nature of the court proceedings. His behavior during interview remained appropriate and he was co-operative.*

*Based on the available information and serial psychiatric assessment, it is our opinion that Mr. Kamal Raj has mild intellectual developmental disorder. He is able to understand the allegations made against him, communicate relevant information to his legal counsel, understand the nature and purpose of the court proceedings and defend himself in the court. Hence we hereby inform the honorable court that we are of the opinion that Mr. Kamal Raj is fit to stand trial at present "*



13. It was mainly based on the above-mentioned report that the learned trial Judge rejected the contention of the accused that he was incapable of making his defence and found him fit to stand trial. On a careful consideration of the order passed by the learned trial Judge and the materials placed on record, this Court finds that the learned trial Judge conducted the enquiry in accordance with the procedure contemplated under Section 368 of the BNSS and arrived at the finding on the basis of the medical opinion obtained pursuant to the statutory enquiry.

14. It is significant that the mere fact that an accused has a low IQ or suffers from intellectual disability does not, by itself, render him incapable of making his defence or unfit to stand trial. The statutory test is whether the disability or mental condition is of such a nature as to render the accused incapable of entering upon his defence. Therefore, the existence of an intellectual disability has to be considered in the context of the actual functional capacity of the accused to understand and participate in the proceedings. If the mere existence of intellectual disability or a low IQ were sufficient to render an accused incapable of standing trial, every person suffering from such disability would, irrespective of the degree of functional capacity possessed by him, be excluded from criminal proceedings.

15. In the present case, the report of the Medical Board clearly states that the accused is capable of communicating with his advocate and



conveying information relevant to his defence. It is further stated that, during the evaluation, the accused was able to comprehend the questions put to him and provide relevant and coherent answers. It is also reported that he was able to understand the nature of the court proceedings. Significantly, the report categorically states that the accused is able to understand the allegations made against him, communicate relevant information to his legal counsel, and understand the nature and purpose of the court proceedings. It is also recorded that he was able to defend himself before the Court. The Medical Board, after evaluating the accused, has specifically recorded findings regarding his ability to understand the allegations against him, comprehend the nature and purpose of the proceedings, answer questions relevantly and coherently, and communicate relevant information to his legal counsel. These findings directly address the functional capacity of the accused that is relevant for determining his fitness to stand trial.

16. In the above circumstances, the mere fact that the accused suffers from intellectual disability, or that he has a low IQ, cannot, by itself, lead to the conclusion that he is incapable of making his defence. What is material is whether his condition renders him incapable of understanding the proceedings and of effectively communicating with his counsel for the purpose of making his defence. The findings recorded in the Medical Board's report indicate that the accused possesses the requisite capacity to



understand the proceedings and put up his defence effectively.

17. This Court also finds that the learned trial Judge has considered the medical reports and the relevant aspects of the accused's functional capacity before concluding that he is fit to stand trial. The said finding being based on proper application of mind and on appreciation of the medical evidence, the same requires no interference.

In the result, the Criminal Revision Petition fails and is accordingly dismissed.

Sd/-  
**JOBIN SEBASTIAN**  
**JUDGE**

ANS

APPENDIX OF CRL.REV.PET NO. 1007 OF 2026

## PETITIONER ANNEXURES

|             |                                                                                                                                                      |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------|
| Annexure A3 | TRUE COPY OF CRL.M.P. NO.2/26 FILED IN S.C NO. 314/2025 PENDING BEFORE THE COURT OF FAST TRACK SPECIAL JUDGE, PUNALUR                                |
| Annexure A4 | TRUE COPY OF THE ORDER DATED 17.04.2026 IN CRL.M.P. NO.2/26 FILED IN S.C NO. 314/2025 PENDING BEFORE THE COURT OF FAST TRACK SPECIAL JUDGE, PUNALUR  |
| Annexure A5 | TRUE COPY OF THE REPORT OF THE MEDICAL BOARD DATED 05.06.2026                                                                                        |
| Annexure A6 | TRUE COPY OF THE OBJECTION DATED 23.07.2026 TO THE REPORT OF THE MEDICAL BOARD                                                                       |
| Annexure A7 | FREE COPY OF THE ORDER DATED 21.08.2026 IN S.C. NO. 314 OF 2025 PENDING BEFORE THE COURT OF FAST TRACK SPECIAL JUDGE, PUNALUR, ISSUED TO THE ACCUSED |
| Annexure A8 | TRUE COPY OF THE MEDICAL REPORT DATED 17.03.2026                                                                                                     |