



2026:KER:16934

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2026 / 6TH PHALGUNA, 1947

CRL.REV.PET NO. 162 OF 2026

AGAINST THE ORDER DATED 31.12.2025 IN CMP 613/2025 IN CC NO.1 OF 2023 OF ADDITIONAL SPECIAL SESSIONS COURT (SPE/CBI CASES)-III, ERNAKULAM

REVISION PETITIONER/PETITIONER IN CRL.M.P/ACCUSED NO.3:

YASER ARAFAT.K,
AGED 47 YEARS,
S/O ABDUL RAZAK. K KARANATH HOUSE, THERATTAMMAL
URINGATTIRI POST, AREEKODE, MALAPPURAM, PIN - 673639.

BY ADVS.
SRI.P.A.MOHAMMED SHAH
SHRI.RENOY VINCENT
SRI.SHAHIR SHOWKATH ALI
SHRI.CHELSON CHEMBARATHY
SHRI.ABEE SHEJIRIK FASLA N.K
SMT.NANDA SURENDRAN
SHRI.SAHAL SHAJAHAN
SHRI.AQUIN KURUVILLA TOM
SHRI.M.N.MOHAMMED HUSSAIN
SMT.NAFIYA SHAHALA C.K.
SMT.AYISHA RISWANA

RESPONDENT/RESPONDENT IN CRL.M.P/STATE:

THE CENTRAL BUREAU OF INVESTIGATION
ANTI-CORRUPTION BRANCH, COCHIN REPRESENTED BY THE
SPECIAL PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
PIN - 682031.

BY ADV SHRI.SREELAL N.WARRIER, SPL.PUBLIC PROSECUTOR,
CENTRAL BUREAU OF INVESTIGATION (CBI)

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON
20.02.2026, THE COURT ON 25.02.2026 DELIVERED THE FOLLOWING:

A. BADHARUDEEN, J.

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Crl.R.P No.162 of 2026-A1
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Dated this the 25th day of February, 2026

O R D E R

Accused No.3 in CC No.1/2023 on the files of the Additional Special Sessions Court (SPE/CBI Cases)-III, Ernakulam (‘Special Court’ hereinafter for short), has filed this Revision Petition under Section 438 and 442 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (‘BNSS’ for short hereinafter), challenging the order dated 31.12.2025 in C.M.P.No.613/2025 in the above case, whereby the learned Special Judge dismissed the discharge petition filed by the revision petitioner/ accused No.3.

2. Heard the learned counsel for the revision petitioner as well as the learned Special Public Prosecutor appearing for the Central Bureau of Investigation. Perused the records.

3. Here the prosecution alleges commission of offences punishable under Sections 120B r/w 409 of the Indian Penal Code (‘IPC’ for short hereinafter) as well as under Sections 8 and 12 of the Prevention of Corruption Act, as amended 2018 (‘PC Act, 2018’ for short

hereinafter). The revision petitioner herein is the 3rd accused in the above case. The prosecution case is that accused Nos. 1 to 3, 5 to 7 and 9 to 13, as public servants had received illegal gratification from the passengers for releasing their dutiable goods, without imposing customs duty and penalty as on 11/01/2021 and 12/01/2021. Accused No.4 alleged to have conspired with other customs officials in the array of accused to withhold contraband articles illegally, without confiscating or making entry of the same in the Books of Accounts and thereby they alleged to have committed the offence of criminal breach of trust punishable u/s. 409 of IPC. As far as the 8th accused is concerned, the allegation by the prosecution is that he directed the passengers to collect the passports from the customs officials in the customs room and other places, facilitating the other delinquent customs officials to collect illegal gratification from the passengers and thereafter to release their goods and passport without confiscating it or imposing customs duty. As far as accused Nos. 1 to 3, 5 to 7 and 9 to 13 are concerned, the specific allegation of the prosecution is that, they have collected bribe from the passengers, committed criminal breach of trust in respect of the seized articles and also permitted the passengers to get release of their goods without imposing customs duty or penalty. Thus accused Nos. 1 to 30 alleged to have committed the offence

punishable u/ss.120 B r/w. 409 IPC and sec. 7, 8 and 12 of the PC Act, 2018, i.e the public servants alleged to have committed the offence punishable u/s. 120 B r/w. 409 IPC and sec. 7 of the PC Act, 1988 and the remaining accused/passengers alleged to have committed the offences punishable u/s. 8 and 12 of the PC Act, 2018.

4. The charge sheet filed before the Special Court would exhaustively narrate as to what are the allegations against each accused, including the revision petitioner/3rd accused.

5. At the time of argument, it is submitted by the learned counsel for the revision petitioner that, the petitioner has no role in this occurrence and, *prima facie*, the prosecution materials do not justify framing of charge and continuation of trial against him. It is pointed out that ignoring these facts, the learned Special Judge wrongly evaluated the prosecution materials and wrongly disallowed the discharge plea at the instance of the petitioner. Therefore, the order impugned would deserve interference. Inasmuch as the grounds raised by the learned counsel for the revision petitioner, Grounds D to J are relevant and the same are extracted hereunder:

“D. The learned Court below ought to have found that there is absolutely no material in Annexure-I Final Report to substantiate the allegations against the Revision

Petitioner/Accused No. 3. The learned Court below overlooked the fact that the alleged illegal gratification received by the Revision Petitioner/Accused No. 3 has not been recovered in any manner known to law. The alleged contraband brought by Accused Nos. 21, 22, 25 and 26 have also not been recovered. In fact, the said accused persons had left the airport much before the commencement of the Joint Surprise check (JSC). The learned Court below failed to find that mere reliance on confession statements under Section 108 of the Customs Act, 1962 would render the charge against the Revision Petitioner/Accused No. 3 groundless, thereby entitling him for an honourable discharge.

E. The learned Court below grossly erred in finding in Paragraph 52 of the impugned order that the statements recorded under Section 108 of the Customs Act, 1962 'prima-facie indicate the involvement of the public servants/accused in demand and acceptance of bribe, while they were in discharge of duty at the Calicut International Airport'. The said finding is unsustainable in law as it is settled position of law that confession statements recorded under Section 108 of the Customs Act, 1962 cannot be the sole basis for arriving at conviction of an accused.

F. The confession statements relied on by the Respondent against the Petitioner/Accused No. 3 are the statements of co-accused i.e the statements of Accused Nos. 21, 22, 25 and 26. It is needless to state that confession of a co-accused is weak evidence and that the guilt of an accused cannot be established by placing reliance solely on the confession of a co-accused. Section 24 of the Bharatiya Sakshya Adhinyam, 2023 categorically provides that a court of law may take into consideration the confession of the co-accused only if such

confession stands proved. The Respondent CBI does not propose to adduce any independent evidence to corroborate the confession statements of co-accused.

G. The learned Court below ought to have found that the Revision Petitioner/Accused No. 3 is similarly placed as the Accused Nos. 19, 20, 23, 24 and 27 with respect to the probability of conviction on the basis of the confession statements under Section 108 of the Customs Act, 1962. The proceedings against Accused Nos. 19, 20, 23, 24 and 27 were quashed by this Hon'ble Court vide Annexure- II order by holding that conviction cannot be based solely upon confession statements under Section 108 of the Customs Act, 1962.

H. The learned Court below grossly erred in assessing the evidentiary value of statements recorded under Section 108 of the Customs Act, 1962. Such statements are weak evidence unless corroborated by other independent evidences. It has been settled by the Hon'ble High Court of Kerala in Assistant Commissioner Customs v Edwin Andrew Minihan (Crl.A No. 1202/2019) that confession recorded under Section 108 of the Customs Act, 1962 cannot be relied upon in isolation unless corroborated by other elements. The Hon'ble High Court was in concurrence with the observation of the Hon'ble High Court of Bombay in Union of India v Kisan Ratan Singh and Others (2020 SCC On Line Bom 39) that a statement recorded under Section 108 of the Customs Act, 1962 is not gospel truth without corroboration. The Hon'ble Apex Court has also held in Chandrapal v. State of Chhattisgarh (2022) SCC Online SC 705 that extra-judicial confession is not a strong piece of evidence without corroboration.

I. The learned Court below has grossly erred in holding in Paragraph 53 of the impugned order that the prosecution has to be given an opportunity to prove the visuals in the CCTV. It is pertinent to note that the Respondent CBI does not even have a case that the CCTV visuals to prove the demand and acceptance of illegal gratification. The place of occurrence of the alleged incident is the customs room, which according to the Respondent CBI is not covered by CCTV cameras. Moreover, the said finding of the learned Court below runs contrary to the finding of this Hon'ble Court in Annexure-II order that CCTV visuals merely establish the presence of the accused persons at the airport. The finding of this Hon'ble Court in Annexure-II order is as follows:

"10.....Merely relying on the CCTV footage showing their presence at the airport and their presence before the customs officer by itself would not prima facie justify that they had paid illegal gratification unless the same is specifically recovered by the manner known to law."

J. Digital evidence in the form of CCTV footages neither proves nor corroborates the guilt of the Revision Petitioner/Accused No. 3. At the outset, the CCTV visuals proposed to be adduced as evidence by the Respondent CBI do not contain any visual of the alleged acceptance of illegal gratification by the petitioner from the customs room. Moreover, the Respondent CBI has admitted in Annexure-I Final Report that there is no CCTV installed inside the customs room. Thus, the CCTV visuals do not even prima facie suggest that the Revision Petitioner/Accused No. 3 has committed any offence."

The learned counsel for the revision petitioner vehemently canvassed the above grounds to interfere with the order.

6. Whereas it is submitted by the learned Special Public Prosecutor that it is true that, as per Annexure II order dated 18.09.2025 in CrI.M.C.No.3362/2024, this Court quashed the proceedings against accused Nos.19, 20, 23, 24 and 27, while declining the prayer for quashment at the option of accused Nos.14, 15, 16 and 30. It is pointed out further that the reasons for quashing the case as against accused Nos.19, 20, 23, 24 and 27 have been precisely stated in paragraph 10 of Annexure II order, the same reads as under:

“Going through the prosecution records, as against accused Nos.19, 20, 23, 24 and 27, the essential ingredients for the said offences could not be justified prima facie. Merely relying on the CCTV footage showing their presence at the airport and their presence before the customs officer by itself would not prima facie justify that they had paid illegal gratification unless the same is specifically recovered by the manner known to law. To put it otherwise, accused Nos.19, 20, 23, 24 and 27, admittedly, being travellers, would have met the customs officer as part of routine clearance and that would appear in CCTV footage. Thus, it appears that the prosecution as against accused Nos.19, 20, 23, 24 and 27 are unwarranted, and the same are liable to be quashed while disallowing quashment as against accused Nos.14, 15 16 and 30, against whom, the prosecution records would show recovery of contraband to justify payment of illegal gratification as alleged by

the prosecution, prima facie warranting trial.”

7. According to the learned Public Prosecutor, the learned Special Judge meticulously analysed the materials on record and after having found that the involvement of the accused has been brought out, *prima facie*, from the prosecution records, dismissed the discharge petitions filed by Accused Nos.1 to 13, 14 to 18, 21, 22, 25, 26 and 28 to 31 by a common order. Therefore Annexure II order would not give any benefit to the revision petitioner.

8. Having addressed the rival submissions, the specific allegation against the revision petitioner, who is arrayed as accused No.3, is that he had received bribe of Rs.30,000/- from accused No.26 on the basis of the demand made by accused No.7 for releasing her gold ornaments without imposing penalty. Further he had received bribe amount of Rs.15,000/- from accused No.22 for releasing his passport and baggage containing dutiable goods without imposing penalty. Apart from that, accused No.3 had received illegal gratification of Rs.15,000/- from one Kattappani Abdul Rifay for releasing his passport and baggage containing dutiable goods without imposing penalty and thereby committed criminal breach of trust in respect of the above said items. Charge Nos.50, 51, 60, 61, 68 and 69 in the final report are against the

petitioner/accused No.3 in this regard.

9. The specific case of the revision petitioner is that since the statements recorded as that of the co-accused under Section 108 of the Customs Act, 1962 are relied on by the prosecution to see *prima facie* the allegation against the 4th accused, the same alone is insufficient to proceed with trial after framing charge. In this connection, it is relevant to note that, as found by the Special Court, accused No.25 stated the names of accused Nos.2, 7, 10 and 11 also regarding payment of bribe of Rs.30,000/- to accused No.3. Similarly, accused No.22, stated the names of accused Nos.3, 7 and 10 also regarding the payment of bribe of Rs.15,000/- to accused No.3. Accused No.26 given statement specifying the names of accused Nos.2, 7, 10 and accused No.3 and also regarding payment of bribe of Rs.30,000/- to accused No.3. It is not in dispute that the voluntary statements recorded under Section 108 of the Customs Act, 1962 are generally admissible in evidence, as they are taken down by a gazetted officer (not a police officer) and are not hit by Sections 25 and 26 of the Indian Evidence Act. The statements are substantive evidence though corroboration to be insisted upon by the courts to seek assurance (see [AIR1996 SC 522 : MANU/SC/0127/1996 : 1996 (62) ECR 366(SC) : 1995 INSC 689 : JT 1995 (8) SC 160 : 1995 (6) SCALE 386],

Naresh J. Sukhawani Vs. Union of India (UOI) and [2023 KHC 6892], ***Commissioner of Customs (Imports), Mumbai v. M/s.Ganpati Overseas;*** and [1997 KHC 94], ***Pavunny v. Assistant Collector***). It is relevant to note that a contention was raised before the Special Court to the effect that the statements were not given voluntarily and therefore the above statements are insufficient to proceed with trial. The learned Special Judge rightly negated this contention finding that, this contention could be considered only during trial. Thus accused Nos.22, 25, 26 and Kattappani Abdul Rifay are the persons given statements supporting receipt of bribe by the revision petitioner/accused No.3. In this connection, it is relevant to note that pardon was granted to accused Nos.22 to 25, 28, 29, 30 and 37 during investigation stage under Section 306 of Cr.P.C as per the order of the C.J.M, Ernakulam dated 28.11.2022. Thus now the status of accused Nos.22 and 25, who had given statements against the petitioner is that of approvers and approvers' evidence attaches probative value and the probative value of the said evidence is a matter to be decided during trial. Thus in the instant case there are sufficient materials to proceed with trial of the revision petitioner/3rd accused, *prima facie*. It is well settled law that at the time of discharge, the court cannot go for a roving enquiry by meticulously analysing the prosecution records within the sphere of a mini

trial to record its finding. The power of the court while considering discharge plea shall be with a view to find whether, *prima facie*, the offence/offences alleged is/are made out to go for trial or at least a strong suspicion to proceed with trial. While doing such endeavour, when the court, *prima facie*, finds that the offence/offences is/are made out to go for trial or a strong suspicion which would warrant trial, discharge plea must fail. In the instant case, accused Nos.22 and 25, who are now approvers along with one Kattappani Abdul Rifay, given statements regarding demand and acceptance of illegal gratification by the revision petitioner. Thus, in the instant case, *prima facie*, there are materials to proceed with trial of the revision petitioner/accused No.3. No doubt, the evidentiary value of approvers and how far the same to be believed and acted upon, and similarly how far the extra judicial confession and how far the statements recorded under Section 108 of the Customs Act, 1962, are matters to be decided after trial. Similar is the position inasmuch as the evidence available through CC TV cameras.

10. Insofar as quashment of the case against accused Nos.19, 20, 23 and 27 as per Annexure II is concerned, the same was based on finding that there are no materials against them, *prima facie*, or a strong suspicion. It is pertinent to note that, as per the same order (Annexure II), quashment

plea as against accused Nos.14, 15, 16 and 30 was dismissed by this Court finding that, *prima facie*, the allegations are made out. Thus it appears that the discharge plea raised by the revision petitioner herein contending that there are no materials to connect him is found to be absolutely unsustainable and, therefore, the learned Special Judge rightly dismissed the discharge petition, holding so. In such view of the matter, no interference with the order is warranted.

11. Therefore, the Revision Petition is liable to be dismissed and is accordingly dismissed.

Registry is directed to forward a copy of this order to the jurisdictional court concerned, for information and further steps

Sd/-

A. BADHARUDEEN, JUDGE

rtr/

APPENDIX OF CRL.REV.PET NO.162 OF 2026

REVISION PETITIONER'S ANNEXURES

- Annexure I THE TRUE COPY OF THE FINAL REPORT FILED BY THE RESPONDENT CBI IN C.C NO.1/2023 BEFORE THE COURT OF THE ADDITIONAL SPECIAL SESSIONS JUDGE, (SPE/CBI)-III, ERNAKULAM.
- Annexure II THE TRUE COPY OF THE ORDER DATED 18.09.2025 IN CRL.M.C NO.3362/2024 PASSED BY THIS HON'BLE COURT.
- Annexure -III THE TRUE COPY OF THE MEMORANDUM OF DISCHARGE APPLICATION IN CRL.M.P NO.613/2025 FILED BY THE REVISION PETITIONER/ACCUSED NO.3.