

**Smitha, vs State of Kerala**

**Smitha, vs State of Kerala**

**SooperKanoon Citation :** [sooperkanoon.com/1278423](http://sooperkanoon.com/1278423)

**Court :** Kerala

**Decided On :** Apr-11-2025

**Judge :** Honourable Mrs. Justice C.S. Sudha

**Appeal No. :** CRL.A/456/2025

**Appellant :** Smitha,

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MRS. JUSTICE C.S. SUDHA FRIDAY,  
THE 11TH DAY OF APRIL 2025 / 21ST CHAITHRA, 1947 CRIME  
NO.200/2025 OF NEDUMKANDAM POLICE STATION, IDUKKI  
AGAINST THE ORDER DATED 04.03.2025 IN CRMC NO.128 OF 2025  
OF DISTRICT COURT & SESSIONS COURT, THODUPUZHA  
APPELLANTS/PETITIONERS 1 TO 3/ACCUSED 1 TO 3: 1 SMITHA,  
AGED 47 YEARS W/O JOBY KURIAN, PARAKKAL HOUSE, PAYODE,  
NALLOORNAD P.O, WAYANAD, PIN - 675645 2 JOBY KURIAN AGED  
47 YEARS S/O MOOLAN VAREED KURIAN, DEVAGIRI, ANAPPARA  
P.O, MANJAPRA, ERNAKULAM, PIN - 683581 3 JOONS AGED 42  
YEARS S/O.ABDUL MUTHALIF, VECHUKUNNEL HOUSE,

CHOTTUPARA P.O, PARATHODU IDUKKI, PIN - 685552  
K.S.MADHUSOODANAN M.M.VINOD KUMAR P.K.RAKESH KUMAR  
K.S.MIZVER M.J.KIRANKUMAR RESPONDENTS/STATE/DEFACTO  
COMPLAINANT: 1 STATE OF KERALA REPRESENTED BY PUBLIC  
PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031 2 STATION  
HOUSE OFFICER NEDUMKANDAM POLICE STATION, IDUKKI, PIN -  
685553 3 PRATHIBHA W/O BIJU, CHERUVILAYIL HOUSE,  
COMBUMMUKKU, RAMAKKALMEDU P.O, PARATHODU VILLAGE,  
IDUKKI, PIN - 685571 SMT.SHEEBA THOMAS, PP THIS CRIMINAL  
APPEAL HAVING COME UP FOR HEARING ON 07.04.2025, THE  
COURT ON 11.04.2025 DELIVERED THE FOLLOWING:

**C.S.SUDHA, J.**

----- Crl. Appeal No.456 of  
2025 ----- Dated this the 11th  
day of April 2025

## **JUDGMENT**

This appeal under Section 14A of the Scheduled Caste &

Scheduled Tribe (Prevention of Atrocities) Act, 1989 (the Act) has been filed by the petitioners/accused nos.1, 2 & 6 (A1, A2 & A6) in crime no.200/2025, Nedumkandam police station, aggrieved by the dismissal of their petition under Section 482, BNSS, namely, Crl.M.C. No.128/2025, on the file of the Court of Session, Thodupuzha, seeking pre-arrest bail.

2. It was submitted by the learned counsel for the

appellants/A1, A2 & A6 that the bar under Section 18 and 18A of the Act will not be attracted as the appellants were unaware that the 3rd respondent(R3)/informant/injured is a member of the Scheduled Caste community as her father is a Christian and as she is married

to a Christian. The present crime is the counter case of crime no.199/2025, Nedumkandam police station, in which the 1st appellant/A1 herein is the informant/injured. The said crime was registered alleging commission of offences punishable under Sections 269(b), 126(2), 115(2), 118(1), 74, 75(1)(iv), 79 and 3(5) BNS. There were civil disputes relating to the resort where the incident took place. It was in the said background the incident took place. Hence, relying on the dictum in XXXX v. State of Kerala, 2022 KHC 1001, the learned counsel for the appellants canvassed for a pre-arrest bail on the premise that the trial court erred in dismissing the application.

3. The request for bail is opposed by the learned

Public Prosecutor who submitted that R3/informant/injured sustained grievous injuries and has been admitted in the ICU. The investigation has revealed commission of the offence punishable under Section 109(1) BNS also and hence the said section has also been incorporated and investigation is progressing. A3 to A5 in the

crime have already been arrested and remanded. Their bail application has been dismissed by the trial court. The arrest of the appellants/A1, A2 & A6 is necessary as custodial interrogation is required for recovery of the weapons used in the crime. The trial court has rightly found that the application for pre-arrest bail is hit by the bar contained under Sections 18 and 18A of the Act. There is no infirmity in the findings of the trial court calling for an interference by this Court, argued the prosecutor.

4. Notice was issued to R3/informant/injured which was served on her husband.

5. Heard both sides.

6. Annexure 8 FIR, that is, crime no.200/2025,

Nedumkandam police station, has been registered based on the FIS given by R3 herein on 18/02/2025 at 01:00 p.m. As per the FIR, the accused persons are - (1) Smitha, (2) Joby, (3) Younus, (4) Arun,

(5) Ambily, (6) Shyam and (7) 15 other identifiable persons. As per the report of the investigating officer filed by the prosecutor, the

investigation revealed the commission of other offences including the offence under Section 109(1) BNS and hence the said sections have also been incorporated in the crime and investigation is proceeding. A3-Younus in the FIR is now A2; A2-Joby is A6 and A4 to A6, that is, Arun, Ambily and Shyam are now A3 to A5. Therefore, I will be referring to the appellants as such.

7. In Annexure 8 FIR, R3/informant/injured says

that she belongs to the Hindu Pulaya caste. She is acquainted with one Alphonsa Sherly who is conducting a resort by name, Zieon Hills Resorts. She is aware that there is some case pending in the court between the 1st appellant/A1 and the said Alphonsa Sherly. In the evening of 16/02/2025, some incident took place in the resort pursuant to which police from Nedumkandam police station had come to the place by about 09:00 p.m. After the police left, Alphonsa Sherly called her from the courtyard of the resort and hence she along with her children Joyal and Jobin went to the resort. When she had reached the resort, Shajiyannan, owner of a

chicken stall, was also present. While she was talking to Alphonsa Sherly, her husband Biju and worker Rojin came in their pick-up van bearing registration no.KL 69 A4794 in order to take them back. It was then about 09:45 p.m. Smitha(A1) who is conducting a restaurant in the resort, that is, the tenant of Alphonsa Sherly, her husband Joby (A6); Younus (A2); Arun (A3); Ambily (A4) and Shyam (A5) arrived there in a vehicle. As soon as the accused persons arrived, Younus (A2) asking what was the business of Shaji at the resort, pushed him. R3 intervened and told Younus

(A2) that they can sit and discuss the matter. Younus (A2)

questioning her presence at the resort, abused her by calling her an obscene word and pushed her. Smitha (A1) also abused her and asking her to leave the place, kicked her on the stomach. She fell down. While she was attempting to get up, Younus (A2) and Arun

(A3) pushed her down. Smitha (A1) held her by her neck and a tussle followed. Seeing this, her husband pulled her away and Younus(A2) pulled away Smitha (A1). Arun (A3) beat her husband

Biju on his head with a chair causing a bleeding injury. Seeing this, when her son Joyal intervened, Younus (A2) fisted him on his face. Joyal fell down. When her husband Biju attempted to intervene, Arun, Vinod@Ambily, Shyam and Joby, that is, A3 to A6, beat him with a chair as a result of which he fell down. When she intervened, Younus (A2) with a pipe wrench beat her husband. When Joyal intervened, Younus (A2) threw him down and hit him on his face with a stone. When her husband and Rojin intervened, Younus (A2) and Vinod@Ambily (A4) beat them with a pipe wrench and spanner. When she intervened, Younus (A2) abused her by calling her obscene words and by her caste name and saying that he would not allow her to live there, beat her with a spanner on her head (. ' ' .) She lost consciousness. When she regained consciousness, she found herself in the hospital.

8. The aforesaid FIS is seen recorded at Arpana

Hospital, Thookkupalam. In Annexure 8 FIR, the appellants/A1, A2 & A6 along with the other accused are alleged to have committed the offences punishable under Sections 189(2), 192, 191(3), 190, 296(b), 126(2),115(2), 118(1), 118(2), 351(2) BNS and Section 3(2)(va) of the Act. The report filed by the investigating officer says that the investigation revealed the commission of other offences also and hence the said offences, that is, offences punishable under Sections 109(1), 116(c)(g), 117(2)(4), 74 BNS and Section 3(1)(s) of the Act have been added and investigation is progressing.

9. In the appeal memorandum, it is alleged that

appellants 1 and 2, that is, A1 and A6 are husband and wife and that the 3rd appellant, that is, A2, is their friend. Appellants 1 and 2 were running a restaurant named Zieon Hill Restaurants which was taken on lease from Alphonsa Sherly as per an oral agreement. An amount of 1,00,000/- was given as security to Alphonsa Sherly. Alphonsa Sherly, R3 herein and her husband are friends. The

restaurant business being run by the appellants 1 & 2/A1 & A6, was quite profitable and hence Alphonsa Sherly demanded the return of the restaurant without returning the security deposit. The appellants 1 & 2/A1 & A6 were not amenable to the said demand of Alphonsa Sherly. Hence, Alphonsa Sherly with the help of R3 and Biju, her husband, tried to evict them from the restaurant by using illegal means and criminal force. Though several complaints were given against the said high-handed acts of Alphonsa Sherly to the 2nd respondent (R2), no action was taken. The harassment by R3 and her men increased day by day. Left with no other option, the 2nd appellant/A6 was constrained to file O.S. No.13/2025 before the

### **Munsiff Court, Kattappana. As per Annexure 1 injunction order**

dated 13/01/2025, Alphonsa Sherly and her men were restrained from evicting the 2nd appellant/A6 from Zion Hills Restaurant and also from causing any obstruction to the peaceful functioning of the restaurant. Despite the receipt of Annexure 1 order, Alphonsa Sherly and her men were not ready to obey the order and continued

their illegal activities in their attempt to get appellants 1 & 2/A1 & A6 evicted. Though the 1st appellant/A1 filed several complaints, no action was taken by R2. Annexure 2 series are the receipts of the complaints that were preferred by the appellants before various authorities. 9.1. On 15/02/2025, the electric fuse of the restaurant

was illegally removed by Alphonsa Sherly and her men. Again a complaint was given to R2, no action was taken. Hence, the 1st appellant/A1 gave a complaint on 16/02/2025 to the Superintendent of Police. In retaliation, on 16/02/2025 at 08:30 p.m., Alphonsa Sherly; R3; her husband Biju; their elder son Joyal and their men tried to trespass into the restaurant violating the injunction order. The 1st appellant/A1 informed R2 about the matter, pursuant to which the police came to the spot and directed Alphonsa Sherly and her men not to violate Annexure 1 order. On the assurance given by R2, the 1st appellant/A1 returned home. On the same day at about 10:00 p.m., Alphonsa Sherly; R3; her husband; their elder son Joyal

and their men again tried to trespass into the restaurant and shift the articles in a pickup van, which was seen by the 1st appellant/A1 through her CCTV. Immediately she, along with her husband, that is, the 2nd appellant/A6, went to the restaurant, where they were brutally attacked by Alphonsa Sherly and her men. On hearing the hue and cry of appellants 1 & 2, the 3rd appellant and others came there to save them. Appellants 1 & 3 sustained serious injuries on their head, shoulder, arm and abdomen and were taken for treatment to the Medical Trust Hospital, Nedumkandam.

9.2. Annexure 3 is the copy of the complaint dated Annexure 4 is the treatment summary of the 1st appellant/A1 dated Though intimation was given from the hospital, R2 did not record the statement of appellants 1 & 3/A1 & A2 due to the political and financial influence of Alphonsa Sherly. Finally, the 1st appellant/A1 had to complain to the ADGP following which R2 registered

Annexure 6 FIR, that is, crime no.199/2025, Nedumkandam police station, alleging commission of the offences under Sections 269(b), 126(2), 115(2), 118(1), 74, 75(1)(iv), 79 and 3(5) BNS. The present crime, that is, Annexure 8 FIR, that is, crime no.200/2025, Nedumkandam police station, is the counter case of Annexure 6 FIR.

10. From the materials that are presently before this

Court, it is clear that there are civil disputes pending between appellants 1 & 2/A1 & A6 and Alphonsa Sherly, A1 in Annexure 6 crime. It appears that in the said dispute, R3 herein and family as well as their worker Rojin intervened, resulting in the incident referred to in Annexures 6 and 8 FIRs.

11. Annexure 6 FIR, that is, crime no.199/2025, was

registered on 18/02/2025 at 16:10 hours wherein the informant/injured is the 1st appellant/A1 herein and the accused persons are Alphonsa Sherly; R3 herein; Biju her husband and Joyal their son. The offences alleged are 269(b), 126(2), 115(2), 118(1), 74, 75(1)(iv), 79 and 3(5) BNS.

12. Initially, in Annexure 8 FIR, the commission of

the offence under Section 3(2)(va) of the Act was incorporated. As per Section 3(2)(va) of the Act, if any person not being a member of a Scheduled Caste or a Scheduled Tribe, commits any offence specified in the Schedule, against a person or property, knowing that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, is liable to be punishable with such punishment as specified under the IPC for such offences. Thereafter, the offence under Section 3(2)(s) of the Act has also been added. It is doubtful whether the offence under the Act would be attracted because the alleged abuse of R3 took place during the course of a quarrel between the parties regarding the lease of the restaurant. In the FIS, R3 has no case that she was abused for the mere fact that she is a member of the Scheduled Caste community. (See Hitesh Verma v. The State of Uttarakhand, 2020 KHC 6631: (2020) 10 SCC 710). Moreover,

appellants/A1, A2 & A6 have taken up a defence that they were unaware that R3 is a member of the Scheduled Caste as her father is a Christian and she is married to a Christian. The question whether the appellants were aware of the caste of R3 is a matter which requires evidence. Therefore, with the available materials on record at this stage, it is prima facie doubtful as to whether the offence(s) under the Act is/are made out. If that be so, the bar under Section 18 or 18A of the Act would not be attracted.

13. Be that as it may, the question now to be

considered is should pre-arrest bail, a discretionary remedy, be granted in the facts and circumstances of the case. The materials on record do show that R3 has sustained a grievous injury. The wound certificate that has been produced by the investigating officer along with the report says that the X-ray revealed no fractures, but the CT

**scan showed fracture of the skull and brain injury. From the facts**

narrated by R3 in the FIS, this injury is seen to have been caused by Younus (A2), the 3rd appellant. The investigating officer in his

report has stated that R3 herein is in the ICU of Arpana Hospital and hence notice of the appeal was given to her husband. The report also says that for further treatment, on 13/03/2025, R3 will be taken to Madhura Medical College Hospital. The report dated 14/03/2025 further stated that due to the grievous injury sustained by R3, she has to be taken to the Madhura Medical College Hospital. However, the husband of R3 on 14/03/2025 is seen to have submitted before the trial court that his wife has been admitted in the ICU of the Medical College Hospital, Kottayam. Pointing to this discrepancy, it was submitted by the learned counsel for the appellants that in fact R3 herein was never in the ICU; R3 was very much at home at the said time and that the police is helping her to create a story to make it appear that she is in a serious condition.

14. The case records reveal that A3 to A5 in the crime

have already been arrested and remanded. Their bail applications have been dismissed by the trial court. Now it is only A1, A2 and A6 in the crime who seek pre-arrest bail. In the light of the overt

acts committed by the accused persons in the crime to which I have referred to in detail, I find that the 3rd appellant/A2 cannot be given the discretionary relief of pre-arrest bail. In the light of Annexure 6 counter case and taking into account the overt acts committed by appellants 1 & 2/A1 & A6, I am of the opinion that they can be granted pre-arrest bail. It is made clear that the observations made in this judgment are only for the purpose of this application.

The dismissal of the request of the 3rd appellant/A2 is confirmed. The appeal is partly allowed to the following effect: -

- i) The appellants 1 & 2/A1 & A6 in the event of their arrest shall be released on bail on execution of a bond to the satisfaction of the officer concerned.
- ii) The appellants 1 & 2/A1 & A6 shall co-operate with the investigation and appear before the investigating officer as and when required/directed.
- iii) They shall not leave the country without the prior permission of this Court.

iv) They shall surrender their passports to the jurisdictional court. If appellants 1 & 2/A1 & A6 do not have passports, they shall file an affidavit to the said effect before the jurisdictional court within seven days of their release on bail. v) The appellants 1 & 2/A1 & A6 shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court or to any police officer.

Interlocutory applications, if any pending, shall stand closed. Sd/- C.S.SUDHA  
JUDGE NP APPENDIX OF CRL.A 456/2025 PETITIONERS ANNEXURES  
Annexure 1 PHOTOCOPY OF THE INJUNCTION ORDER IN O.S . NO. 13/2025  
DATED 13.01.2025 OF THE LEARNED MUNSIF COURT KATTAPPANA.  
Annexure 2 PHOTOCOPY OF THE RECEIPT ISSUED FROM THE  
KATTAPPANA SUB DIVISIONAL OFFICE OF POLICE, DATED 12.02.2025  
Annexure 2(a) PHOTOCOPY OF THE RECEIPT ISSUED FROM THE  
KATTAPPANA SUB DIVISIONAL OFFICE OF POLICE DATED 14.02.2025  
Annexure 2(b) PHOTOCOPY OF THE RECEIPT ISSUED FROM  
NEDUMKANDAM POLICE STATION DATED 14.02.2025. Annexure 3  
PHOTOCOPY OF THE COMPLAINT DATED 16-02-2025 TO  
SUPERINTENDENT OF POLICE, KATTAPPANA. Annexure 4 PHOTOCOPY OF  
THE TREATMENT SUMMARY OF THE 1ST APPELLANT DATED 20.02.2025  
ISSUED FROM MEDICAL TRUST HOSPITAL, NEDUMKANDAM Annexure 5  
PHOTOCOPY OF THE COMPLAINT GIVEN TO ADGP DATED 17-02-2025.  
Annexure 6 PHOTOCOPY OF THE FIR IN CRIME NO.199/2025 DATED 18-02-  
2025 OF NEDUMKANDAM POLICE STATION. Annexure 7 FREE COPY OF  
ORDER IN CRL.M.C. 128/2025 IN CRIME NO. 200/2025 OF NEDUMKANDAM  
POLICE STATION DATED 04-03-2025 Annexure 8 THE PHOTOCOPY OF THE  
FIR AND FIS IN CRIME NO 200/2025 OF NEDUMKANDAM POLICE STATION.  
Annexure 9 THE PHOTOCOPY OF THE OF THE E-COURTS PROCEEDINGS  
DATED 14.3.25 IN CRL MC NO: SESSIONS COURT THODUPUZHA Annexure  
10 PHOTOCOPY OF THE OUTPATIENT RECORD OF 1ST APPELLANTS SON  
BEARING TOKEN NO: 59 DATED 8.3.25 OF DISTRICT HOSPITAL PALAKKAD  
RESPONDENTS ANNEXURES: NIL

