

(2026) 03 KL CK 0757
In the High Court Of Kerala
Case No : Criminal Appeal No. 258 Of 2026

State Of Kerala

APPELLANT

Vs

Anu

RESPONDENT

Date of Decision : 19-03-2026

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 187
Code of Criminal Procedure, 1973 — Section 161, 164
Bharatiya Nyaya Sanhita, 2023 — Section 101, 103, 103(1), 103(2)
Indian Penal Code, 1860 — Section 302
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 — Section 3(2)(v), 8(c), 14A(2), 15A(3), 18

Citation : (2026) 03 KL CK 0757

Hon'ble Judges : A.Badharudeen, J

Bench : Single Bench

Advocate : Vipin Narayan, Sooraj Krishnan K.V., C.Dheeraj Rajan, Mahesh V.Menon, A.V.Ravi, E.A.Haris, Anand Kalyanakrishnan, Libin Varghese, M.A.Ahammad Saheer, Muhammed Yasil, Aagi Johny, Ifra Iqbal, Vipin Narayanan.A

Final Decision : Allowed

Judgement

A. Badharudeen J

1. Common order in CrI.M.P.Nos.4/2026 (filed by accused Nos.1 and 4), 10/2026 (filed by accused No.9), 11/2026 (filed by accused No.8), 13/2026 (filed by accused No.7) and 15/2026 (filed by accused Nos.2, 3 and 5), dated 31.01.2026, is under challenge in this appeal filed under Section 14A(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2018 (hereinafter referred to as 'SC/ST (POA) Act, 2018' for short), at the instance of the prosecution. The above accused persons are arrayed as respondent Nos.1 to 8 in this appeal. The respondent No.9 is the brother of the deceased (victim) who has been impleaded in this appeal in view of the mandate of Section 15A(3) of the SC/ST (POA) Act, 2018.

2. Heard the learned Public Prosecutor, the learned counsel appearing for respondents 1 to 8, and the learned counsel for respondent No.9 in detail. Perused the case diary and the decisions placed by the learned Public Prosecutor.

3. In this matter, crime was registered based on an information received from the police outpost attached to the District Hospital, Palakkad, at about 19.40 hours on 17.12.2025, alleging commission of offence punishable under Section 103(1) of the Bharatiya Nyaya Sanhita, 2023 (hereinafter referred to as 'BNS, 2023' for short). During investigation, it has been revealed that the accused persons, at about 19.40 hours on 17.12.2025, brutally attacked one Ram Narayan Bhagel, a 40 year old native of Jharkhand, with common intention and concert to do away him, as part of mob lynching, and thereby the accused persons committed offences punishable under Sections 103(2) of BNS, 2023 as well as under Section 3(2)(v) of the SC/ST (POA) Act, 2018.

4. On reading the common order, it is discernible that accused Nos.1 to 5 were granted regular bail after completion of their custody for a period of 43 days. Accused No.7 was granted regular bail after completion of 38 days of custody. Accused No.8 was granted regular bail after completion of 35 days of custody and accused No.9 was granted regular bail after completion of 25 days of judicial custody. The reasons for granting regular bail are stated in paragraph Nos.10 and 13 of the common order, which read as under:

"10. From the available records, it can be very well deciphered that a poor unemployed North Indian citizen who arrived in Kerala in search of his fortune was brutally subjected to mob lynching resulting his death. It is obvious that the above incident is exceptional but heart wrenching and shocking. However, it is equally important to note that the remand is not a punishment. The suspect / accused were arrested and they were kept in judicial custody for the purpose of investigation. Here in this case, the petitioners fully co-operated with the investigation. It is true that as the alleged incident took place in the broad day light in the presence of native people, obviously, the witnesses might have strong acquaintance with the petitioners. However, considering the fact that the statement U/s. 183 of Bharatiya Nagarik Suraksha Sanhita of the witnesses were recorded by the jurisdictional Magistrate, there is no point in arguing that these witnesses would be won over by the petitioners at stage of the investigation. For the said reason, it is inappropriate to detain the petitioners indefinitely.

11. xxxxx

12 xxxxx

13. Prima-facie, it is manifested that it is a case of mob lynching. It is true that Section 103 (2) of Bharatiya Nyaya Sanhita would attract in this case. However, even considering the gravity of the shocking incident, it is not appropriate to put the petitioners behind the bar indefinitely. Considering the totality of this case, it is inclined to think that further detention of the petitioners

is not warranted for the completion of the investigation. Therefore, the smooth progress of the investigation can be guaranteed by imposing stringent condition on petitioners while they are being released on bail. Hence, it is held that petitioners are entitled to be released on bail. The point is answered in favour of the petitioners.”

5. According to the learned Public Prosecutor, while drafting the BNS, 2023, apart from ordinary cases of murder, a more exhaustive offence is defined under Section 103(2) of the BNS, 2023, to address the menace of mob lynching, and the instant case is one of such species. According to him, in such a serious case, grant of regular bail to respondent Nos.1 to 8 herein, at an extremely premature stage of investigation, has adversely affected the progress as well as the fate of the investigation. Therefore, cancellation of bail is absolutely essential to complete the investigation effectively in a serious case of this nature. Non-compliance of notice of hearing mandated under Section 15A(3) of the SC/ST (POA) Act, 2018 also is urged as another ground to cancel the bail. Therefore, the learned Public Prosecutor sought to set aside the common order.

6. The learned Public Prosecutor also placed decision of the Apex Court in *Shobha Namdev Sonavane v. Samadhan Bajirao Sonvane*, reported in 2026 KHC OnLine 6143, with specific reference to paragraph No.21 to 24. A case under the SC/ST (POA) Act also referred in paragraph No.22 by the Apex Court. In paragraph No.24, the Apex Court observed as under:

“24. The High Court has assigned the following reasons for granting bail to the Respondents-Accused:

“10. Perusal of the FIR would show that the Appellants have their lands adjacent to the land of the deceased and it is said that there is long standing dispute in respect of way to the land. This Court has granted stay to the matter and, therefore, the dispute aggravated. The informant contends that her husband - Namdeo left along with daughter for dropping her to school around 9.00 a.m. and around 10.00 a.m., her brother-in-law informed about the fact that six persons were assaulting Namdeo in front of Tilekar's shop. Informant, her brother-in-law and wife of brother-in-law went to the spot. The statement of these three persons corroborate each other, however, it is to be noted from all the statements of all the three witnesses that the alleged act imputing offence under the Atrocities Act appears to be against present Appellants and co-Accused Ravindra. It is stated that by doing obscene act, they had abused the informant in the name of caste. As regards the abuses in the name of caste is concerned, role of each Accused will have to be considered. The informant, her brother-in-law, brother-in-law's wife - Usha and the other eye witnesses have stated that Accused Sahebrao was holding axe and Accused Shankar was holding stick and they had assaulted Namdeo as well as Accused Shankar appears to have assaulted Usha with the stick. Unfortunately, Namdeo has expired, but the fact that is required to be considered is that the incident is stated to have taken place on 19.08.2022 and Namdeo

expired on 24.08.2022. The postmortem reveals eight injuries of following nature:

- 1) Bluish contused abrasion of size 6cm x 4cm was present over right side of upper arm.
- 2) Lacerated wound was present over right hand thumb with dressing.
- 3) Multiple sutured wounds was present over right side of leg with discharging fluid.
- 4) Bluish contused lacerated wounds of size 4cm x 3cm to 2cm x 1cm was present over left side of leg.
- 5) Bluish/Blackish contusion of size 6cm x 4 cm was present over left side of arm with fracture of underlying bone.
- 6) Bluish contusion of size 12 cm x 4 cm was present over left side of lumber region.
- 7) Multiple bluish contusion was present over back of trunk.
- 8) Contusion was present over left side of parietal region of scalp with effusion of blood.

The probable cause of death as aforesaid appears to be combined effect of septicaemia with cerebral damage due to blunt trauma to head with polytrauma. Whose weapon caused head injury to Namdeo cannot be ascertained, as there is no such specific statement either in the FIR or in statements of the witnesses Under Section 161 of the Code of Criminal Procedure. Taking into consideration the septicaemia, which would have developed later to the bruises, it will have to be considered by the trial Court, as to whether there was intention and knowledge to kill Namdeo.

11. The investigation is over and charge- sheet is filed. The role attributed to the present Appellants is holding of iron rod and stick. The discovery of iron rod as well as stick appears to be from co-Accused Yogesh Gawand on 21.08.2022. Keeping the question open as to whether the said discovery would be admissible against the present Accused or not, the only fact is then required to be considered that Accused Yogesh appears to be the brother of Appellant No. 2 and the discovery panchanama states that the scythe was also discovered by Yogesh and it is then stated that it was used by Appellant No. 2 Ganesh, but the FIR speaks something else. The present Appellant is said to have discovered his motorcycle and his clothes.

The CA reports are yet awaited. At the cost of repetition, it will have to be stated that even from the statements of certain witnesses Under Section 164 of the Code of Criminal Procedure it cannot be gathered whose weapon has caused which injury to Namdeo.

12. As regards, the obscene act and abuses given in the name of caste are

concerned no doubt it is attributed to the present Appellants, but taking that offence in segregation will not justify the further custody of the Accused. Another fact will have to be considered here is that the litigation is going on since last many years and at any earlier point of time, it has not been pointed out that the situation was so worst i.e. resulting in such attacks. Therefore, taking into consideration all these aspects, the Appellant ought to have been released on bail by the learned Special Judge. No doubt, the offence charged against the Appellants are serious in nature, but for the aforesaid reasons, they need not be asked to remain in jail as it will be long way to stand their trial.....”

7. The learned Public Prosecutor highlighted that accused Nos. 1 to 5 and 9 are habitual offenders, though no criminal antecedents have been traced with regard to the other accused persons. The criminal antecedents of accused Nos. 1 to 5 and 9 are reported as under:

Accused No.1

1. Crime No.336/15 of Walayar Police Station registered u/s 118 a of KP Act
2. Crime No.419/15 of Walayar Police Station registered u/s118a of the KP Act
3. Crime No.02/2009 of Walayar Police Station registered u/s 143, 147, 148, 324, 323, 149 of IPC
4. Crime No.106/2012 of Walayar Police Station registered u/s 326, 341, 324, 307 r/w 34 IPC
5. Crime No.364/2012 of Walayar Police Station registered u/s 143, 147, 148, 324, 308, 149, 341 IPC
6. Crime No.919/2012 of Walayar Police Station registered u/s 452, 354, 34 IPC
7. Crime No.30/2007 of Walayar Police Station registered u/s 341, 323, 294b, 506(1), 34 IPC
8. Cime No.105/2012 of Walayar Police Station registered u/s 143, 147, 148, 452, 506(2), 427, 149 IPC
9. Crime No.944/2010 of Kasaba Police Station registered u/s 143, 147, 435, 427, 149 IPC
10. Crime No.950/2010 of Kasaba Police Station registered u/s 143, 147, 148, 353, 332, 149 IPC
11. Crime No.931/2010 of Kasaba Police Station registered u/s 143, 147, 148, 341, 353, 332, 427, 149 IPC
12. Crime No. 235/2022 of Walayar Police Station registered u/s 279 IPC & 185 MV Act
13. Crime No. 4/23 of Walayar Police Station registered u/s 279 IPC

14. Crime No.947/10 of Kasaba Police Station registered u/s 143, 147, 148, 435, 448, 427, 149 and 3(2)(a) of PDPP Act

15. Crime No.932/10 of Kasaba Police Station registered u/s 427, 149, 143, 148 and 3(2)(a) PDPP Act

Accused No.2

1. Crime No.996/2014 of Walayar Police Station registered u/s 118 a of the KP Act

2. Crime No.821/2015 of Walayar Police Station registered u/s 118 a of the KP Act.

Accused No.3

1. Crime No.106/2012 of Walayar Police Station registered u/s 326, 341, 324, 307 and 34 of IPC

2. Crime No.2/2009 of Walayar Police Station registered u/s.143, 147, 148, 324, 323, 341 and 149 of IPC

Accused No.4

1. Crime No.210/2011 of Walayar Police Station registered u/s 143, 147, 148, 452, 323, 324, 354, 294(b) and 149 of IPC

Accused No.5

1. Crime No.455/2016 of Walayar Police Station registered u/s 143, 147, 448, 294(b), 323 and 149 IPC

2. Crime No.18/2019 of Town North Police Station registered u/s. 143, 144, 147, 148, 188, 283, 332, 353, 427, 149 of IPC and 3(2)e of PDPP Act.

3. Crime No.19/2019 of Town North Police Station registered u/s.143, 144, 147, 148, 188, 283, 332, 353, 427, 149 IPC and 3(2)(e) of PDPP Act.

Accused No.9

1 Crime No.575/10 of Walayar Police Station registered u/s. 343,323,294 b r/w 34 IPC

2 Crime No.634/18 of Walayar Police Station registered u/s 341,323,447 r/w 34 IPC

3 Crime No.559/22 of Walayar Police Station registered u/s 279 IPC & 196 MV Act

4 Crime No.584/18 of Walayar Police Station registered u/s. 279 IPC & 18 MV Act

5 Crime No.106/11 of Walayar Police Station registered u/s 107 CRPC

6 Crime No.240/19 of Walayar Police Station registered u/s 341,447,324,323,325 r/w 34 IPC

7 Crime No.960/17 of Walayar Police Station registered u/s 279 IPC & 18 MV Act

8. The learned counsel for respondent Nos.1 to 8 filed detailed objections and strongly opposed interference in the order. According to them, cancellation of bail is a harsh order and the same would not be invoked when the order would depict reasons for the grant of bail and the same are justifiable. Regarding the antecedents, the learned counsel submitted that many of the cases are much prior to the registration of the present case, and as far as accused Nos. 6, 7 and 8 are concerned, no antecedents have been reported.

9. The learned counsel appearing for respondent No.9, the brother of the victim, strongly supported the version of the learned Public Prosecutor while seeking the relief of cancellation of bail. The thrust of argument of the learned counsel for the 9th respondent in this regard is non-compliance of notice of hearing of the 9th respondent in view of Section 15A(3) of the SC/ST (POA) Act, 2018. According to the learned counsel for respondent No.9, no notice was issued to the dependent of the victim in this case.

10. First of all, I shall consider the observation of the learned Special Judge when he considered the question as to whether offence under Section 3(2)(v) of the SC/ST (POA) Act, 2018 made out in the facts of the case. In paragraph No.12, the Special Judge observed as under:

"12. It is also significant to note that Section 3(2) (v) of SC/ST (POA) Act has been subsequently added in this crime. As per the prosecution allegation, the victim was a member of a Scheduled Caste. Admittedly, the petitioners are not members of any Scheduled Caste/Tribe. However, it is an admitted fact that the petitioners do not have any previous acquaintance with the victim till the very moment they encountered him at the place of occurrence. Admittedly, the deceased/the victim came in Kerala just four days before his death. Therefore, at any such of imagination, it is difficult to grasp that the petitioners had knowledge about the caste identity of the deceased at the time of the alleged offences. Therefore, prima-facie, Section 3(2) (v) of SC/ST (POA) Act would not attract in this case. As a corollary, there is no need to hear the submissions of the de facto complainant while considering these bail applications."

11. The above extract would show that the learned Special Judge took the view that even no need to hear the submission of the victim or his dependent while considering the bail applications and passing the common order. In fact, the learned Special Judge given a go-by to the mandatory nature of Section 15A(3) of the SC/ST (POA) Act, 2018. In this connection, it is relevant to extract Section 15A(3) of the SC/ST (POA) Act, 2018, forms part of Chapter IV A, introduced with effect from 26.01.2016 by way of amendment. Section 15A(3) reads as under:

"15A. Rights of victims and witnesses. (3) A victim or his dependent shall have the right to reasonable, accurate, and timely notice of any Court proceeding including any bail proceeding and the Special Public Prosecutor or the State

Government shall inform the victim about any proceedings under this Act.”

12. On a plain reading of Section 15A(3) of the SC/ST (POA) Act, 2018, the statutory wording is that a victim or his dependent 'shall' have the right to reasonable, accurate, and timely notice of any Court proceedings including any bail proceedings and the Special Public Prosecutor or the State Government shall inform the victim about any proceedings under this Act.

13. In the instant case, the common order impugned would depict that no notice was given to the dependent of the victim (since the victim is no more), to ensure compliance with Section 15A(3) of SC/ST (POA) Act, 2018. This is the main challenge raised at the instance of the prosecution and the 9th respondent while supporting the case of the prosecution for cancellation of bail.

14. On a reading of the scheme of the SC/ST (POA) Act, 2018, which came into force by way of amendment with effect from 20.08.2018, special provision in the form of Section 15A(3) has been introduced to avoid delivery of judgments and passing of orders, including the orders in bail applications, without hearing the grievance of the victim or his dependent. The wording seen in Section 15A(3) of the SC/ST (POA) Act, 2018, is that the victim or his dependent shall have the right to get notice of any court proceedings where offence/offences under the SC/ST (POA) Act, 2018 is/are alleged by the prosecution. When considering the bar under Section 18 of the SC/ST (POA) Act, 2018, to grant of anticipatory bail, the legal position is well settled that when the prosecution materials do not prima facie show commission of the offence, the bar would not apply. However, when a court is considering a proceeding where offences under the SC/ST (POA) Act, 2018 are involved, in order to decide as to whether the SC/ST (POA) Act, 2018, offences would attract or not, also should not be decided unilaterally. For the said purpose also, issuance of notice under Section 15A(3) of the SC/ST (POA) Act, 2018, to the victim or his dependent, as the case may be, is mandatory. In the absence of notice and opportunity of hearing to the victim or his dependent, in such cases a Special Court or any other court is not empowered to take any decision in any proceedings under the SC/ST (POA) Act, 2018. However, it is shocking to note that the learned Special Judge when dealt with a serious case of murder of a member of Scheduled Caste community by mob lynching inattentively and thoughtlessly granted bail even without issuing notice to ensure mandatory hearing of the dependent of the victim in this case. This is a very serious lapse on the part of the Special Judge and the same should not have happened and the learned Special Judge shall be more vigilant hereinafter when dealing with cases of this nature.

15. In view of the above legal position, the common order impugned, which has been passed without hearing the dependent of the deceased, the 9th respondent herein, is non-est in the eye of law and therefore, is liable to be set aside.

16. It is relevant to note that the offence of murder is punishable under Section 302 of the Indian Penal Code (hereinafter referred to as 'IPC' for short).

When the BNS, 2023 has been substituted in the place of IPC, the punishment for murder has been incorporated under Section 103 of the BNS, 2023. Section 103(1) of BNS, 2023, provides punishment for the offence of murder defined under Section 101 of BNS, 2023. Section 103(2) of BNS, 2023 is a new provision introduced and the intent behind the legislation of this provision is to meet a situation when a murder is committed by a group of five or more persons acting in concert on the ground of race, caste or community, sex, place of birth, language, personal belief or any other similar ground each member of such group shall be punished with death or with imprisonment for life, and shall also be liable to fine. Thus the legislature intended to treat the offence under Section 103(2) of BNS, 2023 as more serious. The intention of the legislation is to avoid the peril of murder by mob lynching. Even before the introduction of Section 103(2) of BNS, 2023, in a three Bench decision of the Apex Court in *Tehseen S. Poonawalla v. Union of India and Others*, reported in 2018 KHC 6513 : 2018(2) KLD 308 : 2018(9) SCALE 4 : AIR 2018 SC 3354 : 2018 (3) KLT SN 57 : 2018 (9) SCC 501, the Apex Court considered mob lynching and observed in paragraph Nos.18, 19 and 20, as pointed out by the learned Public Prosecutor, as under.

"18. Lynching is an affront to the rule of law and to the exalted values of the Constitution itself. We may say without any fear of contradiction that lynching by unruly mobs and barbaric violence arising out of incitement and instigation cannot be allowed to become the order of the day. Such vigilantism, be it for whatever purpose or borne out of whatever cause, has the effect of undermining the legal and formal institutions of the State and altering the constitutional order. These extra-judicial attempts under the guise of protection of the law have to be nipped in the bud; lest it would lead to rise of anarchy and lawlessness which would plague and corrode the nation like an epidemic. The tumultuous dark clouds of vigilantism have the effect of shrouding the glorious ways of democracy and justice leading to tragic breakdown of the law and transgressing all forms of civility and humanity. Unless these incidents are controlled, the day is not far when such monstrosity in the name of self-professed morality is likely to assume the shape of a huge cataclysm. It is in direct violation of the quintessential spirit of the rule of law and of the exalted faiths of tolerance and humanity.

19. Mob vigilantism and mob violence have to be prevented by the Governments by taking strict action and by the vigil society who ought to report such incidents to the State machinery and the police instead of taking the law into their own hands. Rising intolerance and growing polarisation expressed through spate of incidents of mob violence cannot be permitted to become the normal way of life or the normal state of law and order in the country. Good governance and nation building require sustenance of law and order which is intricately linked to the preservation of the marrows of our social structure. In such a situation, the State has a sacrosanct duty to protect its citizens from unruly elements and perpetrators of orchestrated lynching and vigilantism with utmost sincerity and

true commitment to address and curb such incidents which must reflect in its actions and schemes.

20. Hate crimes as a product of intolerance, ideological dominance and prejudice ought not to be tolerated; lest it results in a reign of terror. Extra-judicial elements and non-State actors cannot be allowed to take the place of law or the law-enforcing agency. A fabricated identity with bigoted approach sans acceptance of plurality and diversity results in provocative sentiments and display of reactionary retributive attitude transforming itself into dehumanisation of human beings.”

17. In this case, prima facie, the prosecution records would show that this is a clear case of mob lynching, mainly on the ground of discrimination based on the place of birth, as the victim is a native of Jharkhand and, according to the prosecution, the victim reached here in search of a job. On scrutiny of the prosecution records, it could be seen that the investigation of this serious crime is on the primitive stage and the investigation has to go further. In such a case, premature grant of bail has adverse result in the investigation, particularly accused Nos.1 to 5 and 9 are habitual offenders. It is relevant to note that the learned Special Judge granted bail, holding the view that their interrogation for the purpose of investigation is not required, in a mechanical manner, even ignoring the fact that, unlike the Code of Criminal Procedure, Section 187 of the Bharatiya Nagarik Suraksha Sanhita, 2023, provides that police custody can be given during the initial 60 days of detention in this case for the purpose of investigation. That apart, the learned Special Judge not considered the impact of Section 8(c) of the SC/ST (POA) Act, 2018, where a statutory presumption of the ‘knowledge’ regarding the caste identity of the victim has been specifically provided. The learned Special Judge should have provided an opportunity of hearing to the dependent of the victim and to give genuine reasons as to why the statutory provisions would not apply in the facts of this case. Thus, the learned Special Judge jumped into conclusion in a very mechanical manner, ignoring the statutory provisions, otherwise, the learned Special Judge lost sight of the statute and its provisions.

18. The upshot of the above discussion is that the bail cancellation plea raised by the prosecution is sustainable on the facts of this case, even though the same is a harsh order for the reasons illustrated. In such view of the matter, this appeal is allowed, and the common order impugned is set aside. Accordingly, the bail granted to respondent Nos.1 to 8 as per the common order impugned and the bail bonds executed by them stand cancelled. Respondent Nos. 1 to 8 are directed to surrender before the jurisdictional court within three days from today, and the jurisdictional court shall ensure their detention in judicial custody in accordance with law, without fail.

19. On failure to surrender, as directed, the Investigating Officer is at liberty to arrest them and proceed in accordance with law, without fail.

20. It is specifically ordered that, after their surrender and detention, respondent Nos.1 to 8 are at liberty to file fresh bail applications, and the learned Special Judge can adjudicate the same within the mandate of Section 15A (3) of the SC/ST (POA) Act, 2018, and other statutory provisions after providing opportunity to the dependent of the victim, with notice of hearing, and pass orders purely on merits.

Registry is directed to forward a copy of this judgment to the jurisdictional court, forthwith.