

2025 LiveLaw (SC) 884

**IN THE SUPREME COURT OF INDIA
VIKRAM NATH; J., SANDEEP MEHTA; J.**

**Petition(s) for Special Leave to Appeal (Crl.) No(s). 6588/2025; 08-09-2025
MOHAMMED RASAL.C & ANR. versus STATE OF KERALA & ANR.**

Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) - Section 482 - Anticipatory Bail - Hierarchy of Courts - The concurrent jurisdiction of the Sessions Court and the High Court for anticipatory bail under Section 482 of BNSS does not mean a person can directly approach the High Court, bypassing Sessions Court - The Hierarchy of Courts demands that a person seeking pre-arrest bail should not be allowed or encouraged to bypass the jurisdiction of the concerned Session court - Encouraging practice of directly approaching the High Court for anticipatory bail would flood the High Court with a large number of applications, creating a 'chaotic situation' - A significant number of applications would likely be granted at the Session Court level acting as a 'filtration process' before cases reach the High Court - In most states, there is a consistent practice requiring litigants to first approach the Session s Court for anticipatory bail and only if relief is denied, they can approach High Court. [Paras 6-9]

[Arising out of impugned final judgment and order dated 11-03-2025 in BA No. 1485/2025 passed by the High Court of Kerala at Ernakulam]

For Petitioner(s): Mr. K. Rajeev, AOR Mr. Shinoj K.Narayanan, Adv. Ms. Niveditha R Menon, Adv. Ms. Aditya Verma, Adv. Mr. Tarun Kumar, Adv.

For Respondent(s): Mr. Harshad V. Hameed, AOR Mr. Dileep Poolakkot, Adv. Mrs. Ashly Harshad, Adv. Mr. Anshul Saharan, Adv.

ORDER

1. Heard learned counsel for the petitioners and perused the material placed on record.
2. Interim protection was provided to the petitioners vide order 5th May, 2025.
3. Taking into consideration the facts and circumstances of the case, we make the said interim order absolute.
4. It goes without saying that the petitioner will continue to extend all cooperation during the investigation and thereafter during the trial.
5. In the event, the trial Court or the State finds that the petitioners are delaying the conclusion of trial, it will be open for them to approach this Court for recall of this order.
6. We find that in this case, the petitioners had approached the High Court directly for pre-arrest bail under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023(for short, 'BNSS'),,without first approaching the Sessions Court for the said relief. We are of the opinion that though the concurrent jurisdiction is conferred upon the Sessions Court and the High Court to entertain a prayer for pre-arrest bail under Section 482 of the BNSS (formerly, Section 438 CrPC), the hierarchy of Courts demands that no person seeking such remedy should be encouraged or allowed to directly approach the High Court for exercising jurisdiction under Section 482 of the BNSS (formerly, Section 438 CrPC) by bypassing the jurisdiction of the concerned Sessions Court.
7. The Sessions Judge exercises powers under Section 438 CrPC in relation to all cases registered with the police stations in the particular District. This area-wise distribution of work would make it much more convenient and facilitate expeditious

disposal, if the application for prearrest bail is first filed before the Sessions Court which would have a direct and first-hand assistance of the concerned Public Prosecutor appointed for that particular District. The Sessions Court would also have an immediate access to the Case Diary thereby facilitating a better appreciation of facts of the case.

8. We further feel that if the practice of entertaining the applications for pre-arrest bail directly in the High Court is encouraged, and the parties concerned are not relegated to first approach the Sessions Court concerned, the High Court would be flooded with a spate of pre-arrest bail applications thereby creating a chaotic situation. We say so, because if the parties are required to approach the Sessions Court concerned for seeking remedy of pre-arrest bail, there is a strong probability that significant number of applications would be allowed at that level only thereby acting as a filtration process before the process reaches the High Court.

9. It is trite that in most of the States, there is a consistent practice requiring the litigant concerned to first approach the Sessions Court for seeking relief of pre-arrest bail and only in the event of denial of such relief, the litigant would be granted access to approach the High Court for seeking such relief. This is, of course, subject to just exceptions and the High Court, for reasons to be recorded, may entertain an application for pre-arrest bail directly in special/extra-ordinary circumstances.

10. Let notices be issued on this aspect to the High Court of Kerala through the Registrar General. We also appoint Shri Sidharth Luthra, learned senior counsel as *Amicus Curiae* assisted by Mr. G. Arudhra Rao, Advocate, to assist this Court in this matter.

11. Registry to provide the necessary papers to the learned counsel within three days.

12. List this matter on 14th October, 2025, for consideration of the above issue only.

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