



2025:KER:48012

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

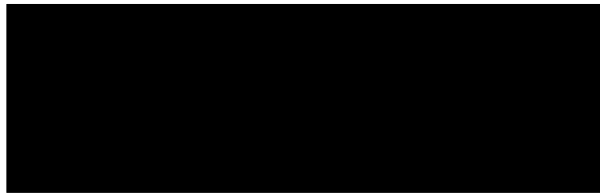
THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 2ND DAY OF JULY 2025 / 11TH ASHADHA, 1947

BAIL APPL. NO. 7916 OF 2025

CRIME NO.755/2025 OF MALAPPURAM POLICE STATION, MALAPPURAM.

PETITIONER:



BY ADVS.
SHRI.AMEEN HASSAN K.
SHRI.REBIN VINCENT GRALAN

RESPONDENT:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, PIN - 682 031.
- 2 STATION HOUSE OFFICER,
MALAPPURAM POLICE STATION,
MALAPPURAM, PIN - 676 519.

SRI. NOUSHAD K A, PP

THIS BAIL APPLICATION HAVING BEEN FINALLY HEARD ON
02.07.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



BECHU KURIAN THOMAS, J.

Bail Appl. No.7916 of 2025

Dated this the 2nd day of July, 2025

O R D E R

This bail application is filed under section 483 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS').

2. Petitioner is the accused in Crime No.755 of 2025 Malappuram Police Station registered for the offences punishable under sections 84 and 69 of the Bharatiya Nyaya Sanhita, 2023 (for short "BNS").

3. The prosecution case is that the petitioner, after giving a false promise of marriage, sexually assaulted the de facto complainant and threatened to publish her photos and videos and borrowed a total amount of Rs.2,50,000/- and thereby committed the offences alleged. Petitioner was arrested on 13.06.2025, and he has been in custody since then.

4. Sri.Ameen Hassan K, the learned counsel for the petitioner, submitted that the prosecution allegations are totally false, and the incident as alleged had not occurred. It was further submitted that even going by the prosecution allegations, the victim is a married lady and therefore, there cannot be sexual intercourse



with a promise of marriage. It was further submitted that a reading of the FIR will indicate that it is primarily based on a financial claim and the allegation of rape under the promise of marriage is taken up only to ensure that the petitioner yields to her illegal demands. The learned counsel further submitted that further detention ought not to be permitted, considering the young age of the petitioner.

5. Sri.Noushad K A, the learned Public Prosecutor, on the other hand, opposed the bail application and submitted that the allegations are serious and that the petitioner having been arrested only on 13.06.2025, his continued detention is necessary.

6. On a consideration of the rival contentions and on a perusal of the statement of the victim given to the police, it is noticed that the de facto complainant is a married lady. In fact, one of the offences alleged against the petitioner is that under Section 84 of BNS, which deals with enticing or taking away with criminal intent a married women. Once the admitted case of the prosecution itself is that the de facto complainant is a married women, there cannot be sexual intercourse with the promise of marriage. As observed by this Court in **Anilkumar v. State of Kerala and others** [2021 (1) KHC 435] as well as **Ranjith v. State of Kerala** [2022 (1) KLT 19] there cannot be a promise of marriage when one of the parties is in a subsisting marriage. In such a view of the matter, prima facie, it is



doubtful whether the offence under Section 69 can be attracted.

7. As far as Section 84 is concerned, it is a bailable offence and therefore, the continued detention of the petitioner is not necessary.

8. In this context, it is observed that while considering the cases alleging rape on the basis of the promise of marriage, it is difficult for this Court at this juncture to enter into a conclusion regarding whether the relationship was consensual or not. The entire circumstances will have to be taken into consideration especially when a married lady enters into a physical relationship with another person. If both of the parties are aware about a subsistant marriage it cannot be alleged that the sexual intercourse between them was with a promise to marry.

9. Taking into consideration the above circumstances, I am of the view that this is a fit case to release the petitioner on bail.

In the result, this application is allowed on the following conditions:-

(a) Petitioner shall be released on bail on him executing a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the court having jurisdiction.

(b) Petitioner shall appear before the Investigating Officer as and when required.



(c) Petitioner shall not intimidate or attempt to influence the witnesses; nor shall he tamper with the evidence or contact the victim or her family members.

(d) Petitioner shall not commit any similar offences while he is on bail.

(e) Petitioner shall not leave India without the permission of the Court having jurisdiction.

10. In case of violation of any of the above conditions or if any modification or deletion of the conditions are required, the jurisdictional Court shall be empowered to consider such applications, if any, and pass appropriate orders in accordance with law, notwithstanding the bail having been granted by this Court.

It is clarified that the observations made in this order are solely for the purpose of disposing of this bail application and the same shall have no bearing at any other stage of the proceedings.

Sd/-
BECHU KURIAN THOMAS
JUDGE

ADS



APPENDIX OF BAIL APPL. 7916/2025

PETITIONER ANNEXURES

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| Annexure A1 | THE COPY OF THE BAIL ORDER OF JFCM, MALAPPURAM DATED 17.06.2025 IN C.M.P 1962/2025. |
| Annexure A2 | THE COPY OF THE FIR NO.404/2025 OF TIRUR POLICE DATED 04.03.2025. |
| Annexure A3 | THE COPY OF THE JUDGMENT DATED 30.10.2020 OF THE HON'BLE HIGH COURT OF KERALA IN ANILKUMAR V. STATE OF KERALA [2021 (1) KHC 435]. |
| Annexure A4 | THE COPY OF THE JUDGMENT DATED 29.03.2022 OF THE HON'BLE HIGH COURT OF KERALA IN CRL.MC NO. 4933 OF 2021. |
| Annexure A5 | THE COPY OF THE JUDGMENT DATED 06.03.2024 OF THE HON'BLE SUPREME COURT OF INDIA IN CRIMINAL APPEAL 3431/2023. |