

IN THE COURT OF THE SESSIONS JUDGE,
THIRUVANANTHAPURAM
PRESENT : SMT. NAZEERA.S, SESSIONS JUDGE

On Thursday , 4th day of December 2025/ 13th day of Agrahayana, 1947.

Criminal M.C.No. 3585/2025
(Crime No. 1750/2025 of Nemom Police Station)

Petitioner /Accused No 1 :-

Rahul B R @ Rahul Mamkootathil, aged 36 years
S/o. Rajendra Kurup, Attuvilakathu Veedu,
Mundapalli, Parakootam P.O, Pathanamthitta.

By Advocates:- Sasthamangalam S Ajithkumar (Senior)
and Sekhar G Thampi

Counter Petitioner/ Respondent :-

State of Kerala represented by the
Station House Officer,
Nemom Police Station.

By Public Prosecutor Dr. T. Geenakumari

This Criminal M.C. is finally heard on 04.12.2025 and the court on the same day passed the following :

ORDER

This is an application filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, seeking pre-arrest bail.

2. The petitioner is alleged to have committed the offences punishable under Sections 64(2)(f), 64(2)(h), 64(2)(m), 89, 115(2) and 351(3), r/w Section 3(5) of the Bharatiya Nyaya Sanhita, and Section

66E of the Information Technology Act, and Crime No. 1750/2025 of Nemom Police Station is registered against the petitioner arraying him as the 1st accused, along with one other accused.

3. *The prosecution allegation in brief is as follows:-* The 1st accused, who is the serving M.L.A. of Palakkad Constituency befriended the victim through social media, while she was living separately from her husband, and thereafter, he gave psychological support to the victim and assured of being there for her. The 1st accused promised the victim that their relationship would endure forever. The 1st accused also convinced the victim that, the victim will not leave the 1st accused, if she has a child of the 1st accused and thereafter, the 1st accused, with the intention of having sexual intercourse with the victim and impregnating her, on 27.01.2025 and on 28.01.2025, at the apartment of the 1st accused bearing 1 situated at Palakkad, had sexual intercourse with the victim. Subsequently, on 04.03.2025, at the apartment of the victim bearing , the 1st accused physically assaulted the victim and committed rape upon her. Thereafter, on 17.03.2025, at the apartment of the victim, the 1st accused

took her nude video by threatening her. Then, the 1st accused, by knowing the fact that the victim was pregnant, on 22.04.2025, again committed rape upon her at her apartment, and compelled her for miscarriage. Subsequently, on 30.05.2025, at the instruction of the 1st accused, the 2nd accused handed over the abortion pills to the victim, and finally, at the compulsion of the 1st accused, she took the pills and aborted the pregnancy.

4. Notice in this bail application is issued to the Public Prosecutor. The Investigating Officer filed report opposing the anticipatory bail application.

5. Heard. Perused the records.

6. The only point to be considered is, whether an order of pre-arrest bail can be granted to the petitioner/ 1st accused.

7. **The Point:-** The petitioner is the Member of Legislative Assembly representing Palakkad Constituency. The defacto complainant / victim in this case is a . It is alleged that, the petitioner / 1st accused, who got acquaintance with the victim, who was living separately from her husband, gave emotional support and assurance of being with her lifelong, and thereafter,

committed rape upon the victim on so many occasions, impregnated her, took her nude video, and also insisted her to terminate the pregnancy.

8. The petitioner who stated as an opposition side M.L.A. and famous youth leader approached this court seeking the discretionary relief of pre-arrest bail in view of the allegations spreading against him for the last few months followed by a complaint dated 27.11.2025 filed by the victim before the Hon'ble Chief Minister of Kerala. The case against the petitioner is registered on the basis of the statement given by the victim on 28.11.2025 to the Sub Inspector of Thiruvananthapuram Rural Women Cell. The allegation against the petitioner mainly involves rape, causing miscarriage and taking nude photos of the victim.

9. The specific contention raised by the petitioner is that, this case against him is completely politically motivated in view of the political nexus of CPM and BJP in Kerala. It is submitted that, during this election time, this controversy is initiated in order to turn the public attention away from some other controversy. It is also stated that, the victim, who is a , and her husband, who is a , are cohabiting together and thus the case is politically motivated.

10. The main arguments raised by the learned counsel for the petitioner as against the allegation levelled against the petitioner are as follows:-

- (i) The victim/defacto complainant is already married.
- (ii) The relationship between the petitioner and the victim was consensual and there is no ingredients to attract an offence under Section 64 of the Bharatiya Nyaya Sanhita.
- (iii) The victim herself took the tablet for miscarriage and the offence under Section 89 of Bharatiya Nyaya Sanhita will not be attracted.
- (iv) The complaint is falsely foisted against the petitioner on a pressure from _____ where the victim was working.

11. The petitioner has produced Ext.P1 series photographs to show that the marriage of the victim was duly solemnized under the Hindu Marriage Act as per custom. The learned Public Prosecutor fairly submitted that, neither the marriage nor the legality of the marriage of the victim is put in dispute now. Admittedly, the marriage of the

defacto complainant was held on 22.08.2024. In the statement given by the defacto complainant, it is stated that, she had resided in the house of her husband only for four days and that due to some problems, she returned to her place and used to go for work in the

According to the defacto complainant, she got acquaintance with the petitioner during the period when she was living separately from her husband and there developed a friendship among them initially and thereafter the petitioner asked her family matters and she revealed her marital problems and thereafter the petitioner gave her emotional support and assurance that he is there for her. The learned counsel for the petitioner, in order to oppose the version of the victim that she had cohabited with her husband only for four days, produced Ext.P2 photograph dated 08.01.2025, which is actually a photo posted in the social media by some person related to the victim and her husband, which only depicts the three of them in a frame. The said post was made on 08.01.2025 and that is not indicative of the fact that the photo was taken on that date. The petitioner also produced Ext.P8 Facebook post of the husband of the victim dated 06.01.2025 along with a photo of the duo. Even if it is considered for a moment that their marital

relationship continued for a further period than as stated by the victim or that it is still continuing, so far as the allegation against the petitioner is concerned, it is of little relevance.

12. The main allegation as against the petitioner is not that the petitioner had entered into a sexual relationship with the victim by giving a false promise of marriage as one under Section 69 of the Bharatiya Nyaya Sanhita, but it is one under Section 64 of the Bharatiya Nyaya Sanhita alleging rape. There is allegation that the petitioner had committed rape against her will and without her consent and that too repeatedly, including rape on her knowing that the victim is pregnant. The learned counsel for the petitioner vehemently argued that there can be no promise for marriage with a lady who is already married and the relationship between the two is purely consensual. The learned counsel pressed his argument by stating that even the statement given by the victim reveals that the relationship between the two was a romantic relationship. It is discernible from the statement given by the victim that initially the relationship was a romantic relationship and that she fell in the relationship when he invited her to his life for a life long relationship and the sexual relationship initially was with her consent. However, the

further narration of events in the statement given by the victim throws light on the fact that their relationship was not so sweet and smooth when she got pregnant. According to the victim, it is the petitioner who insisted for conceiving a child in their relationship and later turned against the victim and insisted for termination of pregnancy by consuming pills. In the statement of the victim, there is clear allegation as to how the petitioner insisted, forced and threatened her to get the pregnancy terminated. Equally, there is allegation that, against her resistance on fear of getting some harm to the child in the womb, the petitioner forcefully entered into a sexual relationship with the victim. It is also alleged that, in order to pressurize her and compromise on her demands, the petitioner had captured her nude photos in his mobile phone in spite of the resistance of the victim and many a times he had threatened her not to reveal their relationship. The defacto complainant had narrated instances where the petitioner had forced her to consume pills for abortion by threatening her that he will commit suicide if she is not yielding. According to the defacto complainant, she agreed to consume pills for abortion on the basis of the threat of suicide by the petitioner. Allegedly, on 30.05.2025, the 2nd accused, who is the friend

of the petitioner, came to the victim as instructed by the petitioner, and gave her pills for termination of pregnancy and instructed her how to use it, and on the next day she consumed the tablet and that was confirmed by the petitioner by viewing through video call. According to the defacto complainant, she had some physical problems after taking the pills and thereafter she approached a Gynecologist in and then she was informed by the Doctor that the medicine which she consumed was not supposed to be taken without consulting a Doctor or without the prescription of a Doctor. After the first statement given by the defacto complainant, her statement under Section 183 of the Bharatiya Nagarik Suraksha Sanhita was taken by the Magistrate and she had reiterated the same. The statement of the Gynecologist, who had treated the petitioner, is also appended along with the report.

13. According to the petitioner, the whole story narrated by the victim is false and she was forced to lodge a complaint at the instance of where she was working. It is submitted by the learned counsel for the petitioner that, even during the relationship between the petitioner and the victim, the petitioner was told by the defacto complainant that she had pressure from the to give a

complaint and she was reluctant to give the complaint expecting that their relationship would go smoothly. Ext.P3 audio clip is produced by the petitioner to show the same. It is further submitted that the defacto complainant had sent a voice message to the petitioner that the petitioner was not taking adequate care of her and in view of the same, she had threatened the petitioner much prior to the lodging of the present complaint and Ext.P6 voice clip is produced to show that the defacto complainant told the petitioner that if the petitioner agreed to settle the matter at an earlier stage, the defacto complainant would have taken the stand that the voice clips allegedly attributed to the petitioner were in fact AI generated. What is perceived from the statement given by the victim before the Police and the Magistrate is that, in spite of the repeated set backs from the hands of the petitioner, she was expecting a rethinking or return back by the petitioner giving her a beautiful life. Further, it is seen that, at a weaker moment of her grief, she had revealed the difference of opinion between them and shared the phone chat between them to one of her friends, who is working in another Channel, and without the consent of the defacto complainant, that phone chat was published in their channel, and thereafter, the defacto complainant had

faced a great extent of bad remarks from different corners. As stated, the broken relationship between the petitioner and the defacto complainant was aired and was the talk of the town and in such circumstance, there is every chance of a private chat between the defacto complainant and the petitioner relating to this aspect and the voice clips pertaining to that has only little relevance.

14. The counsel for the petitioner also challenged the veracity of the complaint given by the victim and emphasized on the point that it is given on political motivation and in order to substantiate the same, he invited the court's attention to a complaint lodged by the victim as against her husband on 25.03.2025 before the Women Cell, Thiruvananthapuram, vide Petition No. _____, and submitted that, even at that point of time, she had not raised any complaint as against the petitioner. The said complaint is not on record. Neither it is disputed by the Public Prosecutor. The contention of the petitioner's counsel is that the defacto complainant prefer to keep silent at that point of time even when she had access to file complaint before the Women Cell. The statement given by the victim narrates why she had preferred a complaint at this point of time and under what circumstances.

15. The allegation against the petitioner is not simply an allegation of rape and it cannot be glorified as a broken consensual relationship. The main allegation rests on the fact that the petitioner had prompted the victim to cause miscarriage. The definite contention put forth by the petitioner's counsel is that the victim herself had insisted for medicines for termination of pregnancy and Ext.P4 audio clip between the 2nd accused and the defacto complainant with Ext.P5 hash value certificate is produced to show the same. It is argued that, as evident from Ext.P4, the victim had asked for the medicine and sent her location to the 2nd accused and received medicine from the 2nd accused. The learned Public Prosecutor even without disputing Ext.P4, submitted a detailed record of voice chat and messages between the petitioner and the defacto complainant over a period of time, which shows the insistence of the petitioner for terminating the pregnancy of the victim. It is seen from the materials produced by the learned Public Prosecutor that the mobile phone of the victim was seized by the Investigating Officer and mahazar was prepared regarding the Whatsapp chat between the petitioner and the defacto complainant in that phone, including the voice clips. A perusal of the said mahazar throws light on the fact that

there was a detailed discussion between the petitioner and the defacto complainant regarding the conception of a child and thereafter when the victim was conceived how the petitioner was insisting for termination of pregnancy. It is also seen therefrom that the victim was expressing her emotions to keep her child in the womb and her emotional connection with the life growing in her womb. Those chats also indicate her dilemma to choose between the insistence of the petitioner for terminating the pregnancy and her wish to keep the child. So, there is prima facie materials to show the allegations against the petitioner.

16. Now it is apposite to consider whether the allegation against the petitioner contains materials so as to constitute an offence. An offence under Section 89 of Bharatiya Nyaya Sanhita would be attracted only when miscarriage is caused without the consent of the woman. The petitioner's contention is that the miscarriage is being done voluntarily by the victim. As per the allegation, the petitioner had insisted for the same, later forced her by various means and at one occasion, offered directly medicines for the same, later threatened and out of the threat, she had agreed to yield his instruction and obtained medicine from the 2nd accused. It is specifically alleged that the 1st accused had confirmed

the consumption of medicine through video call. There are prima facie materials which show the insistence of the accused for termination of pregnancy as against the will of the defacto complainant to keep her child in the womb. As per Section 28 of the Bharatiya Nyaya Sanhita, a consent is not such a consent, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception. The materials placed by the learned Public Prosecutor prima facie shows that the consent of the victim for miscarriage was only under pressure exerted by the petitioner and on a hope of getting a life with the petitioner. The allegation of rape initially with the consent and thereafter against her will and without her consent is not supported by any material at this point of time. It is submitted by the learned Public Prosecutor that the mobile phone of the defacto complainant seized by the Investigating Officer is produced before the jurisdictional Magistrate Court and it need to be sent to the Forensic Science Laboratory for examination and only then, the messages and chats, which were not peripherally available in the phone can be retrieved. According to the learned Public Prosecutor, many of

the messages and voice chats may be deleted as these are all vulnerable. However, there is prima facie material to show insistance of causing miscarriage. The magnitude of the offence alleged under Section 89 of Bharatiya Nyaya Sanhita is grave.

17. Apparently, there is delay in lodging this complaint as against the petitioner and it is submitted that the present complaint is lodged in view of political motivation. The statement given by the victim narrates how she was forced to give the complaint and it shows how on many occasions, she tried not to bring her grievance into light. It is seen from the statement given by the defacto complainant that when as against her consent, the voice clips shared by the defacto complainant with her friend was aired, there were tarnishing remarks from various corners and her parents were almost in the verge of committing suicide and then only she came forward to give a complaint.

18. In **State of Punjab v. Gurmit Singh and Others** (1996 ICO 2283), the Hon'ble Apex Court observed that *the courts cannot overlook the fact that in sexual offences, delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident*

which concerns the reputation of the prosecutrix and the honour of her family. This principle was adopted by the Apex Court in **Deepak v. State of Haryana (2015 ICO 205)** also.

19. The learned counsel for the petitioner contended that the petitioner being a Member of the Legislative Assembly is very much available for investigation and considering the nature of the case, custodial interrogation is not necessary and seek for a pre-arrest bail. The learned Public Prosecutor on the other hand contended that the mobile phone of the petitioner is a relevant piece of evidence for which custodial interrogation is necessary. Then, the learned counsel for the petitioner canvassed for a deemed custody or limited custody as per the guidelines given by the Hon'ble Apex Court in **Sushila Aggarwal and Others v. State (NCT of Delhi) and Another (2020 (1) KHC 663)**.

20. Here it is appropriate to recall the guidelines given by the Hon'ble Apex Court in **Arun Kumar C.K v. Sumitha Pradeep (2022 ICO 2096)** regarding the grant of anticipatory bail, even if no case for custodial interrogation is made out by the prosecution. It is held by the Hon'ble Apex Court as follows:-

“There appears to be a serious misconception of law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail”.

21. The parameters to grant an order of pre-arrest bail is precisely culled by the Hon’ble Supreme Court in **Siddharam Satlingappa Mhetre v. State of Maharashtra (2010 ICO 1628)** and it is specifically stated that the Court must evaluate the entire available

material against the accused very carefully and the Court must also clearly comprehend the exact role of the accused in the case. Further, it is held that *while considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused.*

22. Further, another point which comes for consideration is based on a complaint given as against the petitioner by another victim. The learned Public Prosecutor had produced the copy of the complaint, which is sent through Email to the President of the Kerala Pradesh Congress Committee (KPCC) and it is submitted that a crime is registered as against the petitioner on that complaint and the KPCC President is the defacto complainant. The copy of the F.I.R in Crime is produced by the counsel for the petitioner and it is submitted that the name of the complainant/victim, the place of occurrence etc. are not mentioned in the complaint and it is still suspicious and the Email ID from which the complaint comes is also suspicious. The learned Public Prosecutor submitted in this regard that

the complaint against the petitioner in _____ is pressed into service only after verification of the Email ID by the police. As the said complaint and the case registered on the basis of the said complaint is in its preliminary stage of investigation, it is not considered in this case as a matter of antecedents.

23. This Court is not unmindful of the fact that frivolity in prosecution is also a factor to be considered and that it is essential to see whether the complaint is raised only to harass or humiliate the petitioner. In the backdrop of pursuing election and in view of the fact that the petitioner being a prominent politician, lodging the complaint to ignite a controversy cannot be ruled out. This Court is not oblivious of the scenario or backdrop upon which this complaint is initiated after a considerable delay. However, in view of the materials placed by the prosecution, which prima facie shows the involvement of the petitioner in the offence alleged, it appears that the exceptional jurisdiction to grant a pre-arrest bail cannot be invoked in this case.

24. In **Jai Prakash Singh v. State of Bihar and Another** (2012 (4) SCC 379), the Hon'ble Apex Court has held that, an order of pre-

arrest bail being an extra ordinary privilege, should be granted only in exceptional cases. It is settled in law that arrest should be the last option and it should be restricted to cases where arrest is imperative in the facts and circumstances of a case and consistent view is that the grant of anticipatory bail shall be restricted to exceptional circumstances. So it is clear that the power to grant anticipatory bail under section 482 of the Bharatiya Nagarik Suraksha Sanhita is an exceptional power and should be exercised only in exceptional cases and not as a matter of course. Its object is to ensure that a person should not be harassed or humiliated in order to satisfy the grudge or personal vendetta of the complainant. [Reliance placed on the decision rendered by the Hon'ble Apex Court in **HDFC Bank Limited v. J.J. Mannan and Another (2010 (1) SCC 679); Srikant Upadhyay v. State of Bihar (2024 KHC Online 6137)].** In the case at hand, I find no exceptional circumstance to exercise the exceptional power of granting pre-arrest bail.

25. Considering the serious allegation against the petitioner and the gravity of the offence, it appears that granting the petitioner with an order of pre-arrest bail will adversely affect the investigation. If an order of pre-arrest bail is granted, he is likely to influence the witnesses and

tamper with the evidence. Considering all these aspects, this court is not inclined to grant an order of pre-arrest bail to the petitioner.

In the result, this petition is dismissed.

(Dictated to the Confidential Assistant, transcribed and typed by him, corrected and pronounced by me in Open Court on this the 4th day of December 2025)

Sd/-
NAZEERA S.
SESSIONS JUDGE

(Copies : 4)

Typed by : Manjusha

Compared by : Anupama

F.C.S:

True copy

By Order

SHERISTADAR

Copy of the Order
Crl.M.C. No.3585/2025
Dated : 04.12.2025