

IN THE SESSIONS COURT, PATHANAMTHITTA**Present: Sri. N. HARIKUMAR, Sessions Judge,****Wednesday the 28th day of January 2026/8th day of Magha 1947 SE.****BAIL APPLICATION NO. 43 /2026**

(Thiruvananthapuram Crime Branch Crime. No. 100/CB/KLM & PTA/D/2026)

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

Respondent : State of Kerala represented by the Deputy
Superintendent of Police, Crime Branch, Kollam
& Pathanamthitta through the Public
Prosecutor, Pathanamthitta.

This Criminal Miscellaneous Petition coming on for hearing on 24.01.2026 in the presence of Adv. Sekhar. G. Thampi & Adv. Abhilash Chandran, counsel for Petitioner and Adv.T. Harikrishnan, Public Prosecutor, counsel for respondent and on 28.01.2026 the court passed the following:

ORDER

Above numbered petition is for regular bail under section 483 of the Bharatiya Nagarika Suraksha Sanhita, 2023.

2. Petitioner is the sole accused in Crime Branch crime No.100/CB/KLM & PTA/D/2026. Offences alleged against the petitioner are punishable under Sections 376 and 506 of IPC

3. Allegations: The petitioner is a politician and a Member of the State Legislative Assembly. At some point of time prior to 08.04.2024, the

petitioner had got befriended with the survivor through social media and after gaining her confidence, he had lured her and under the false pretext of having conversation in privacy, he had caused her to book a room at a hotel by name 'Club 7 Hotel', situated at Thiruvalla on 08.04.2024. The survivor had checked in at about 01.00 pm and about fifteen minutes thereafter, the petitioner had entered into the said room and all on a sudden, the petitioner had forcibly pushed the survivor onto the bed and repeatedly bitten on her lips. Having got disrobed himself, the petitioner had disrobed her forcibly and bitten her on her navel. When the survivor cried out in pain, the petitioner had inserted his finger into her vagina. The petitioner then had fit a condom over his penis and committed penetrative sexual intercourse with her. Again the petitioner had committed penetrative sexual intercourse with her without using condom. After all these, the petitioner had compelled the survivor to perform oral sex, which when she refused, he had assaulted her by slapping and poking on her face using his finger. She became pregnant as a result of the sexual intercourse and when this was conveyed to the petitioner, he had intimidated her.

4. The petitioner was arrested on 11.01.2026 and since then he has been in judicial custody.

5. Pleading innocence of the petitioner, the learned counsel for the petitioner *inter alia* contended that, no proper First Information statement

being furnished; the First Information Report is illegal; even if the allegations are taken on their face value, the essential ingredients of the offence of rape are not attracted; the petitioner was not informed of the grounds of arrest thereby rendering his arrest and detention illegal and violation of Section 40 of the Code of Criminal Procedure and Article 22 of the Constitution of India; the allegation that the survivor had booked the hotel room at the whim of the petitioner is an embellished version; the conduct of the survivor subsequent to the alleged incident as reflected in her own statement would indicate that, they were in cordial relationship and the sexual acts if any committed, were consensual; the petitioner has been complying with the conditions in the earlier orders directing him to appear before the respective Investigating Officer while granting pre-arrest bail to him in two other crimes alleging commission of similar offences; prolonged detention of the petitioner is not required for the purpose of investigation. Further according to the learned counsel, the petitioner is ready and willing to cooperate with the investigation and to abide by any condition that may be imposed by this Court.

6. The learned counsel produced;

- i. Copy of the order of the Hon'ble High Court in BA No.14427/2025 granting stay of arrest of the petitioner until 21.01.2026 (Annexure 1),

- ii. Copy of the order of the Sessions Court, Thiruvananthapuram in Crl.MC No.3669/2025 granting pre-arrest bail to the petitioner in crime no.4156/25 of Crime Branch Police station (Annexure 2),
- iii. Screenshots of whatsapp chats purporting to be made between the petitioner and the survivor on 20.12.2024 and 16.10.2025 (Annexure 3),
- iv. Screenshots of whatsapp chats purporting to be made between the petitioner's friend and the survivor (Annexure 4),
- v. A pen drive purporting to contain the conversation between the survivor (Annexure 5),
- vi. Copy of remand application (Annexure 6),
- vii. Copy of notice issued by the police under section 47 of BNSS(Annexure 7),
- viii. Copy of the order of the jurisdictional court dismissing the bail application filed by the petitioner (Annexure 8).

7. Drawing the attention of the court to the full text of the statement given by the survivor, the learned counsel for the petitioner argued that, at any rate, the relationship between the petitioner and the survivor, as disclosed from her own statement, would at best constitute an illicit relationship and not the offence of rape. According to the learned counsel, the allegations of sexual offences ordinarily arise from incidents occurring in private and therefore, such allegations are required to be tested strictly on

the basis of evidence. It was contended that, the statement of the survivor itself would reveal that, she had maintained cordial contact with the petitioner both prior to and subsequent to the alleged incident. According to the learned counsel, whether the alleged sexual act amounted to rape or was consensual, is a matter that can be determined only on the basis of the evidence adduced at the stage of trial. The learned counsel further argued that, having regard to the marital status of the survivor, the circumstances preceding and following the alleged incident and the subsequent conduct of the parties, a careful scrutiny is required before fixing the culpability.

8. In order to buttress his argument that, the alleged sexual act won't at any rate amount to rape, but at the most an illicit sexual relationship only, the learned counsel for the petitioner placed reliance *inter alia* on ***Samadhan v. State of Maharashtra* (2025 KHC OnLine 7629)**, ***Amol Bhagwan Nehul v. State of Maharashtra* (2025 (4) KHC 607)**, ***Prasanth v. State of NCT of Delhi* (2024 (7) KHC 317)** and ***Sayooj S. v. State of Kerala* (2025 KHC OnLine 1857)**. A perusal of these decisions would show that, all of them pertain to cases involving allegations of commission of sexual intercourse on the promise of marriage. It has been consistently held therein that, consent given by an adult woman on a promise of marriage cannot later be converted into criminality merely because the relationship

did not culminate in marriage and that, such consent cannot be subsequently withdrawn so as to attract the offence of rape.

9. On the other hand, the learned Public Prosecutor opposed the application contending that, by misusing his position as a Member of the Legislative Assembly and as a leader of a political party, the petitioner had induced the survivor to book a hotel room under the pretext of having a private verbal interaction and thereafter committed rape on her. The learned Public Prosecutor further submitted that, the petitioner being an influential person, there is every likelihood for him to intimidate the survivor and to harass her through cyber platforms, thereby interfering with the course of the investigation. According to the learned Public Prosecutor, it would be unsafe to enlarge the petitioner on bail before the completion of the investigation. It was also argued that, the fact that the hotel room was booked in the name of the survivor cannot be construed as her consent or as an invitation for the commission of sexual acts. On these grounds, the learned Public Prosecutor urged that, the petitioner be detained in custody until the submission of the final report.

10. Perused the report.

11. A review of the First Information Statement reveals that, the marital relationship of the survivor is subsisting. Though she has stated that, there was disharmony in her marital life, there is no indication that any

steps were initiated either by her or by her husband to dissolve the marital tie in accordance with law. In such circumstances, a relevant question that arises is as to how, the survivor could have entered into a lawful marriage with the petitioner, as allegedly promised. The circumstances leading to the meeting between the petitioner and the survivor in privacy, even if stated to have been as suggested by the petitioner, are matters of evidence which require adjudication at the stage of trial. The statement of the survivor further discloses that, she had voluntarily met the petitioner for a private interaction, notwithstanding the fact that, they had never met earlier in person and their acquaintance was confined only to communication through social media, telephonic conversations and WhatsApp messages. It is also appearing in her statement that, she continued to maintain contact with the petitioner even after the alleged incident and that, there were subsequent interactions between them, including discussions regarding joint purchase of a flat at Palakkad, from which proposal, she withdrew due to financial constraints. The statement further reveals that, she had transferred money to the petitioner on multiple occasions, including after she had come to know about the pregnancy. According to her, she made the incident public only after she came to know that, certain other women also had raised allegations of sexual abuse against the petitioner. All these circumstances, when taken together, are matters which require a detailed appreciation of

evidence to determine whether the offence of rape has been made out, an exercise which is clearly beyond the scope of consideration of this court while dealing with an application for bail.

12. The learned counsel for the petitioner vehemently argued that, the arrest and detention of the petitioner are *per se* illegal on the premise that, the mandatory requirements under Sections 41 and 50 of the Code of Criminal Procedure, 1973 (Sections 35 and 47 of the Bharatiya Nagarik Suraksha Sanhita, 2023) were not complied with, thereby violating the right guaranteed under Article 22 of the Constitution of India. According to the learned counsel, the grounds of arrest were not communicated to the petitioner, thereby vitiating the arrest as illegal. Per contra, the learned Public Prosecutor emphatically argued that, there was no procedural non-compliance in the case in hand. It was submitted that, after taking the petitioner into custody from a hotel at Palakkad, he was brought to Thiruvananthapuram prior to being produced before the jurisdictional Court, where, his arrest was formally recorded, arrest documents were prepared and the grounds of arrest were furnished to him, which, according to the prosecution, the petitioner refused to acknowledge.

13. To buttress the contention regarding illegality of arrest, the learned counsel for the petitioner placed reliance on ***Vihankumar v. State of Haryana*** (2025 KHC OnLine 6116) and ***Prabir Purkayastha v. State***

(NCT of Delhi) (2024 KHC OnLine 6286). In this context, it is apposite to advert to here the legal incidents enjoining Section 50 of the Cr.P.C (Section 47 of BNSS). Section 50 of the Cr.P.C. mandates that every police officer arresting a person without warrant shall forthwith communicate to him the full particulars of the offence for which he is arrested or the grounds of such arrest. In **Vihankumar** (supra), referring to **Pankaj Bansal v. Union of India [(2024) 7 SCC 576]**, the Hon'ble Apex Court observed that, Section 50 Cr.PC underscores the requirement of communicating the full particulars of the offence and clarified that, the expression "other grounds of such arrest" occurring in Section 50 is distinct from the grounds contemplated under Article 22(1) of the Constitution. In **Prabir Purkayastha** (supra), the Hon'ble Supreme Court drew a clear distinction between the "reasons for arrest" as contemplated under Section 41 Cr.P.C. and the "grounds of arrest" required to be communicated under Section 50 Cr.P.C. It was explained that, the reasons for arrest, ordinarily reflected in the arrest memo, relate to general parameters such as the necessity for custodial interrogation, prevention of further offences, prevention of tampering with evidence, likelihood of influencing witnesses, or the possibility of absconding. On the other hand, the "grounds of arrest" comprise the basic factual allegations and materials in possession of the arresting officer, which necessitated the arrest and such grounds must be communicated in writing to enable the

arrested person to effectively oppose custodial remand and seek bail. The Hon'ble Supreme Court further held that, the grounds of arrest are personal to the accused and cannot be equated with the reasons for arrest, which are general in nature. In the case in hand, in the prescribed proforma, under the heading "detailed grounds and reasons of arrest", the arresting officer enumerates that, the petitioner may influence or intimidate witnesses; may cause evidence to disappear; that custodial interrogation is necessary; that he is involved in two other crimes alleging similar offences; that he may abscond; that there is a possibility of cyber harassment of the victim and that he is a habitual offender. A scrutiny of these assertions, in the light of the law laid down in ***Prabir Purkayastha*** (supra), would indicate that, they constitute reasons for arrest and not the "grounds of arrest" as envisaged under Section 50 of the Cr.P.C., because, they do not disclose the factual particulars of the accusation. Therefore, as rightly argued by the learned counsel for the petitioner, the grounds of arrest were not communicated to the petitioner in the manner mandated by law. On that count, it is apparent that, the arrest of the petitioner did not strictly comply with the mandatory requirements under Section 50 of the Cr.P.C. (Section 47 of BNSS).

14. According to the learned counsel for the petitioner, the delay in furnishing the first information itself is indicative of mala fides and lends credence to the contention that, the so-called first information was ill-

motivated. Per contra, the learned Public Prosecutor submitted that, the statement of the survivor itself discloses the reasons for the delay. According to the learned Public Prosecutor, the petitioner, an influential person had intimidated and bullied the survivor by referring to adverse consequences to her sister and the possible disruption of her marital life, which prevented her from approaching the authorities at the earliest point of time. Placing reliance on ***Lalita Kumari v. Government of Uttar Pradesh and others*** (AIR 2014 SC 187) and ***Ramesh Kumari v. State (NCT of Delhi) and others*** (AIR 2006 SC 1322), the learned Public Prosecutor argued that, upon receipt of the information disclosing the commission of a cognizable offence, the FIR was registered forthwith, in strict compliance with the mandate under Section 173 of the BNSS. Further that, the information was initially received through e-mail and the detailed statement was thereafter recorded through online mode, while the receipt of the signed statement of the survivor is awaited.

15. A perusal of the case diary reveals that, the statement of the survivor was recorded by the Sub-Inspector of Vanitha Police Station at the Police Headquarters, Thiruvananthapuram, through a Zoom meeting at about 02:30 p.m. on 08.01.2026. A copy of the said statement, produced along with the case diary contains a signature purporting to be that of the survivor. Even according to the learned Public Prosecutor, the survivor is yet

to return to India. In such circumstances, it is not discernible as to how her signature could be affixed on the said statement when she was admittedly in Canada. The First Information Report indicates that, the first information was received by the Crime Branch Police on 09.01.2026 at about 05:00 p.m., and the FIR was registered thereafter at 07:28 p.m. on the same day. Therefore, the materials on record do not indicate that, the survivor had affixed her signature on the First Information Statement within the statutorily prescribed period of three days as contemplated under Section 173(ii) of the Bharatiya Nagarik Suraksha Sanhita, 2023. In this context, the learned Public Prosecutor invited the attention of this Court to the order of the Hon'ble High Court in **CrI.M.C. No.4778 of 2020** dated 20.06.2025, wherein, the refusal of the Station House Officer to register an FIR on the basis of a complaint forwarded by a woman from a foreign country through e-mail was under challenge. In the said order, the Hon'ble High Court held that, the police cannot refuse to register an FIR, if the complaint discloses commission of a cognizable offence, even if the complaint is forwarded from outside India. There can be no dispute with the said proposition. In the present case, FIR has already been registered by the police. However, the fact remains that, there is non-compliance with the requirement under Section 173(ii) of the BNSS, which mandates that, information received through electronic communication shall be signed by the informant within three

days. The records placed before this Court do not prima facie demonstrate such a compliance. In the absence of compliance with the aforesaid statutory requirement, a question arises as to whether, a legally valid first information can be said to have been furnished in the manner contemplated under law. This aspect, does cast a shadow on the procedural regularity surrounding the registration of the FIR and is a factor that cannot be completely ignored while considering the present application for bail.

16. What remains evident from a perusal of the statement of the survivor is that, even after the miscarriage, she had come to her native place. Despite the allegation that, the petitioner had disowned responsibility for the pregnancy and notwithstanding the miscarriage suffered by her, there appears to have been no immediate attempt on her part to initiate criminal proceedings alleging forcible sexual intercourse. It is further discernible that, after returning to Canada, the survivor continued to maintain cordial communication with the petitioner. Annexure-3 and Annexure-4 screenshots of WhatsApp chats purporting to have been exchanged between the survivor and the petitioner in December 2024 and October 2025 respectively would prima facie indicate that, their interactions continued in a friendly manner. It is only after her having come to know that certain other women had raised allegations of sexual abuse against the petitioner, that, she chose to approach the police with the present complaint. The length of time which

the survivor would have remained silent, had she had not been carried away by the allegations of sexual abuse raised by some other women against the petitioner, is a matter within her personal knowledge only. At this juncture, the delay in furnishing the first information as highlighted by the learned counsel for the petitioner, assumes relevance. It is true that, victims of sexual offences often hesitate to approach law enforcement agencies for a variety of reasons. However, in her statement, the survivor has not articulated any specific explanation for the delay of about one year and nine months in approaching the police. Whether such a delay would ultimately prove fatal to the prosecution is a matter that depends upon several attendant circumstances and the evidence to be adduced by the parties. Such an evaluation squarely falls within the domain of trial and is not determinative at the stage of considering an application for bail pending completion of investigation. As regards the Annexure-5 pen drive produced by the petitioner, it is audible to contain a voice clip purportedly of a woman stating that, the incident occurred with her consent. However, the said voice clip is neither clearly identifiable as that of the survivor nor does it refer to any specific individual, for it being a monologue. In such circumstance, there is limited scope for placing reliance on or entering into a detailed discussion on the said material at this stage.

17. The Annexure-2 order passed by the Sessions Court, Thiruvananthapuram in C.M.C. No.3669/2025, arising from Crime No.4156/CB/TVM/D/2025 of the Crime Branch Police Station, produced by the petitioner indicates that, the petitioner has been implicated in another prosecution involving similar allegations, though with certain factual distinctions, including that the survivor therein was unmarried and that, the incident therein allegedly had occurred in a home stay type accommodation. Annexure-1 order dated 07.01.2026 passed by the Hon'ble High Court in Bail Appeal No.14427/2025, is stated by the learned counsel for the petitioner to be an interim order whereby arrest of the petitioner was stayed in yet another crime viz. Crime No.1750/2025 of Nemom Police Station, which also involved allegations of similar nature. It is submitted on behalf of the petitioner that, the petitioner has been strictly complying with Condition No.2 in Annexure-2 pre-arrest bail order, which directs him to appear before the Investigating Officer between 10:00 a.m. and 11:00 a.m. on alternate Mondays for a period of three months or till filing of the final report, whichever is earlier. The above orders produced would prima facie show that, the petitioner had been granted pre-arrest bail in an earlier case and in another, his arrest is stayed for the time being. The prosecution has not raised any contention that, the petitioner has violated or failed to comply with any of the conditions imposed in the earlier pre-arrest bail orders.

According to the learned counsel for the petitioner, this circumstance assumes relevance while considering whether custodial arrest of the petitioner in the present case was warranted at this stage.

18. The purpose of detention pending completion of investigation, even accepting the submissions advanced by the learned Public Prosecutor, is to prevent interference by the accused with the investigation including attempts to delay the course of justice; to prevent witnesses from being influenced or threatened; to check tampering of evidence and to ensure the safety of the victim and the like. The seriousness or gravity of the allegations is, of course, a factor of paramount consideration. However, the fundamental principle of criminal jurisprudence is that, bail is the rule and jail is the exception. Detention pending investigation is justified only for purposes falling within the scope outlined above and the detention beyond these purposes would assume the character of a punitive measure. In the present case, the grounds advanced for prolonged custody mainly relate to the possibility of tampering with evidence, harassment of the survivor through cyber platforms and repetition of similar offences. The petitioner's alleged antecedents are also relied upon as a justification for continued detention. Notably, the survivor is overseas in Canada and hence, the apprehension that she may be intimidated appears to be speculative. The mobile phone used by the petitioner has already been recovered and sent for

forensic examination and matters such as room booking and other connected evidence have been obtained even without the petitioner's intervention. The alleged offence is stated to have occurred within the confines of a hotel room, leaving no scope for independent witnesses. Consequently, the likelihood of the petitioner influencing or intimidating witnesses is minimal. The petitioner has already undergone police custody for eighteen days and the collection of evidence appears to have been substantially completed. He had been complying with all the conditions imposed under the pre-arrest bail granted to him in an earlier case involving similar allegations. Furthermore, the petitioner being a prominent political leader and an elected Member of the Legislative Assembly, there is no likelihood of his absconding or evading the process of law. Considering the above, this court is of the view that, prolonged detention of the petitioner is unnecessary for the purpose of completing the investigation. Any remaining investigation can be completed even with the petitioner on bail. In view of these circumstances and having regard to the observations made hereinabove, this Court finds no compelling reason warranting continued custodial detention and is therefore, inclined to enlarge the petitioner on bail, subject to conditions.

In the result, the petition stands allowed and bail granted to the petitioner/accused on the following conditions:

1. The petitioner shall execute a bail bond for Rs.50,000/- (Rupees Fifty Thousand only) with two solvent sureties, each for the like sum to the satisfaction of the jurisdictional court.
2. Petitioner shall appear before the investigating officer on every Saturday between 10 a.m and 12 noon for a period of three months or until the submission of the final report whichever is earlier.
3. The petitioner shall co-operate with the investigation and shall appear before the investigating officer as and when called for in writing.
4. The petitioner shall not intimidate or influence witnesses, tamper with evidence, or interfere with the investigation in any manner.
5. The petitioner shall not commit any inducement, threat, or promise to any witness, nor shall he harass or communicate with the survivor directly or through any social media platform.

In the event of violation of the above conditions, the bail granted by this order will be cancelled.

Dictated to the Confidential Assistant, transcribed and typed by her, corrected by me and pronounced in open court on this the 28th day of January, 2026.

Sd/-
N.HARIKUMAR
SESSIONS JUDGE