

B.A.No.7200 of 2025

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2025:KER:45498

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 24TH DAY OF JUNE 2025 / 3RD ASHADHA, 1947

BAIL APPL.NO.7200 OF 2025

CRIME NO.313/2025 OF THAMARASSERY POLICE STATION, KOZHIKODE

PETITIONER/ACCUSED:

SAMEER IBRAHIM, AGED 27 YEARS
S/O.IBRAHIM N., NALAKATH HOUSE, VADAKKUMPURAM P.O
KULAMANGALAM, MALAPPURAM, PIN - 676552

BY ADVS.
SRI.P.ABDUL NISHAD
SMT.NAJMA THABSHEERA.T
SHRI.K C MOHAMED RASHID
SMT.AJISHA M.S.

RESPONDENTS/STATE:

- 1 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031
- 2 STATION HOUSE OFFICER,
THAMARASSERY POLICE STATION, THAMARASSERY,
KOZHIKODE DISTRICT, PIN - 673573

SMT. SREEJA V., PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
24.06.2025, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



“C.R.”

BECHU KURIAN THOMAS, J.

.....
B.A.No.7200 of 2025
.....

Dated this the 24th day of June, 2025

ORDER

This bail application is filed under section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short ‘BNSS’).

2. Petitioner is the accused in Crime No.313 of 2025 of Thamarassery Police Station, Kozhikode, registered for the offence punishable under section 64(1) of the Bharatiya Nyaya Sanhita, 2023.

3. According to the prosecution, the accused had raped the de facto complainant between 03.11.2024 and 04.11.2024 at a hotel room near Thamarassery and thereby committed the offence alleged.

4. Sri.Abdul Nishad, the learned Counsel for the petitioner, submitted that the prosecution allegations are totally false and a consensual relationship has been converted into a case of rape without any basis, merely because subsequently the



relationship turned sour. It was also submitted that, even according to the de facto complainant, she is a married lady, who had travelled all the way from Thiruvananthapuram to Kozhikode and then travelled with the petitioner on his scooter and took a room near Thamarassery and stayed with him for the night and on the next day again, took a room in a lodge at Tirur and then returned back to Thiruvananthapuram on 05.11.2025. According to the learned Counsel, the complaint has been filed after five months of the incident alleging rape, and the allegations are false and the petitioner being a young person of just around 24 years, ought to be protected with an order of pre-arrest bail as otherwise his life itself would be destroyed.

5. Smt.Sreeja V., the learned Public Prosecutor opposed the bail application and submitted that the allegations are serious and custodial interrogation is necessary, especially since the prosecutrix has specifically alleged that the petitioner compelled her to indulge in sexual intercourse without her consent.

6. I have perused the First Information Statement, which is produced as Annexure A as well as the FIR registered on



04.04.2025, which is produced as Annexure B. The statement of the de facto complainant specifically mentions that she is a third year student of a private Medical College and that her marriage had taken place on 16.02.2023, which is still subsisting, though they have decided to part their ways. The de facto complainant stated that in the meantime, she became acquainted with the petitioner through 'Instagram' and thereafter continued their relationship through a platform called 'SnapChat'. Later, according to the de facto complainant herself, under the pretext of returning home for study leave, she took a train to Kozhikode, where she was picked up by the petitioner and together, they travelled to Wayanad. En route, they took a room at a hotel near Thamarassery and spent a night there. The next day, they travelled to Tirur and stayed in another hotel and on the following day, she returned to Thiruvananthapuram.

7. The above statement of the de facto complainant indicates that she went on her own volition to meet the petitioner and also willingly stayed with him in two different hotels. There is nothing *prima facie* indicative of a rape except for a bald



statement that petitioner had indulged in a forceful sexual relationship with her. When a married lady, on her own volition travelled all the way from Thiruvananthapuram to Kozhikode and willingly stayed with the petitioner in different lodges, that too for two nights, it cannot be assumed that the physical relationship between them was without her consent. It is inconceivable that the de facto complainant had stayed with the petitioner for two nights in two different lodges without being willing for a sexual relationship. Merely because a consensual relationship turned sour at a later point of time, it cannot be a reason to allege rape. Further, there cannot be a case of deceitfully obtaining consent under a false promise of marriage as the de facto complainant is still in a subsisting marriage. Since *prima facie* I am satisfied that the statement given by the de facto complainant does not indicate an instance of rape *stricto sensu*, petitioner ought to be protected with an order of pre-arrest bail.

8. Rape is a heinous crime and such an allegation, if incurred, can mar a young person's life forever. The stigma of such an accusation will follow him even if he is later acquitted. The stain



on his life will be rendered unerasable if he is arrested and remanded even before he is found guilty. Courts must be cautious when two young people enter into a willing physical relationship and later rape is attributed to their union. Refusing bail blindly in such cases, without considering the circumstances, can lead to injustice and destroy the young personality. Arrest and remand being a curtailment of the cherished liberty of a person, it must be resorted to only if the circumstances warrant such a course to be adopted. Courts cannot be unmindful of the changing social milieu, while considering the applications for bail from youngsters who are accused of the offence of rape after being in a willing relationship.

9. In this context it is relevant to refer to the decision in **Amol Bhagwan Nehul vs. State of Maharashtra and Another** [2025 SCC OnLine SC 1230], where the Supreme Court observed that a consensual relationship turning sour at a later point of time or partners becoming distant cannot be a ground for invoking the criminal justice machinery of the State and that such conduct not only burdens the Courts, but blots the identity of an individual accused of such a heinous offence.



10. Similarly in the decision in **Prashanth v. State of NCT of Delhi** (2024 INSC 879), the Supreme Court had observed that a mere breakup of a relationship between a consenting couple cannot result in initiation of criminal proceedings.

11. In **Ashok Kumar v. State of Union Territory Chandigarh**, [2024 SCC OnLine SC 274], it has been held that a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient and that the State would have to show or indicate more than *prima facie* case as to why custodial interrogation of the accused is required for the purpose of investigation.

12. On a consideration of the circumstances arising in the case, this Court is of the view that though the allegations are serious in nature, there is an indication from the statement of the de facto complainant herself that there was a consensual relationship between the accused and the de facto complainant. In such circumstances, denying bail to the accused is not proper. Further, the State has not been able to convince this Court that



custodial interrogation of the petitioner is necessary. Thus, having regard to the nature of the offence and the severity of punishment, this Court is of the considered view that the petitioner is entitled to be released on pre-arrest bail. However, for the purpose of investigation, petitioner must subject himself to interrogation and the said period can be treated as limited custody as held in **Sushila Aggarwal and Others v. State (NCT of Delhi) and Another** [(2020) 5 SCC 1].

Accordingly, this application is allowed on the following conditions:

(a) Petitioner shall appear before the Investigating Officer from 10.00 A.M. to 5.00 P.M. on 07.07.2025 and if needed further on 08.07.2025 and shall subject himself to interrogation. The said period shall be treated as limited custody for the purpose of investigation.

(b) If after interrogation, the Investigating Officer proposes to arrest the petitioner, then, he 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 before the Investigating Officer.



(c) Petitioner shall appear before the Investigating Officer as and when required and shall also co-operate with the investigation.

(d) Petitioner shall not intimidate or attempt to influence the witnesses; nor shall he tamper with the evidence. Or contact the victim directly or indirectly.

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

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.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**