

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 28TH DAY OF SEPTEMBER 2026 / 6TH ASWINA, 1948

CRL.A NO. 1231 OF 2026

**CRIME NO.138/2026 OF Feroke Police Station, Kozhikode
AGAINST THE ORDER/JUDGMENT DATED 17.06.2026 IN BA NO.782 OF
2026 OF DISTRICT COURT & SESSIONS COURT/RENT CONTROL**

APPELLATE AUTHORITY I, KOZHIKODE

APPELLANT(S)/PETITIONER/1ST ACCUSED:

**UDAYAN,
AGED 39 YEARS
S/O. KUNHIRAMAN, KOLATHODI THAZHE VEEDU,
NEAR PAYYOLI ALBAIK RESTAURANT, PAYYOLI,
KOZHIKODE DISTRICT,, PIN - 673522**

**BY ADVS.
SRI.R.BINDU (SASTHAMANGALAM)
SHRI.G.RAJAGOPAL (KUMMANAM)
SHRI.AJAY T.S.**

RESPONDENT(S)/RESPONDENTS/DEFACTO COMPLAINANT & STATE:

- 1 XXXXXXXXXX
 XXXXXXXXXX XXXXXXXXXXXX**
- 2 THE STATION HOUSE OFFICER
 FEROKE POLICE STATION, FEROKE,
 KOZHIKODE DISTRICT, PIN - 673631**
- 3 STATE OF KERALA
 REPRESENTED BY THE PUBLIC PROSECUTOR,
 HIGH COURT OF KERALA, ERNAKULAM,
 KOCHI, PIN - 682031**

PP M A SHIHAB

**THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION ON
28.09.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

**“C.R.”****A. BADHARUDEEN, J.**

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Crl.A. No.1231 of 2026

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*Dated this the 29th day of September, 2026***JUDGMENT**

The 1st accused in Crime No.138/2026 of Feroke Police Station, Kozhikode, assails the order dated 17.06.2026 in B.A. No.782/2026 on the files of the Special Court, Kozhikode, under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as “the SC/ST (PoA) Act”), whereby his plea for anticipatory bail was negatived by the said Court. Though notice was served upon the victim/defacto complainant under Section 15A(3) of the SC/ST (PoA) Act, she did not appear.

2. Heard the learned counsel for the appellant and the learned Public Prosecutor. Perused the order impugned and the case diary placed by the learned Public Prosecutor.

3. Here, the prosecution alleges commission of offences punishable under Sections 318(4), 3(5) and 69 of the Bharatiya



Nyaya Sanhita, 2023 (hereinafter referred to as “the BNS”) as well as under Section 3(2)(va) of the SC/ST (PoA) Act, by the accused.

4. The prosecution case is that a marriage fixation ceremony was scheduled at the house of the defacto complainant, who is a member of the Scheduled Caste community, and the accused/appellant herein, who does not belong to either the Scheduled Caste or Scheduled Tribe community, on 06.07.2025, but it was noticed thereafter that, as decided by them and their family members, the appellant herein decided to marry the victim, after suppressing his live-in relationship with another lady, and he is the father of a three-year-old child born in the said relationship. The further case is that, for the fixation of the marriage, an amount of Rs.10,00,000/- was spent by the family of the defacto complainant, in which 1000 persons participated. The prosecution case further is that, after the fixation of the marriage, as asked by the appellant, the defacto complainant went to Wayanad anticipating the marriage as fixed and stayed at Almaj Residency in Room No.101, where the



appellant compelled her to have sexual intercourse on the premise that they had already decided to marry, and on such compulsion, she consented to sexual intercourse, after the marriage had been fixed by suppressing his relationship and the child born to him.

5. The learned counsel for the appellant argued at length to convince this Court that the offence under Section 318(4) of the BNS would not be attracted in the facts of the case, since no delivery of property was involved. It is also pointed out that, similarly, in order to attract the offence under Section 69 of the BNS, the appellant ought to have offered marriage and thereafter retracted from the same. In the instant case, the appellant is ready to marry as proposed and, therefore, the offence under Section 69 of the BNS would also not be attracted. According to him, the SC/ST offence would come into play in view of the incorporation of the scheduled offences under the BNS. It is pointed out by the learned counsel for the appellant further that merely because there was a relationship without marriage and a child born in the said



relationship, the same by itself is not a reason to find commission of the offences *prima facie* and, in such a case, the appellant is entitled to get pre-arrest bail, where the bar under Section 18 of the SC/ST (PoA) Act has no application.

6. Opposing anticipatory bail, as prayed for, the learned Public Prosecutor produced the statement and additional statement of the defacto complainant, which would show the allegations *prima facie*. According to him, suppression of a relationship in the nature of marriage and a child born in the said relationship is nothing but an act that would come under the purview of deceitful means contemplated under Section 69 of the BNS. Therefore, the bar under Section 18 of the SC/ST (PoA) Act would come into play and, hence, the learned Special Judge was right in dismissing the anticipatory bail application, where arrest, custodial interrogation, conduct of potency examination of the accused, etc., are essential to accomplish a meaningful investigation and successful prosecution. Here, the serious offence alleged is under Section 69 of the BNS.



Section 69 provides as under:

“69. Whoever, by deceitful means or by making promise to marry to a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Explanation.— “Deceitful means” shall include inducement for, or false promise of employment or promotion, or marrying by suppressing identity.”

7. On reading Section 69, Section 69 deals with two situations. The first situation is that, whoever, by deceitful means, has sexual intercourse with a woman and such sexual intercourse does not amount to the offence of rape, then the same is an offence under Section 69, punishable with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine. The second situation is that, whoever, by making a promise to marry a woman without any intention of fulfilling the same, has sexual intercourse with the woman and such sexual



intercourse does not amount to the offence of rape, then also the same is punishable in a similar manner. No doubt, the commission of offences alleged under the BNS are corresponding to the scheduled offences appended to the Schedule under the IPC and, therefore, Section 3(2)(va) of the SC/ST (PoA) Act also would be attracted when the said offences to be found from the prosecution records, *prima facie*.

8. In the instant case, going through the statements of the defacto complainant, supported by other materials, there was a marriage fixation on the premise that the appellant was an unmarried person, not either married or had any other relationship in the nature of marriage, to marry the defacto complainant, who is unmarried. At the time of fixing the marriage and prior to that, the appellant was fully aware of the fact that he had a relationship with a lady in the nature of marriage and that a child was also born to them. Despite this vital aspect, the same was suppressed from the knowledge of the defacto complainant and her family, and the



marriage fixation ceremony was conducted and the marriage was fixed. Subsequently, on the said premise of marriage, after suppressing the earlier relationship, the defacto complainant was subjected to sexual intercourse by deceitful means. Though the said overt act may not be treated as rape, the same would fall under the first situation dealt with in Section 69 of the BNS, as already pointed out. In such a case, the Investigating Officer filed a report opposing bail on the submission that grant of anticipatory bail would impede the investigation, on the assertion that the presence of the appellant in custody is inevitable for recording his statement, conducting procedures in respect of the seizure and recovery of the dress worn by him at the time of occurrence and for conducting his potency test. Thus, in instant case, custodial interrogation is an absolute necessity for the said purposes and, in such a case, grant of anticipatory bail would definitely impede and destroy the investigation.

9. To sum up, it is held that, in the instant case, *prima facie*,



the offences are made out and, in such a case, the bar under Section 18 would apply and the appellant could not be granted anticipatory bail, as rightly found by the learned Special Judge. Therefore, this appeal must fail.

In the result, this appeal stands dismissed, confirming the order of the Special Court, with a direction to the appellant/accused to surrender before the Investigating Officer forthwith. Failing which the Investigating Officer is at liberty to arrest the appellant/accused and to proceed with the investigation without any reluctance.

Registry is directed to forward a copy of this judgment to the Special Court for information and compliance.

Sd/-
A. BADHARUDEEN
JUDGE

GBG

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2026:KER:74972

APPENDIX OF CRL.A NO. 1231 OF 2026**PETITIONER ANNEXURES****Annexure 1**

**TRUE COPY OF THE FIRST INFORMATION REPORT
DATED 26.02.2026 IN CRIME NO. 138/2026 OF
FEROKE POLICE STATION ALONG WITH THE F.I
STATEMENT**