



2026:KER:26413

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE KAUSER EDAPPAGATH

WEDNESDAY, THE 25TH DAY OF MARCH 2026 / 4TH CHAITHRA, 1948

BAIL APPL. NO. 1536 OF 2026

CRIME NO.73/2026 OF CHOKLI POLICE STATION, KANNUR

PETITIONER/ACCUSED:

SHAHIR BASHEER
AGED 31 YEARS, S/O BASHEER,
'VAISYAMBRATH', OLAVILAM, NOW RESIDING AT
'MARIYAS', SETTUMUKKU, P.O.OLAVILAM, CHOKLI,
KANNUR DISTRICT, PIN - 673313

SRI.M.P.PRIYESHKUMAR
SRI.SHANAVAS NALAKATH RANDUPURAYIL

RESPONDENT/STATE AND COMPLAINANT:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT
OF KERALA, ERNAKULAM, PIN - 682031

SRI.K.A.NOUSHAD-SR.PP

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON
25.03.2026, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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“C.R.”

ORDER

This application is filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, BNSS), seeking pre-arrest bail.

2. The applicant is the sole accused in Crime No.73/2026 of Chokli Police Station, Kannur District. The offences alleged are punishable under Sections 64(1), 64(2)(m), 69, 143(1)(f) and 143(2) of the Bharatiya Nyaya Sanhita, 2023; Section 66E of the Information Technology Act, 2000 and Section 376 of the Indian Penal Code, 1860.

3. The prosecution case, in short, is that the applicant fell in love with the de facto complainant while they were studying in a college. In March 2017, the applicant made her believe that he would marry her and under the pretext of discussing it with his parents, he brought her to his house at Olavilam, got her intoxicated and committed rape on her. He had recorded the sexual acts on his mobile phone and then, on several occasions till 21.07.2025, at different places, had repeated sexual intercourse with her by threatening that the above photos and videos



recorded on the phone would be published. Thereby, the applicant committed the above offences.

4. I have heard Sri.Priyesh Kumar M.P., the learned counsel for the applicant and Sri.K.A.Noushad, the learned Senior Public Prosecutor. Perused the case diary.

5. The learned counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in the present case. The counsel further submitted that no materials are on record to connect the applicant with the alleged crime; hence, he is entitled to bail. The learned Senior Public Prosecutor, on the other hand, submitted that the alleged incident occurred as part of the applicant's intentional criminal acts, and if he is released on bail at this stage, it will affect the course of the investigation.

6. The law regarding the grant or refusal of pre-arrest bail is well settled. Pre-arrest bail cannot be granted as a matter of course. The power under Section 482 of BNSS could be exercised only when a special case is made out, that too, recording reasons thereof. Perusal of the case diary reveals that the accusation made against the applicant is very serious in nature, and it *prima facie* shows a premeditated criminal act on his part.

7. It is reported that the applicant is abroad. The question



whether the presence of the accused in India is necessary at the time of filing the application for pre-arrest bail was considered by the Division Bench of this Court in **Anu Mathew v. State of Kerala** [2023 (3) KHC 151]. It was held that the mere fact that an accused was in a foreign country when filing an application for pre-arrest bail under Section 438 of Cr.P.C. does not make the application not maintainable. It was further held that when an accused who is abroad files an application for pre-arrest bail, the court may examine the factual submissions of both sides to determine if the accused has a genuine fear of arrest in a non-bailable offence and decide whether discretion should be exercised in his favour or not. However, it is the primary duty of an accused applying for pre-arrest bail from abroad in a court in India to disclose that he is abroad. He must also undertake to come to India when directed by the Court. The failure to disclose in the bail application that the accused was abroad at the time of filing the application alone would disqualify him from obtaining the extraordinary relief of pre-arrest bail. In other words, if an accused conceals that he was abroad when filing the application, that alone is enough for the Court to decline to exercise its discretion under Section 438 of Cr. P.C./Section 482 of BNSS in his favour.



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The bail application did not mention that the applicant was abroad at the time of filing. This concealment alone justifies dismissing the bail application. Therefore, the application is dismissed.

**Sd/-
DR. KAUSER EDAPPAGATH
JUDGE**

NP



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APPENDIX OF BAIL APPL. NO. 1536 OF 2026

PETITIONER ANNEXURES

Annexure A

TRUE COPY OF THE ORDER IN BA 283/2026
DATED 10.03.2026