

## Shibu Vs State Of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** Oct. 6, 2022

**Acts Referred:** Code of Criminal Procedure, 1973 " Section 439

Indian Penal Code, 1860 " Section 377

Protection of Children from Sexual Offences Act, 2012 " Section 3(a), 4(1), 5(m), 6(1)

**Hon'ble Judges:** Bechu Kurian Thomas, J

**Bench:** Single Bench

**Advocate:** Abraham Mathan,Noushad K.A

**Final Decision:** Allowed

### Judgement

Bechu Kurian Thomas, J

1. This is an application for regular bail filed under Section 439 of Code of Criminal Procedure, 1973.

2. Petitioner is the sole accused in Crime No.602 of 2022 of Koratty Police Station, Thrissur District. The offences alleged against the petitioner are

punishable under Sections 377 of the Indian Penal Code,1860 apart from Sections 4(1), 3(a), 6(1) and 5m of the Protection of Children from Sexual

Offences Act, 2012 .

3. According to the prosecution, in the month of April 2019, petitioner who is the friend of the father of the victim forced the victim to perform oral sex

on the accused and thereby committed penetrative sexual assault on the minor victim.

4. Sri.Abraham Mathan, the learned counsel for the petitioner contended that the prosecution allegations are false and since the petitioner has been in

custody from 31-07-2021, the continued detention ought not to be permitted, especially since the final report has already been filed. The learned

counsel also relied upon the order of Sessions Court Thrissur in CrI.M.P.No.2728/2022 wherein for identical offences committed against the very

same victim by another accused, bail was granted within 60 days of his detention.

5. Sri. Noushad K.A., the learned Public Prosecutor opposed the grant of bail and contended that the allegations against the petitioner are serious in

nature and releasing him on bail at this juncture would cause prejudice and also that there was every chance of the victim being influenced,

considering the close relationship of the accused with the victim's father.

6. I have considered the rival contentions. Though the allegation against the petitioner is serious in nature, considering the fact that in Annexure-A4,

Sessions Court had granted bail to another accused alleged as similar crime against the same victim and the filing of the final report in the present

case, I am of the view that petitioner should be given the benefit granted to similarly situated accused in Annexure-A4. Therefore, I am of the view

that the petitioner can be released on bail subject to strict conditions.

In the result, this application is allowed on the following conditions:-

(a) Petitioner 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 to the satisfaction of the court having jurisdiction.

(b) Petitioner shall co-operate with the trial of the case.

(c) Petitioner shall not enter into the jurisdictional limits of Koratty Police Station until conclusion of trial.

(d) Petitioner shall not contact or interact the victim or his relatives or other witnesses.

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

(f) Petitioner shall not leave India without the permission of the Court having jurisdiction and shall surrender the passport if any to the

Court. If he does not possess a passport an affidavit to the effect shall be filed.

In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and

pass appropriate orders in accordance with the law, notwithstanding the bail having been granted by this Court.