

## XXXXXXXXX Vs State Of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** Oct. 30, 2023

**Acts Referred:** Indian Penal Code, 1860 " Section 34, 308, 323, 324, 326, 363, 376, 376(2)(n), 427, 447, 506  
Protection of Children from Sexual Offences Act, 2012 " Section 3(a), 3(b), 3(d), 4(l), 5(l), 6(l), 7, 8, 11(iv), 12,  
13(a)(c), 14, 15  
Information Technology Act, 2000 " Section 66E, 67A, 67B(b), 67B(e)  
Kerala Police Act, 2011 " Section 118(a)

**Hon'ble Judges:** Gopinath P, J

**Bench:** Single Bench

**Advocate:** E.S.Firos, P.Thomas Geeverghese, Noushad K.A

**Final Decision:** Dismissed

### Judgement

Gopinath P, J

1. This is an application for regular bail.

2. The petitioner is the accused in Crime No.1100 of 2023 of Thoppumpady Police Station, Ernakulam District, alleging commission of offences under

Sections 363, 376, 376(2)(n), 323, 447, 427 and 506 of the Indian Penal Code and Section 4(l) read with Section 3(a), 3(b), 3(d), Section 6(l) read with

Section 5(l), Section 8 read with Section 7, Section 11(iv) read with Section 12, Section 13(a)(c) read Section 14 and 15 of the POCSO Act and

Section 67A, 67B(b), 67B(e) and 66E of the IT Act. The allegation against the petitioner is that on 04.05.2023 at about 08.15PM, the accused took the

17 year old victim on his bike to his house and sexually assaulted her. Thereafter, it is alleged that the petitioner/accused uploaded certain pictures of

the minor victim in his whatsapp status and on his instagram story and thereby he committed the offences alleged against him.

3. The learned counsel for the petitioner would submit that the petitioner has been in custody from 03.08.2023. It is submitted that the petitioner and

the victim were in a relationship. It is submitted that the allegation that the petitioner had uploaded certain pictures of the victim on social media is

absolutely incorrect. It is submitted that the petitioner has now been in custody for 88 days and since final report has already been filed, the continued

detention of the petitioner is not necessary.

4. The learned Public Prosecutor refers to Annexure - 2, where this Court had rejected the Bail Application of the petitioner after noticing the

allegations against him and also noticing that the victim came to know of the fact that her pictures had been uploaded by the petitioner, from her friend,

whose statement had also been recorded by the police. It is submitted that the petitioner is also having criminal antecedents and three cases, the

details of which are given below have been registered against him. It is submitted that the petitioner is accused in Crime No.1580/2016 of

Thoppumpady Police Station under Section 118(a) of the K.P.Act, Crime No.1460/2023 of the Palluruthy Police Station under Section 15(c) of the

Abkari Act and Crime No.1788 of 2016 of Fort Kochi Police Station under Sections 308, 324, 326 and 34 of the Indian Penal code. It is submitted that

in such circumstances, the petitioner may not be granted bail.

5. Having heard the learned counsel for the petitioner and the learned Public Prosecutor, I am of the view that the petitioner can be granted bail

subject to conditions. The petitioner has already been in custody for 88 days. The investigation has been completed and final report has been filed.

Apart from the fact that the petitioner is likely to intimidate or influence the minor victim and the fact that the petitioner has criminal antecedents, no

other compelling reason is shown as to why the petitioner must be continued in custody.

6. In the result this bail application is allowed. It is directed that the petitioner shall be released on bail, subject to the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.50,000/-(Rupees fifty thousand only) with two solvent sureties each for the like sum to the satisfaction of the

jurisdictional Court;

(ii) The petitioner shall report before the Investigating officer in Crime No.1100 of 2023 of Thoppumpady Police Station, Ernakulam District as and when summoned to

do so;

(iii) The petitioner shall not attempt to influence or intimidate the victim or any witness in Crime No.1100 of 2023 of Thoppumpady Police Station, Ernakulam District;

(iv) The petitioner shall not enter into the local limits of Ernakulam District, till, 31.12.2023, except, for, complying, with, any condition imposed in this

order or for appearance before any court or authority;

(v) The petitioner shall not involve in any other crime while on bail.

If, any, of, the, aforesaid, conditions, are, violated, the Investigating officer in Crime No.1100 of 2023 of Thoppumpady Police Station,

Ernakulam District, may file an application before the jurisdictional Court for cancellation of bail.