

## Noushad K.N Vs State Of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** Jan. 14, 2025

**Acts Referred:** Constitution of India, 1950 â€” Article 21  
 Bharatiya Nagarik Suraksha Samhita, 2023 â€” Section 483  
 Bharatiya Nyaya Sanhita, 2023 â€” Section 109, 118(1)

**Hon'ble Judges:** P.V.Kunhikrishnan, J

**Bench:** Single Bench

**Advocate:** Vivek Venugopal, Noushad K.A

**Final Decision:** Allowed

### Judgement

P.V.Kunhikrishnan, J

1. This Bail Application is filed under Section 483 of Bharatiya Nagarik Suraksha Sanhita.

2. PetitionerÃ, Ã, isÃ, Ã, theÃ, Ã, accusedÃ, Ã, inÃ, Ã, Crime No.1249/2024 of Narakkal Police Station. The above case is registered against the

petitioner alleging offences punishable under Section 118(1) of the Bharatiya Nyaya Sanhita (for short, BNS). Subsequently, the offence under Section

109 of the BNS was added.

3. The prosecution case is that on 02.12.2024 at 4.30 am, the accused, with an intention to cause hurt to the defacto complainant and his friend,

attacked him with a glass taken from the bar and the victim sustained grievous injury.

4. Heard counsel for the petitioner and the Public Prosecutor.

5. TheÃ, CounselÃ, forÃ, theÃ, petitionerÃ, submitted that the petitioner earlier moved B.A.No.10432 of 2024 before this Court and this Court

directed the petitioner to surrender before the Investigating Officer. In the meanwhile, he was arrested and he was produced before the learned

Magistrate. The learned Counsel submitted that the petitioner is in custody from 08.01.2025. According to the petitioner, the alleged incident happened

on 02.12.2024 and the First Information Statement was filed only on 10.12.2024. The learned Counsel also submitted that the allegation against the

petitioner is not correct.

6. TheÃ, PublicÃ, ProsecutorÃ, opposedÃ, theÃ, Bail Application. The Public Prosecutor submitted that the injury sustained to the victim is very

serious and that the petitioner has criminal antecedents.

7. The Counsel for the petitioner submitted that the criminal antecedents alleged is only matrimonial offence that that the petitioner is now living with

his wife.

8. Admittedly, the petitioner is in custody from 08.01.2025. There is a long delay in filing the complaint. That itself is not a reason to grant bail. But

considering the fact that the petitioner is in custody from 08.01.2025, this Court is of the view that bail can be granted to him after imposing stringent

conditions.

9. Moreover, it is a well accepted principle that the bail is the rule and the jail is the exception. The Hon'ble Supreme Court in Chidambaram. P v

Directorate of Enforcement [2019 (16) SCALE 870], after, considering, all, the, earlier, judgments, observed that, the basic jurisprudence

relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the

opportunity of securing fair trial.

10. Moreover, in Jalaluddin Khan v. Union of India [2024 KHC 6431], the Hon'ble Supreme Court observed that:

“21. Before we part with the Judgment, we must mention here that the Special Court and the High Court did not consider the material in the charge sheet

objectively. Perhaps the focus was more on the activities of PFI, and therefore, the appellant's case could not be properly appreciated. When a case is made out for a

grant of bail, the Courts should not have any hesitation in granting bail. The allegations of the prosecution may be very serious. But, the duty of the Courts is to

consider the case for grant of bail in accordance with the law. "Bail is the rule and jail is an exception" is a settled law. Even in a case like the present case where there

are stringent conditions for the grant of bail in the relevant statutes, the same rule holds good with only modification that the bail can be granted if the conditions in

the statute are satisfied. The rule also means that once a case is made out for the grant of bail, the Court cannot decline to grant bail. If the Courts start denying bail in

deserving cases, it will be a violation of the rights guaranteed under Art.21 of our Constitution.” (underline supplied)

11. In Manish Sisodia v. Directorate of Enforcement [2024 KHC 6426], also the Hon'ble Supreme Court observed that:

“53. The Court further observed that, over a period of time, the trial courts and the High Courts have forgotten a very well - settled principle of law that bail is not

to be withheld as a punishment. From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of

bail. The principle that bail is a rule and refusal is an exception is, at times, followed in breach. On account of non - grant of bail even in straight forward open and

shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. It is high time that the trial courts and the High Courts

should recognize the principle that "bail is rule and jail is exception".

12. Considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this Bail Application is allowed

with the following directions:

1. Petitioner shall be released on bail on 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 jurisdictional Court.

2. The petitioner shall appear before the Investigating Officer for interrogation as and when required. The petitioner shall co-operate with the

investigation and shall not, directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to

dissuade him from disclosing such facts to the Court or to any police officer.

3. Petitioner shall, not, leave India without permission of the jurisdictional Court.

4. Petitioner shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected.

5. The petitioner shall appear before the Investigating Officer on all Mondays and Fridays for a period of 30 days.

6. If any of the above conditions are violated by the petitioner, the jurisdictional Court can cancel the bail in accordance to law, even though the bail is

granted by this Court. The prosecution and the victim are at liberty to approach the jurisdictional court to cancel the bail, if there is any violation of the

above conditions.