

## Anthony Swamy Vs Kerala State Of Kerala

**Court:** High Court Of Kerala

**Date of Decision:** Jan. 21, 2025

**Acts Referred:** Constitution of India, 1950 " Article 21

Bharatiya Nagarik Suraksha Samhita, 2023 " Section 483

Bharatiya Nyaya Sanhita, " Section 63(b), 64(1), 65(2)

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

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

**Bench:** Single Bench

**Advocate:** Rizwana A.A., Aqib Sohail P.S., 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. Petitioner is the accused in Crime No.904/2024 of Kozhinjampara Police Station. The above case is registered against the petitioner alleging

offences punishable under Sections 64(1), 65(2), and 63(b) of the Bharatiya Nyaya Sanhita (for short, BNS) and Sections 4(1), 3(b), 6(1) and 5m of

the Protection of Children from Sexual Offences Act (Amendment) 2017.

3. The prosecution case is that on 26/10/2024, between 12:00 PM and 1:30 PM, the daughter of the defacto complainant went to play at the house of

the accused, who is a neighbor. It is alleged that the accused, with the intention to sexually abuse the survivor, subjected her to severe penetrative

sexual assault by inserting his finger into her genitals. The petitioner was arrested on 27.10.2024.

4. Heard counsel for the petitioner and the Public Prosecutor. Since the offence under Section 65 of BNS is also alleged, this Court issued notice to

the guardian / parents of the victim about the pendency of this bail application through the Investigating Officer. The Public Prosecutor submitted that

the notice is served; but there is no appearance.

5. The counsel for the petitioner submitted that the petitioner is aged 65 years and it is a false case foisted against the petitioner. Different contentions

are raised in this bail application. The Public Prosecutor seriously opposed the bail application. The Public Prosecutor produced the medical report and

the First Information Statement.

6. This Court perused the First Information Statement. It is true that serious allegations are there. The victim girl is aged only 3½ years. There is

prompt FI Statement also. But the petitioner is in custody from 27.10.2024. The investigation is over and the final report is also filed. In such

circumstances, indefinite incarceration of the petitioner may not be necessary. But, till the main witnesses in this case are examined before the trial

court, there can be a direction to the petitioner not to enter the jurisdictional limit of Kozhinjampara Police Station except for the purpose of appearing

before the jurisdictional court.

7. 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.

8. 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)

9. 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".

10. 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/her 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 not enter the jurisdictional limit of Kozhinjampara Police Station, except for the purpose of appearing before the jurisdictional

court, till the main witnesses in the case are examined by the trial court.

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.