

**Ajay Krishnan vs State of Kerala**

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**SooperKanoon Citation :** [sooperkanoon.com/1355507](https://sooperkanoon.com/1355507)

**Court :** Kerala

**Decided On :** Apr-28-2023

**Judge :** Honourable Mr.Justice Ziyad Rahman a.a.

**Appeal No. :** Bail Appl./3056/2023

**Appellant :** Ajay Krishnan

**Respondent :** State of Kerala

**Judgement :**

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.  
FRIDAY, THE 28TH DAY OF APRIL 2023 / 8TH VAISAKHA, 1945  
CRIME NO.437/2023 OF TIRUR POLICE STATION, MALAPPURAM  
DISTRICT PETITIONER/ACCUSED: AJAY KRISHNAN AGED 34  
YEARS S/O. KRISHNANKUTTY, JAYAKRISHNA HOUSE,  
THOTTAKKARA, NR. OTTAPALAM FAMILY COURT, PALAKKAD  
DISTRICT, PIN - 679102 BY ADV NIREESH MATHEW  
RESPONDENT/COMPLAINANT: STATE OF KERALA REPRESENTED  
BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, PIN - 682031  
BY ADV PUBLIC PROSECUTOR SR.GP.SRI. VIPIN NARAYAN THIS  
BAIL APPLICATION HAVING COME UP FOR ADMISSION ON

28.04.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## **ORDER**

The petitioner is the accused in Crime No.437/2023 of Tirur Police Station, Malappuram. The offence alleged against the petitioner is under Section 376(2)(n) of the Indian Penal Code.

2. The prosecution case is that on 14.10.2018 at 9.30

hours, the accused who is her classmate, committed rape on the defacto complainant while they were in a lodge near Agali. It was repeated on 13.01.2020 also. As per the statement of the victim, the sexual intercourse was performed by the petitioner, by making a promise to marriage. Later, he retracted from the proposed marriage. The complaint in this regard was submitted in the year in April, 2023 based on which the crime was registered. As part of

investigation the petitioner was arrested on 05.04.2023. Even though the petitioner submitted an application for bail before the jurisdictional court the same was dismissed. This application for regular bail is submitted in such circumstances.

3. Heard Sri.Nireesh Mathew, the learned counsel appearing for the petitioner and Sri.Vipin Narayan, the learned Pubic Prosecutor for the State.

4. The learned counsel for the petitioner submits that the

petitioner is innocent of all the allegations. According to him, from the materials available on record, the offence under Section 376(2) will not be attracted, as apparently the relationship was on the basis of consent between the parties. The huge delay of more than three years was also highlighted by the learned counsel for the petitioner.

5. On the other hand, the learned Public Prosecutor would oppose the aforesaid bail application by pointing out that there are specific allegations against the petitioner.

6. I have gone through the records and heard the

contentions raised from both sides. The specific case put forward by the learned counsel for the petitioner is that, the sexual relationship was on the basis of the mutual consent. The nature of the allegations to some extent will fortify the same. The specific case of the prosecution is that, the sexual intercourse was performed on the basis of a promise to marriage which was later not fulfilled. Another crucial aspect to be noticed is the huge delay in reporting the matter to the Police. The first incident occurred in the year 2018, and the second incident is in the year

2020. But the matter is reported only in the year 2023. When

considering all the aforesaid contentions, I am of the view that, the contentions put forward by the learned counsel for the petitioner cannot be simply brushed aside. The petitioner is in custody since 05.04.2023. In the facts and circumstances of the case, I do not find any necessity of continued incarceration of the petitioner.

In such circumstances, this application is allowed and the petitioner is directed to be released on bail subject to following conditions: 1) The petitioner shall be released on bail on executing a bond for Rs.1,00,000/- (Rupees One Lakh only) with two solvent sureties each for the like sum to the satisfaction of the jurisdictional Court.

2) The petitioner shall fully co-operate with the investigation. 3) The petitioner shall appear before the Investigating Officer between 10.00 a.m and 11.00 a.m on every Wednesday until the filing of final report. 4) The petitioner shall appear before the Investigating Officer as and when required. 5) The petitioner shall not commit any offence of similar nature while on bail. 6) The petitioner shall not make any attempt to contact

any of the prosecution witnesses, directly or through any other person, or in any other way try to tamper with the evidence or influence any witnesses or other persons related to the investigation. 7) The petitioner shall not leave the State of Kerala without the permission of the jurisdictional court. In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider

the application for cancellation of bail, if any, and pass appropriate orders in accordance with the law. Sd/- ZIYAD RAHMAN A.A. JUDGE scs APPENDIX OF BAIL APPL. 3056/2023 PETITIONER ANNEXURES

**Annexure1 TRUE PHOTOCOPY OF THE SAID ORDER**

DATED 11.04.2023 IN CMP.NO.1394/2023 PASSED BY THE JUDL. FIRST CLASS MAGISTRATE COURT, TIRUR

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