

IN THE COURT OF SESSION, KOZHIKODE DIVISION
Present:- Sri. R. Madhu, Sessions Judge

Thursday, the 8th day of May, 2025
 18th day of Vaisakham, 1947

CRIMINAL MISCELLANEOUS CASE No.563/2025
 (Crime No.281/2025 of Elathur Police Station)

Between:-

M.K. Suhaib, aged 36 years, S/o. Hussain Koya, Alif House, Kunnuvayal Parambu, Elathur P.O, Kozhikode.	}	Petitioner/Accused
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And:-

State of Kerala, Rep. by SHO, Elathur Police Station, by Public Prosecutor, Kozhikode.	}	Respondent/Complainant
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This petition filed u/s. 482 of BNSS praying to release the petitioner on bail, in the event of arrest.

This petition coming on this day for orders before me upon perusing the petition and upon hearing the arguments of **Sri. Neeraj Rehman**, advocate for the petitioner and the **Public Prosecutor** for the State and the court passed the following:

ORDER

This is an application for pre-arrest bail filed under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS' in short) by the petitioner/Accused in crime No.281/2025 of Elathur Police Station registered for the offences punishable under Sections 126(2), 296 and 79 of Bharatiya Nyay Sanhita, 2023 (hereinafter referred to as 'BNS' in short).

2. The case of the prosecution, in brief, is as follows:- That on 19.03.2025 at 08:35 Hrs, the accused wrongfully restrained the informant and abused her with obscene words. Thus, according to the prosecution, the Petitioner/accused has committed the aforesaid offences.

3. It is revealed from the contents of the bail application and from the report filed by the respondent that the offences alleged to have been committed by the petitioner are under Sections 126(2), 296 and 79 of BNS. The said sections are bailable in nature and in such case the apprehension of the arrest is not there. The above aspect was considered by the Hon'ble High Court of Kerala in **XXX Vs. State of Kerala** reported in **2022 (7) KHC 333** wherein it is held that in cases of bailable offences, pre-arrest bail cannot be granted since the apprehension of the arrest is not there in such cases. At the time of hearing, the learned counsel for the petitioner submitted that the investigating officer may alter the sections in the FIR so as to incorporate non-bailable offences and thereby the petitioner apprehends the possibility of arrest. In such an eventuality, if the respondent wants to proceed against the petitioner involving non-bailable offence, notice under section 35(3) to (6) of the BNSS shall be complied.

Thus from the above observation, the application for pre-arrest bail is liable to be dismissed as not maintainable. Accordingly, the above application is dismissed.

(Dictated to the Confidential Assistant, transcribed by her, corrected by me and pronounced in open court, on the 08th day of May, 2025).

Sd/-
Sessions Judge

Typed by: Asbija.T

//True Copy//

Senior Superintendent

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Fair/Copy of Order in CMC No.563/2025

Dated: 08.05.2025.

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