

(2026) 01 KL CK 1714

In the High Court Of Kerala

Case No : Bail Application No. 12607 Of 2025

T.P Nandakumar

APPELLANT

Vs

State Of Kerala, Represented By The Public Prosecutor

RESPONDENT

Date of Decision : 30-01-2026

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 482

Bharatiya Nyaya Sanhita, 2023 — Section 192

Information Technology Act, 2000 — Section 67, 67A

Citation : (2026) 01 KL CK 1714

Hon'ble Judges : Dr. Kauser Edappagath, J

Bench : Single Bench

Advocate : Bimala Baby, Roshan Shaji, Remya Thomas, S.Rajeev, V.Vinay, M.S.Aneer, Anilkumar C.R., Sarath K.P., K.S.Kiran Krishnan, Dipa V., Akash Cherian Thomas, Azad Sunil, Maheswar Padickal, T.P.Aravind, Akshara S., U. Jayakrishnan

Final Decision : Allowed

Judgement

Dr. Kauser Edappagath, J

1. This application is filed by the sole accused in Crime No.33/2025 of Cyber Crime Police Station Kochi, Ernakulam City, under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short, BNSS), seeking pre-arrest bail.

2. The applicant is the chief editor of a YouTube channel named CRIME ONLINE. On 29/8/2025, the applicant posted a video on the said YouTube channel as well as in his Facebook account named CRIME STORY with a caption "? ?? ? ?? ? ? ??? ? ? ?? ? ? ??? ?? ? ?? ???" ("What exactly did Pinarayi do by lifting Saritha Nair's skirt...the video is out"). On the same day itself, at 9.41 p.m., the Cyber Crime Police Station, Kochi, registered a crime against the applicant for the offences punishable under Section 192 of the Bharatiya Nyaya Sanhita, 2023 (for short, the BNS) and Sections 67 and 67A of the Information Technology Act, 2000 (for short, the IT Act). Annexure 1 is the

FIR.

3. The allegation in Annexure 1 is that the above-mentioned video contains obscene material involving sexually explicit content, and the applicant published it on his social media platforms with the intention of inciting public mutiny and tarnishing the reputation of the Hon'ble the Chief Minister of Kerala, Sri. Pinarayi Vijayan and thereby committed the offences mentioned above.

4. I have heard Sri.S.Rajeev, the learned counsel for the applicant and Sri.U. Jayakrishnan, the learned Senior Public Prosecutor. Perused the case diary.

5. The learned counsel for the applicant submitted that the applicant is innocent and has been falsely implicated in the above crime. The learned counsel further submitted that no material is on record linking the applicant to the alleged crime; hence, he is entitled to bail. According to the learned counsel, by no stretch of imagination, Section 67A of the IT Act would be attracted as the post cannot be categorised as relating to any sexually explicit act or conduct. The learned counsel justified the post, contending that it was purely a political and comparative analysis in the backdrop of the allegation of molestation by a young MLA against a woman and the double standard taken by the ruling party led by the Hon'ble the Chief Minister when similar allegations arose against the leaders of their party. It is submitted that the applicant, a journalist, used his poetic vocabulary for the comparison and there was no obscene or sexually explicit act or conduct in the video to attract Sections 67 and 67A of the IT Act. The counsel added that the investigation is almost over, the Cyber Police, Thiruvananthapuram, already seized the hard disk containing the post in Crime No.38/2025, and hence the custodial interrogation of the applicant is not necessary.

6. The learned Public Prosecutor, on the other hand, submitted that the alleged incident occurred as part of the applicant's intentional criminal acts, and if he is released on bail at this stage, it will affect the course of the investigation. The learned Public Prosecutor further submitted that the investigation is in the early stage and it is too early to conclude that the offences alleged will not be attracted. According to the learned Public Prosecutor, the intention of the applicant was to embarrass and humiliate the Hon'ble the Chief Minister. The learned Public Prosecutor also submitted that the custodial interrogation of the applicant is necessary for the purpose of investigation. The applicant has criminal antecedents and he is involved in several crimes of similar nature, added the learned Public Prosecutor.

7. Even though in Annexure 1 FIR, the offences under Section 192 of BNS, along with Sections 67 and 67A of the IT Act, were incorporated, later during the investigation, Section 192 of BNS was deleted, and what remains is Sections 67 and 67A of the IT Act.

8. The provisions of Sections 67 and 67A of the IT Act operate in distinct circumstances. Section 67 refers to publishing or transmitting obscene material in electronic form, whereas Section 67A refers to transmitting or publishing of

material containing sexually explicit act. The offence under Section 67 is punishable with imprisonment for a term, which may extend to three years and with fine, which may extend to `5 lakhs and on second conviction, with imprisonment for a term, which may extend to five years and also with fine, which may extend to `10 lakhs. The prosecution has no case that the applicant was previously convicted for the offence under Section 67, and hence the said offence is bailable in nature, since the maximum punishment provided is three years and fine. Thus, the only non-bailable offence alleged against the applicant is Section 67A of the IT Act, which reads thus:

"67A. Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form.— Whoever publishes or transmits or causes to be published or transmitted in the electronic form any material which contains sexually explicit act or conduct shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to ten lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to seven years and also with fine which may extend to ten lakh rupees".

9. To attract Section 67A, the accused must publish, transmit, or cause to publish or transmit in electronic form any material containing sexually explicit act or conduct. The IT Act does not define sexually explicit act or conduct. The term 'explicit' means "stated clearly and precisely and/or prescribing or depicting sexual activity in direct and detailed way". According to the Black's Law Dictionary, "sexual activity" is defined as "physical sexual activity or both persons engaged in sexual relations" [See. Pramod Anand Dhumal v. State of Maharashtra (2021) 2 High Court Cases (Bom) 66]. The term "sexually explicit" is often used as a euphemism for pornography. It includes unsimulated sexual acts, sexual intercourse, and exposed genitalia (See. Majeesh K.Mathew v. State of Kerala and Another, 2018 (4) KHC 253). Therefore, to invoke Section 67A of the IT Act, the publication in question must depict actual or simulated sexual acts or intercourse. Such depiction does not necessarily have to be through filming; it can also be conveyed through spoken language.

10. Annexure 2 is the transcription of the contents of the video. The relevant portions of it have been reproduced in paragraph 8 of the bail application as well. A reading of the same would reveal that the applicant was commenting about the allegation of molestation by a sitting MLA against a woman in the backdrop of a similar allegation in the year 2015 involving one Smt.Saritha Nair. While criticising the double standard alleged to have shown by the ruling party and its head, the Hon'ble the Chief Minister, in both issues, there was a comment that the said stand of the Hon'ble the Chief Minister would amount to 'politics with a skirt up' (? ? ?? ? ?? ? ? ?). The said comment has been projected as having sexually explicit content. By no stretch of imagination can it be characterised as sexually explicit content. In short, the contents of the video do not contain any

sexually explicit acts or conduct. That apart, even as per the prosecution version, the alleged post was intended to incite public mutiny and tarnish the reputation of the Hon'ble the Chief Minister. There is no allegation that the contents in the video would deprave or corrupt the minds of the people who view it or are likely to excite lustful thoughts in them. As stated already, Section 67A of the IT Act deals with publication, transmission, or causing to publish or transmit in an electronic form any material that contains sexually explicit act or conduct. No case of publication or transmission of material containing sexually explicit act or conduct as provided under Section 67A of the IT Act has been prima facie made out against the applicant.

11. The applicant indeed has criminal antecedents, and he is involved in several crimes involving similar offences. However, it is settled that mere pendency of several criminal cases against the accused cannot itself be the basis for refusal of pre-arrest bail if he is otherwise entitled to [Prabhakar Tewari v. State of Uttar Pradesh and Another (2020) 11 SCC 648]. The hard disk containing the alleged video was already seized by the police in connection with another crime. The investigation is almost over. Considering the allegations made against the applicant, his custodial interrogation seems unnecessary. For these reasons, I find this to be an appropriate case to grant pre-arrest bail to the applicant.

In the result, the application is allowed on the following conditions:-

- (i) The applicant shall be released on bail in the event of his arrest on executing a bond for `1,00,000/- (Rupees One lakh only) with two solvent sureties for the like sum each to the satisfaction of the arresting officer/investigating officer, as the case may be.
- (ii) The applicant shall fully cooperate with the investigation, including subjecting himself to the deemed police custody for discovery, if any, as and when demanded.
- (iii) The applicant shall appear before the investigating officer between 10.00 a.m. and 11.00 a.m. every Saturday until further orders. He shall also appear before the investigating officer as and when required.
- (iv) The applicant shall not commit any offence of a like nature while on bail.
- (v) The applicant shall not 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.
- (vi) The applicant shall not leave India without the permission of the trial Court.
- (vii) The application, if any, for deletion/modification of bail conditions or cancellation of bail on the grounds of violating the bail conditions shall be filed at the jurisdictional court.