

**(2023) 05 KL CK 0071**  
**In the High Court Of Kerala**  
**Case No : Bail Application No. 3439 Of 2023**

XXXXXXXXXX

APPELLANT

Vs

State Of Kerala

RESPONDENT

**Date of Decision :** 12-05-2023

**Acts Referred:**

Code of Criminal Procedure, 1973 — Section 439  
Indian Penal Code, 1860 — Section 376(2)(f), 376(2)(n), 376AB

**Citation :** (2023) 05 KL CK 0071

**Hon'ble Judges :** P.G. Ajithkumar, J

**Bench :** Single Bench

**Advocate :** Nireesh Mathew, P. G. Manu

**Final Decision :** Dismissed

## Judgement

P.G. Ajithkumar, J

1. This is an application for bail filed under Section 439 of the Code of Criminal Procedure, 1973.

2. The petitioner is the accused in Crime No.380 of 2023 of Ottappalam Police Station. He allegedly had committed the offences punishable under Sections 376(2)(f), 376(2)(n) and 376-AB of the Indian Penal Code, 1860 and Section 4 r/w 3(b), 6 r/w Section 5(l), (m), and (n) of the Protection of Children from Sexual Offences Act, 2012.

3. The prosecution case is as follows:

The wife of the petitioner expired in the year 2022. Thereafter, the petitioner has committed aggravated penetrative sexual assault on the defacto complainant, who is his granddaughter on various occasions.

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

5. The petitioner would contend that he did not involve in the alleged crime and

without any material or evidence, he has been implicated in the crime. He is innocent. The investigation in the matter has been progressed considerably and there is no reason or justification for his further detention. The petitioner is aged 72 years now. He is suffering from several ailments. Only on account of the matrimonial dispute between the parents of the defacto complainant, this case has been foisted against him. From the delay occasioned in lodging the complaint itself, it is clear that the case is a manipulated one. Pointing out those aspects, the learned counsel for the petitioner would submit that the petitioner is entitled to be released on bail.

6. The learned Public Prosecutor would submit that considering the seriousness of the offence and the possibility of interfering with the investigation by the petitioner in the event of his release on bail, this petition deserves only to be dismissed.

7. No doubt, the offences alleged against the petitioner are serious in nature. It is seen that investigation in the matter has been progressed considerably. The petitioner is aged 72 years. He has been in custody since 21.04.2023. Considering the aforesaid aspects and also the nature of the offence, I am of the view that further detention of the petitioner pending investigation is unnecessary. Therefore the petitioner is entitled to be released on bail.

8. It is not seen that the petitioner has filed an application for bail before the Sessions Court. It is true that in order to file an application for bail before this Court invoking the provisions of Section 439 of the Code, it is not a precondition to file an application before the Sessions Court. But when in appropriate cases, the application for bail is expected to be filed first before the Sessions Court. Bypassing the jurisdiction of the Sessions Court, in cases like this amounts to choosing of Forum. This Court strongly deprecate that approach of the petitioner.

9. The bail application is allowed. The petitioner is granted bail on his executing a bond for Rs.50,000/- (Rupees fifty thousand only), with two solvent sureties for the like amount each, to the satisfaction of the learned Sessions/Special Court, subject to the following conditions:

- (i) The petitioner shall not influence or intimidate witnesses or tamper with evidence;
- (ii) Petitioner shall appear before the investigating officer as and when called for until filing the final report;
- (iii) During the period of bail, petitioner shall not get involved in any other offence.
- (iv) The petitioner shall not enter the territorial limits of jurisdictional court except to comply with the aforesaid directions, till filing of the final report.

In case of breach of the bail conditions, the prosecution shall be at liberty to apply for cancellation of the bail before the jurisdictional court.