



HIGH COURT OF TRIPURA
AGARTALA

AB No.34 of 2026

Shri Gitangshu Sinha
S/o- Sri Sudip Sinha, Resident of Barjala Manipuri Para, P.S- NCC,
District- West Tripura.
....Applicant(s)

Versus

- 1. **The State of Tripura.**
- 2. **The Prosecutrix (Name & Address withheld)**
.....Respondent(s)

For Applicant(s)	:	Mr. Subrata Sarkar, Sr. Adv. Mr. Prabin Singh, Advocate. Ms. Megha Sarkar, Advocate.				
For Respondent(s)	:	Mr. Samrat Kar Bhowmik, Sr. Adv. Mr. E. L. Darlong, Advocate. Mr. Raju Datta,PP.				
Date of hearing and Delivery of Order	:	03.06.2026				
Whether fit for reporting	:	<table><tr><td>Yes</td><td>No.</td></tr><tr><td>✓</td><td></td></tr></table>	Yes	No.	✓	
Yes	No.					
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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

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Heard Ld. Sr. Counsel, Mr. Subrata Sarkar assisted by
Ms. Megha Sarkar, Advocate for the Applicant.

[2] Ld. PP, Mr. Raju Datta has produced the Case Diary.

[3] Also heard Mr. S. Kar Bhowmik, Ld. Sr. Counsel assisted
by Mr. E. L. Darlong, Ld. Counsel for the Prosecutrix.

[4] The pre-arrest bail has been sought for by the accused
person, namely, Shri Gintangshu Sinha, in connection with East



Agartala Women P.S case No. 2026WEA18 registered under Sections 69,89,351,49,3(5) of Bharatiya Nyaya Sanhita (for short- BNS),2023. The accused petitioner is the prime accused in the case who is a bank employee. The prosecutrix is also an educated person professing advocacy.

[5] Ld. Sr. Counsel Mr. Subrata Sarkar for the petitioner argues that the FIR was a very exhaustive FIR containing several pages which itself shows that the petitioner and the prosecutrix were in love with each other and an alleged physical relationship grew up between them on mutual consent; therefore, no element of any malafide intnetion or any deceitful means adopted by the applicant-petitioner is found in the contents of the FIR itself, though it is repeatedly stated by the informant in the FIR that every time physical relationship occurred against her will. According to Ld. Sr. Counsel, the FIR is the embroidered version of what had actually happened. Mr. Sarkar also takes note of the assertion made in the FIR that on 14.02.2024, on the 'Valentine's Day', according to the informant, she was proposed by the accused at 'Dimsagar Lake' and also expressed that he wanted to marry her, whereas, the so-called incident of rape or cohabitation, as the case may be, for the first time occurred on 22.10.2024, i.e. after a long gap therefrom and therefore, from the said fact itself, it can easily be presumed that at the very inception, the applicant-petitioner had no malafide intention to have physical relationship with the victim, otherwise he could do it even just after their first engagement itself.

[6] Ld. Sr. Counsel, Mr. Sarkar also contends that the alleged story of the victim that during such cohabitation she became pregnant is totally false. According to Ld. Sr. Counsel, out of love affairs, there may be physical relationship between the two adults, but that itself will not attract the provision of Section 69 of BNS, 2023 just because for certain reasons, the male partner fails to marry his counterpart.

[7] Ld. Sr. Counsel, in support of his submissions, relies on a decision of Hon'ble Supreme Court in the case of **Uday vs. State of**



Karnataka; (2003) 4 SCC 46 (paragraph no.21) wherein it is observed that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within meaning of the Code (IPC). However, there is no straightjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact and the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion.

[8] Ld. Sr. Counsel, Mr. Sarkar also refers to one decision of Hon'ble Allahabad High Court in case of **Neeleshramchandani and Others vs. State of Uttar Pradesh and Others; 2026 SCC OnLine All 145 (paragraph no.11)**, wherein it is observed that Section 69 of BNS punishes deceit and not disappointment. In said case, the High Court finds that there was an agreement between the parties to marry and there was in fact no unilateral or deceitful promise by the petitioner no.1 to the respondent no.4 that he would marry her in near future. Taking note of the facts involved in that case, the High Court further observes that the agreement to marry was very much in existence between the parties, but, there was no false promise from either side.

[9] Finally, Ld. Sr. Counsel, Mr. Sarkar relies on another decision of Hon'ble Supreme Court in the case of **Pramod Suryabhan Pawar vs. State of Maharashtra and Another; (2019) 9 SCC 608**, wherein it is held that where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vititates woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise and to establish a false promise, the maker of the promise should have had no intention of upholding his words at the time of giving it. It is also further observed that the



“consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act, and to establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given and the false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.

[10] Ld. PP, on the other hand, referring to the relevant materials available in the case diary, submits that there are sufficient incriminating materials against the applicant-petitioner to attract Section 69 of BNS, 2023 and nothing is coming out from the side of the accused person that he tried to keep his promise, but despite all his efforts, he failed to keep the promise to the victim to marry her.

[11] Ld. PP also relies on a decision of the Hon’ble Gujarat High Court in the case of **Kunal Rameshbhai Kalyani vs. State of Gujarat and Anr.; R/Criminal Misc. Application (For quashing & Set aside FIR /Order)No.7256 of 2026**. In said case, the High Court observes that the Hon’ble Apex Court has already drawn clear distinction between false promise of marriage which is given on understanding by maker that it would be broken and breach of promise which is made in good faith, but subsequently not fulfilled. It is the former which outrightly attracts the penal provision. Considering the attending facts and circumstances of said case, the High Court also observes that the explanation that failure to marry the victim on the ground that mother was not agreed for the marriage cannot be considered to be bonafide reason or the circumstances which is beyond the control of the applicant, and it is the applicant who before indulging into relations could have taken the sense of the mother, however, denying subsequently smokes of malafide motive of the applicant. Ld. PP, therefore, seriously opposes the bail prayer.



[12] Ld. Sr. Counsel Mr. S.Kar Bhowmik for the respondent No.2 submits that in our societal environment, no woman generally goes to falsely implicate a person at the cost of social stigma and injury to one's own reputation and even taking such steps, the future marriage prospect of a lady is likely to be impaired. Ld. Sr. Counsel also argues that the informant categorically stated in her FIR about the false promise made by the accused and engaged her in a physical relationship with him. Even he performed an artificial saptapadi in the quarters of the mother of the victim to further make her sure that he was going to marry her and even with such false promise, in different places, he compelled the victim to surrender her to his unlawful lust and later on he turned around without any valid reason. Ld. Sr. Counsel, also contends that initially, when the victim, taking all risks on her reputation, went to the Police Station for justice knowing fully well that now the matter is likely to be gone on public gaze, both the present accused and his father went to the police station and promised her that they would make necessary arrangements for the marriage between the couples within two days, but, ultimately, doing nothing, the petitioner fled away from Agartala; therefore, such conduct itself indicates that the accused had his malafide intention since inception to enjoy the victim and ultimately to leave her. The father and the son, submits Mr. Kar Bhowmik, were simply looking for a scope so that the petitioner could abscond and that was the reason, they sought for two days' time from her.

[13] Ld. Sr. Counsel, Mr. Kar Bhowmik to gain support for his submissions, relies on a decision of Hon'ble Delhi High Court in the case of **Nikhil Parasar vs. The State Govt. NCT of Delhi; Bail Appln. No.1745 of 2009**, wherein it is observed by the High Court on the contexts of that case that it was difficult to accept that a young and well-educated boy such as the petitioner, who is modern, bold and outgoing enough to call the prosecutrix to Mumbai, spends a few nights with her in a hotel under an assumed name and follows it up by taking her to Sailors Home in New Delhi a number of times and has sexual intercourse with her, would not marry her only on account of her caste/sub-caste. It is further observed that in the absence of



exceptional and peculiar circumstances, the Court, therefore, should not grant anticipatory bail to a person, who is evading the process of law by continuing to remain absconding.

[14] Ld. Sr.Counsel, Mr. Kar Bhowmik also relies on another decision of Hon'ble Calcutta High Court in case of **Lachmi@Lakshmi Kanta Kamath vs. The State of West Bengal; 2015 SCC OnLine Cal 7137**, wherein the High Court took note of the observation of Hon'ble Supreme Court in another case viz **Tulsidas Kanolkar V. State of Goa, (2003) 8 SCC 590**. In said case, the Apex Court observes that there is gulf of difference between consent and submission. Every consent involves a submission but the converse does not follow, and mere act of submission does not involve consent. An act of helpless resignation in the casea of inevitable compulsion, quiescence, non-resistance or passive giving-in when the faculty is either clouded by fear or vitiated by duress or impaired due to mental retardation or deficiency cannot be considered to be consent as understood in law. For constituting consent, there must be exercise of intelligence of intelligence bsed on the knowledge of the significance and the moral effect of the act. The High Court also eloquently made reference to another decision of the Apex Court namely, **State of U.P. v. Chhotey Lal, (2011) 2 SCC 550**. In said case, regarding the way as to how the evidence of prosecutrix is to be evaluated, further reference was made to another decision of the Hon'ble Supreme Court in the case of **Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat**; wherein it was observed that rarely will a girl or a woman in India make false allegations of sexual assault on her. The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society because a girl or a woman in the tradition bound non permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred and that she would be conscious of the danger of being ostracised by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours. She would have to brave the whole



world and she would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered.

[15] The Court has appreciated the submissions of both the sides and has also gone through the materials placed in the record.

[16] It is true that just mere failure to marry a woman after pursuing a long physical relationship does not automatically attract Section 69 of BNS, 2023. For prosecution under section 69 of BNS, 2023, either there should be some deceitful means adopted by the offender to have sexual relationship with the prosecutrix, or there has to be a promise on his part to marry the prosecutrix without any intention of fulfilling the same. Mere failure on the part of the offender to keep his promise or breakdown of the relationship for certain reasons, do not mechanically attract Section 69, of BNS but if the offender despite having aware of the fact that he would not marry her, pursue her with such promise, would certainly come within the sweep of such penal provision. However, the applicability of the provision of section 69 is to be judged from the facts and circumstances involved in each case. The conduct of the parties also assumes significance in this regard.

[17] It is fact that the victim hails from the Bengali community whereas, the accused hails from Manipuri community. Therefore, their sects are different and both are well educated. There are prima facie materials that the present accused indulged in sexual relationship with the victim on promise of marriage. They had sexual relationship in different places like Jorhat, Tawang, Kolkata and also at Agartala on several occasions. Therefore, prima facie, it appears to be a case of consensual sex out of their love affair. There are also prima facie materials that the accused in the official quarters of the mother of the victim in presence of one friend of the victim took seven steps with the victim by lighting up one candle in presence of the deity and put vermilion on her forehead to make her convinced that he was treating her as his wife. Prima facie, therefore, having knowledge that she was



from a different sect and community and there may be resistance from his family, the petitioner proceeded to grow such physical relationship with the victim with the assurance of marriage and engaged her in such act on several occasions.

[18] He even went to give an artificial show of ceremonial performance like Saptapadi, started addressing the younger brother of the prosecutrix as his brother in law, visited different places either with the victim or to meet her and to have such sexual performance with her, but suddenly cut off such relationship. No satisfactory explanation is also coming up from his side about the reason for his unwillingness to marry her. Materials are also there that seeking two days time for arrangement of marriage with the victim, ultimately he absconded. His conducts appears to be lacking of his bonafides and Section 69 of BNS is prima facie, found to be attracted in respect of him. Considering thus, this Court finds that it is not a fit case to extend the benefit of pre-arrest bail to the accused person.

[19] In view of the above, the bail prayer is rejected. The observations made hereinabove are solely for the limited purpose of deciding the present bail application and the same shall not have any bearing on the merits of the case during trial.

[20] The bail application is accordingly disposed of.

Return the CD to Ld. PP.

JUDGE