

Sr. No. 01

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Bail App No. 353/2025
CrlM No. 2403/2025

Reserved on : 06.07.2026
Pronounced on : 07.07.2026
Uploaded on : 07.07.2026

Ajay Dubey

.... Applicant/Applicant(s)

Through:- Mr. Rajnish Raina, Sr. Advocate with
Mr. Abid Khan and Mr. Mohd. Sher
Khan, Advocates

V/s

Union Territory of J&K & anr.

.....Respondent/Non-applicant(s)

Through:- Mr. Pawan Dev Singh, Dy.AG
alongwith I.O./Mr. Ankush Sharma, SI
PS Gangyal.

CORAM : HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

ORDER

01. This bail application has been filed by the applicant under Section 482 of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) for grant of anticipatory bail in connection with FIR No.0095 dated 05.09.2025 registered at Police Station, Gangyal for the offence under Section 376 of IPC.

02. The complainant/respondent No. 2 had appeared in person before this Court but chose not to file response to this application, as such, this Court proceeded to hear this matter finally.

03. The case of the prosecution is that FIR No. 0095/2025 was registered in the Police Station Gangyal on the complaint of respondent No. 2 against the applicant. It is alleged that the complainant came in contact with the applicant through Facebook about one and a half year ago. The

applicant called the complainant to his place on the pretext of a job and offered her soft drink to the complainant which was spiked and on consuming the same, the complainant fell unconscious and upon gaining conscious, found herself without clothes, which caused her extreme shame. The applicant taking the benefit of that committed rape upon her. The applicant told the complainant that he had clicked her photographs & Videos and would make the same viral in case she reported the incident to anybody. Thereafter, the applicant started blackmailing her into sexual favour and would call her to accompany him wherever he went. Thereafter the applicant kept abusing the complainant who has not reported this matter to anyone. In the month of October, 2024, the complainant visited Chandi Mata Temple, the applicant also came on spot and attempted to take the complainant with him against her wish. On her resistance, she was thrashed. The applicant thereafter abused her and threatened to spoil her life and is, thus, guilty of committing sexual assault upon her by employing deceitful means.

04. Learned counsel for the applicant submits that the applicant has been falsely implicated in the present case. The victim is major woman of about 26 years. The relationship between the applicant and respondent No. 2/victim was consensual in nature and continued till August, 2025. The applicant came in contact with the complainant in the year 2020 through Face book and thereafter, they started talking to each other and became good friends. The complainant told him that her husband has died and she is a single mother having a small girl child living in a rented accommodation. It is further submitted that the applicant informed

respondent No. 2/complainant that his wife has left him and they are separated for the last more than 10 years. They both being adults entered into a consensual relationship and were living together in a rented accommodation in Model Town, Gangyal District Jammu. That after nearly 02 years of the living relationship, the applicant came to know that the husband of the complainant was alive and in fact, there were some matrimonial disputes with the family. In the month of August, 2024, a summon was received from Court in Kathua wherein it transpired that the husband of respondent No. 2 had filed a petition under Section 9 of the Hindu Marriage Act, seeking restitution of conjugal rights with the complainant. The said petition is still pending for adjudication before the Court of Additional District Judge, Kathua titled *Narayan Kumar versus Pooja Devi*. There is a specific averment in Section 9 of the petition that respondent No. 2 is living with a stranger. In order to cover up her relationship with the applicant that respondent No. 2 has moved a false and frivolous application on 05.09.2025 seeking registration of FIR.

05. The applicant preferred an application for grant of anticipatory bail before the Court of learned Presiding Officer, Fast Track Court, Jammu and learned Presiding Officer vide his order dated 22.09.2025 rejected the application for grant of bail.

06. Learned counsel for the State has opposed the prayer and submitted that the applicant cannot claim bail as a matter of right as he is involved in heinous offence, besides enlarging him on bail will encourage the offenders. It is also stated that FIR No. 0095/2025 under Section 376 of IPC was registered in Police Station, Gangyal Jammu on complaint of

respondent No.2 wife of Narayan Kumar, resident of at present Dayala Chak, Tehsil and District Kathua against the applicant and initial investigation was entrusted to SI Suresh Kumar. During the course of investigation, Investigating Officer visited the spot, prepared the site plan of the place of occurrence on the identification of the complainant, statement of the complainant under section 183-BNSS was recorded before the Judicial Magistrate.

07. It appears that as per the FIR, the date of occurrence is 10.02.2024, whereas the complaint has been lodged on 19.08.2025, nearly after a lapse of more than 1½ years. On perusal of the material on record, it appears that during this time, the allegation is that the applicant established physical relationship with her without her will and consent many times on the threat of making the photographs and video viral but no such complaint was made by the complainant to any authorities. It is further submitted that the alleged photographs and videos have not been released.

08. The provision for grant of anticipatory bail is provided in Section 482 of BNSS 2023. Section 482 of BNS 2023 clearly stipulates that when a person has a reasonable apprehension to believe he can be arrested on an accusation for commitment of non-bailable offence, he can move to the High Court or to the Court of Sessions for grant of anticipatory bail. The power to grant anticipatory bail must be exercised by the Court in very exceptional cases. The Court must be satisfied that there is a reasonable cause and reasonable grounds for grant of anticipatory bail. This Section protects the right to life and personal liberty of such person by providing him a remedy against frivolous detention.

09. In *Bhadresh Bipinbhai Sheth versus State of Gujarat & anr.*, reported as **2016 (1) SCC 152**, certain guidelines in respect of grant of anticipatory bail have been given by the Hon'ble Supreme Court in Para-23, which read as under:-

23.....

(x) We shall also reproduce para 112 of the judgment wherein the Court delineated the following factors and parameters that need to be taken into consideration while dealing with anticipatory bail:

(a) The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(b) The antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

(c) The possibility of the applicant to flee from justice;

(d) The possibility of the accused's likelihood to repeat similar or other offences;

(e) Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(f) Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(g) The courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of [Sections 34 and 149](#) of the Penal Code, 1860 the court should consider with even greater care and caution, because overimplication in the cases is a matter of common knowledge and concern;

(h) While considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to free, fair and full investigation, and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(i) The Court should consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;

(j) Frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

10. After hearing learned counsel for the parties and perusing the record, it is evident that victim is a major woman. The allegation of rape

was on 10.02.2024 and the FIR was lodged on 05.09.2025 about one and half years from the said date and in between there is allegation of any sexual assault many times but no complaint was made by the victim or anybody to any authority. There is no alleged photos or videos recovered during evidence.

11. The nature and gravity of the accusations and the exact role of the accused must be properly comprehended before the arrest is made. The antecedents of the applicant, including the fact as to whether the accused has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence, are also relevant considerations. The Court is further required to examine the likelihood of the applicant repeating a similar or any other offence. It is well settled that anticipatory bail cannot be granted as a matter of rule and can be granted only when the Court is convinced/satisfied that exceptional circumstances exist to resort to the extraordinary remedy.

12. The Hon'ble Supreme Court has held that attribute of fairness in prosecution should always be considered and in the event of there being some doubts as to the genuineness of the prosecution in the normal course, the accused would be entitled to grant of anticipatory bail. No inflexible guidelines or jacket formula can be provided for grant or refusal of anticipatory bail as it should depend upon the facts and circumstances of the each case.

13. At this stage, reliance has been placed on the case of **Gurbaksh Singh Sibbia etc. vs. State of Punjab** reported as **1980 (2) SCC 565**, whereby the Coordinate Bench of the Hon'ble Supreme Court has held that

an anticipatory bail can be granted so long as the applicant has not been arrested.

14. Looking into the facts and circumstances and considering the dictum laid down in the above decision and considering the facts and circumstances of this case, this bail application is allowed and the applicant, in the event of his arrest in FIR No. 0095/2025, is directed to be released on bail subject to the following conditions:-

- i. The applicant shall furnish a personal bond of Rs.50,000/- with two sureties of like amount to the satisfaction of the Investigating Officer.
- ii. The applicant shall surrender before the Investigating Officer within a period of 15 days from today, failing which this order shall automatically stand cancelled and the applicant shall report to the Police Station daily at 10 AM till further orders;
- iii. The applicant shall not tamper with the prosecution evidence in any manner and he shall not directly or indirectly make any threat or inducement to any person acquainted with the facts of the case. He should cooperate with Investigating Officer as well as the Trial Court and in case of any violation of such conditions, the prosecution can file a petition for cancellation of anticipatory bail.

15. This bail application alongwith interim application stands **disposed of**, accordingly.

(SINDHU SHARMA)
Judge

JAMMU
RAM MURTI/PS
07.07.2026