



HIGH COURT OF UTTARAKHAND AT NAINITAL

Anticipatory Bail Application No. 160 of 2026

26 May, 2026

Shyam Singh

.....Applicant

Vs.

State of Uttarakhand & Ors.

.....Respondents.

Counsel for the Applicant:

Mr. Sanja Bhatt, learned counsel.

Counsel for the State:

Mr. Tumul Nainwal, learned
A.G.A.

Counsel for the Respondent:

Ms. Sarita Bisht, learned counsel

(Sri Rakesh Thapliyal, J.)

1. The present applicant Shyam Singh, S/o Ajeet Singh praying for anticipatory bail in reference to FIR dated 07.05.2026, bearing FIR No. 0101 of 2026 registered at P.S. Nanakmatta District U.S. Nagar wherein he has been implicated for the offence punishable under section 69 of BNS 2023.

2. It is argued by the learned counsel for the applicant that the applicant is innocent and the FIR was lodged with the delay of five years and such delay has not been explained and even otherwise the allegation as alleged in the FIR does not disclose any offence punishable under Section 69 of BNS 2023 and there is no evidence to corroborate the allegations made in the FIR and the entire prosecution story is bundle of lies which has been cooked just to mount pressure of marriage on the applicant. He further submits that on close scrutiny of the FIR, the allegation does not fall within the ambit of Section 69 of BNS 2023. In support of his arguments he placed reliance to the judgment of Hon'ble Apex Court in the case of *Siddharam*



Satlingappa Mhetre vs. State of Maharashtra and others, (2011) 1 SCC 694 wherein the Apex Court laid down certain parameters for grant of anticipatory bail. He submits that the case of the present applicant falls within the parameter as specified by the Hon'ble Apex Court in para 111 and 112. Para 111 and 112 reads as under:-

111. No inflexible guidelines or straitjacket formula can be provided for grant or refusal of anticipatory bail. We are clearly of the view that no attempt should be made to provide rigid and inflexible guidelines in this respect because all circumstances and situations of future cannot be clearly visualized for the grant or refusal of anticipatory bail. In consonance with the legislative intention the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case. As aptly observed in the Constitution Bench decision in Sibbia's case (supra) that the High Court or the Court of Sessions to exercise their jurisdiction under section 438 Cr.P.C. by a wise and careful use of their discretion which by their long training and experience they are ideally suited to do. In any event, this is the legislative mandate which we are bound to respect and honour.

112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

- i. The nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;*
- ii. 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;*
- iii. The possibility of the applicant to flee from justice;*
- iv. The possibility of the accused's likelihood to repeat similar or the other offences.*
- v. Where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her.*
- vi. Impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people.*
- vii. 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 accused is implicated with the help of sections 34 and 149 of the Indian Penal Code, the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;*
- viii. 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 the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;*
- ix. The court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant;*
- x. 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.*



He further placed reliance to another judgment of the Hon'ble Apex Court in the case of *Mahesh Dam Khare vs. State of Maharashtra and Another*, (2024) 11 SCC 398 and particularly placed reliance to para 26 and 27 which reads as under:-

26. *The complainant had taken the plea that the appellant had physical relationship with her against her consent by making a false promise that he would marry her. In this regard, it has to be considered whether making a false promise to marry amounts to an offence. If a false promise of marriage is made to a woman by a man, thus deceiving the woman leading her to engage in sexual relations, it may amount to misconception of fact, in which case the consent given by the woman may be vitiated. In this regard one may refer to the decision of this Court in Niam Ahmed v. State (NCT of Delhi)5,*

"20. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of law and the case fell under the Clause- Secondly of Section 375 IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfill his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376."

27. *In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.*

3. Learned counsel for the applicant also placed reliance to another judgment of Hon'ble Apex Court in the case of *Pramod Suryabhan Panwar vs. State of Maharashtra*, (2019) 9 SCC 608 and particularly he placed reliance to para 16 which reads as under:-

6. *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 vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To*



establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The “consent” of a woman under Section 375 is vitiated on the ground of a “misconception of fact” where such misconception was the basis for her choosing to engage in the said act. In Deepak Gulati this Court observed: (SCC pp. 682-84, para 21 and 24)

“21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance”. [Section 90](#) IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.” (Emphasis supplied)

4. Per contra, Mr. Tumul Nainwal, learned A.G.A. submits that the applicant in a very well planned and organized manner first married with the victim and then develop physical relations, therefore, such conduct of the applicant come within the ambit of Section 69 of BNS 2023. He further submits that the medical report also does not support the case of the applicant as hymen is found to be torn. He further submits that cases, as relied by the learned counsel for the applicant are not at all applicable. In reference to the Apex Court’s decision in the case of Mahesh Dam Khare (supra) he submits that this case is not applicable in this particular case as after thorough investigation charge sheet has been filed and trial has been concluded but here in the present case, the investigation is at preliminary



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stage. So far as another judgment which has been relied by the learned counsel for the applicant with regard to the factors and parameters which have to be looked into while granting anticipatory bail there is no dispute on these parameters as specified by the Hon'ble Apex Court but case in hand does not fall in those parameters.

5. After hearing the arguments of the learned counsel for the parties and after gone through with the FIR and the fact that in the medical report the hymen of the prosecutrix found to be torn, I do not find good ground to granted anticipatory bail to the applicant. Accordingly, the instant anticipatory bail application is dismissed.

RAKESH THAPLIYAL, J.

Parul