APHC010575952026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3521]**
(Special Original Jurisdiction)

WEDNESDAY, THE 11th DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION NO: 9659/2026

Between:

1. GANGUPAMU MOHAN PRASAD, S/O. G. SATYANARAYANA, AGED ABOUT 32 YEARS,OCCUPATION POLICE CONSTABLE PC NO. 3564,R/O. D.N0.2-59A, SEETHANAGRAM VILLAGE,TGARAMPOODI POST, ANAKAPALLI MANDAL,ANAKAPALLI DISTRICT,

...PETITIONER/ACCUSED

AND

1. THE STATE OF ANDHRA PRADESH, PARAWADA POLICE STATION, ANAKAPALLI DISTRICT REP. BY THE PUBLIC PROSECUTOR,HIGH COURT OF ANDHRA PRADESH,AT AMARAVATHI, GUNTUR DISTRICT, A.P.
2. DANDETI SOWJANYA, D/O. RAJU, AGED ABOUT 29 YEARS.OCCUPATION WOMAN POLICE CONSTABLE,R/O. FLAT NO. 404, A.V.K. CHARISHRNA APARTMENTS,SRI SURYA TULASI NAGAR, P.M. PALEM,VISAKHAPATNAM CITY, ANDHRA PRADESH.

...RESPONDENT/COMPLAINANT(S):

Counsel for the Petitioner/accused:

1. A S C BOSE

Counsel for the Respondent/complainant(S):

1. S.MOHANA RAO
2. PUBLIC PROSECUTOR

The Court made the following:

ORDER:

Criminal Petition has been filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity 'the BNSS') by the Petitioner/Accused for granting of pre-arrest bail in connection with Crime No.306 of 2026, dated 17.10.2026 of Parawada Police Station, Anakapalli District, registered for the alleged offences punishable under Sections 69 and 88 of the Bharatiya Nyaya Sanhita, 2023 (for brevity, 'the BNS') and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for brevity, 'the SC/ST (PoA) Act').

2. The case of the prosecution in brief is that the de-facto complainant is working as a Woman Police Constable and became acquainted with the petitioner, who is also working as a Police Constable, in the year 2022 while they were working in different police stations in Anakapalli District. The petitioner expressed his love towards her and promised to marry her, pursuant to which they developed a relationship. Believing his promise, she had sexual intercourse with him on several occasions. On 18.05.2025, the petitioner allegedly took her to Ramnivas Hotel at Lankelapalem and had sexual intercourse with her. In August 2025, she obtained a positive result in a home pregnancy test and informed the petitioner about the same. The petitioner supplied tablets for termination of pregnancy, which she consumed, resulting in a miscarriage. Subsequently, on 30.09.2026, the petitioner declined to marry her and blocked her telephone number. On 03.10.2026, she noticed photographs on Facebook indicating that the petitioner had got engaged to

another woman. When she questioned him, he refused to marry her on the ground that she belongs to SC-Mala community. Aggrieved by the conduct of the petitioner, she suffered mental agony and consumed eight Pantab-40 tablets. Thereupon, her family members shifted her to GITAM Hospital, Visakhapatnam. Her statement was recorded on 16.10.2026, and the case was subsequently re-registered at Parawada Police Station.

3. Sri. Posani Venkateswarlu, the learned Senior Counsel appearing on behalf of Mr. A.S.C. Bose, learned counsel for the petitioner, submits that the petitioner has been falsely implicated in Crime No.306 of 2026 of Parawada Police Station for the offences punishable under Sections 69 and 88 of 'the BNS' and Section 3(2)(v) of 'the SC/ST (POA) Act.' It is submitted that, even as per the allegations in the FIR, the petitioner and the de-facto complainant, both being serving Police Constables, were acquainted with each other since 2022 and developed a consensual relationship pursuant to a promise of marriage. The mere failure to honour such promise would not, by itself, establish dishonest intention from the inception so as to attract Section 69 of BNS. The alleged relationship commenced much prior to the alleged refusal to marry and that the complaint was lodged after an inordinate delay, with an ulterior motive to harass the petitioner following his marriage with another woman.

4. Learned Senior Counsel further submits that the essential ingredients of Section 3(2)(v) of 'the SC/ST (POA) Act' are not made out, as there is no allegation that the alleged acts were committed on the ground that the de-

facto complainant belongs to a Scheduled Caste. The petitioner is a serving Police Constable with an unblemished service record, that the case is based primarily on documentary and electronic evidence and that custodial interrogation is unwarranted. The Petitioner undertakes to strictly adhere to any conditions that may be imposed by this Court while granting pre-arrest bail. Hence, it is urged to allow the Criminal Petition.

5. *Per contra,* Sri Singuru Mohan Rao, learned counsel for Respondent No.2, opposed the grant of pre-arrest bail to the petitioner and submits that the allegations levelled against the petitioner are serious in nature and disclose the commission of cognizable offences punishable under Sections 69 and 88 of 'the BNS' and Section 3(2)(v) of 'the SC/ST (POA) Act.' It is contended that the petitioner, on the false promise of marriage, induced the de-facto complainant into a physical relationship and subsequently refused to marry her after maintaining such relationship for a considerable period. The learned counsel further submits that the petitioner cannot seek to evade criminal liability by merely describing the relationship as consensual, particularly when the allegation is that consent was obtained on the basis of a promise of marriage which the petitioner never intended to honour. The subsequent marriage of the petitioner with another woman, without fulfilling his promise to the de-facto complainant, is stated to be a circumstance substantiating the allegations made against him.

6. Learned counsel for the Respondent No.2 further submits that the allegations attract the provisions of 'the SC/ST (POA) Act' and that the

truthfulness of the allegations, including the circumstances surrounding the relationship and the alleged offences, require thorough investigation. It is contended that the petitioner's status as a serving Police Constable cannot be a ground to grant him the discretionary relief of pre-arrest bail and that his custodial interrogation may be necessary for the purpose of effective investigation. It is further submitted that, having regard to the seriousness of the allegations and the nature of the offences alleged, the petitioner is not entitled to the extraordinary relief of pre-arrest bail. Hence, the learned counsel prays for dismissal of the Criminal Petition.

7. Mr. A. Sai Rohith, learned Assistant Public Prosecutor, while adopting the submissions made by the learned counsel for Respondent No.2, opposed the grant of pre-arrest bail to the petitioner and submitted that the allegations levelled against the petitioner are serious in nature and warrant a thorough investigation. He further submits that the petitioner, by allegedly inducing the de-facto complainant on the promise of marriage, maintained a physical relationship with her and subsequently refused to honour his promise by marrying another woman. It is contended that the circumstances surrounding the alleged offences require proper investigation and that the petitioner's custodial interrogation may be necessary for eliciting relevant facts. Hence, it is urged that the petition be dismissed.

8. Heard learned counsel for the Petitioner, learned Assistant Public Prosecutor and learned counsel for the Respondent No.2. Perused the record.

9. Thoughtful consideration is bestowed on the arguments advanced by the learned Counsel for both sides. I have perused the entire record.

10. In the light of the case of the prosecution and the contentions of the learned Counsel for both the sides, now the point for consideration is:

"Whether the Petitioner is entitled for grant of pre-arrest bail?"

11. On perusal of the record, the Petitioner is aged about 32 years and he is recruited in the 2020 as Police Constable, while Respondent No.2 is aged about 29 years, she is also working as women Police Constable. Thus, both are majors and are presumed to be mentally mature. Respondent No.2 herself stated that she had been in a love relationship with the Petitioner for some time. It is alleged that they developed physical intimacy in the course of their relationship. Respondent No.2 contends that, believing the assurance of the Petitioner that he would marry her, she consented to sexual intercourse with him on several occasions. The Petitioner avoided marrying her on one pretext or another.

12. Respondent No.2 consumed eight Pantab-40 tablets in an attempt to commit suicide, pursuant to which she was shifted to the hospital and a medico-legal case was registered.

13. In this regard, it is apposite to refer the judgment of the Hon'ble Apex Court in **Amol Bhagwan Nehul v. State of Maharashtra**[1] wherein at para No.9 it is held as under:

> *"9...In our considered view, this is also not a case where there was a false promise to marry to begin with. A consensual relationship turning sour or partners becoming distant cannot be a ground for invoking criminal*

[1] MANU/SC/0787/2025

> *machinery of the State. Such conduct not only burdens the Courts, but blots the identity of an individual accused of such a heinous offence. This Court has time and again warned against the misuse of the provisions, and has termed it a folly[3] to treat each breach of promise to marry as a false promise and prosecute a person for an offence under section 376 IPC".*

14. So, the Hon'ble Apex Court in Amol Bhagawan Nehul *supra* observed that a consensual relationship that later turns sour, or partners subsequently becoming distant, cannot by itself justify invoking the criminal machinery of the State.

15. It is also important to mention the judgment of the Hon'ble Supreme Court in **Kunal Chatterjee v. State of West Bengal**[2], at paragraph No.7 *supra*, it is held as under:

> "*We have heard learned counsel for the parties at length. Learned counsel appearing for the State has relied upon the definition of 'Rape' and would argue that the consent given by the minor is no consent and it would still be a rape. In our considered opinion, as regarding the rape being committed by the appellant when the prosecutrix was a minor, there is absolutely no evidence, and definitely no forensic evidence with the prosecution. It is only an allegation in the FIR after more than 03 years, in order to make out a case under the POCSO Act, that such an act of rape was committed three years back when she was a minor. She also categorically states that she consented to the act as there was a promise of marriage by the appellant".*

16. Thus, the Hon'ble Apex Court in Kunal Chatterjee *supra* in the similar facts and circumstances of the case, granted the relief of quashing the proceedings.

17. Further, the Hon'ble Apex Court in **Naim Ahmed v. State of (NCT) of Delhi**[3] at para No.21 and 22 held as under:

> *""21... 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 the law and the case fell under Clause Secondly of*

[2]Spl Leave Petition (Crl.) No.7004 of 2025
[3](2023) SCC Online SC 89

Section 375IPC. 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 deceited 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 fulfil 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. As stated earlier, each case would depend upon its proved facts before the court.

In the instant case, the prosecutrix who herself was a married woman having three children, could not be said to have acted under the alleged false promise given by the appellant or under the misconception of fact while giving the consent to have sexual relationship with the appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in the year 2015. Even if the allegations made by her in her deposition before the court, are taken on their face value, then also to construe such allegations as "rape" by the appellant, would be stretching the case too far. The prosecutrix being a married woman and the mother of three children was matured and intelligent enough to understand the significance and the consequences of the moral or immoral quality of act she was consenting to. Even otherwise, if her entire conduct during the course of such relationship with the accused, is closely seen, it appears that she had betrayed her husband and three children by having relationship with the accused, for whom she had developed liking for him. She had gone to stay with him during the subsistence of her marriage with her husband, to live a better life with the accused. Till the time she was impregnated by the accused in the year 2011, and she gave birth to a male child through the loin of the accused, she did not have any complaint against the accused of he having given false promise to marry her or having cheated her. She also visited the native place of the accused in the year 2012 and came to know that he was a married man having children also, still she continued to live with the accused at another premises without any grievance. She even obtained divorce from her husband by mutual consent in 2014, leaving her three children with her husband. It was only in the year 2015 when some disputes must have taken place between them, that she filed the present complaint. The accused in his further statement recorded under Section 313 CrPC had stated that she had filed the complaint as he refused to fulfil her demand to pay her huge amount. Thus, having regard to the facts and circumstances of the case, it could not be said by any stretch of imagination that the prosecutrix had given her consent for the sexual relationship with the appellant under the misconception of fact, so as to hold the appellant guilty of having committed rape within the meaning of Section 375IPC".

18. In **Naim Ahmed v. State of (NCT) of Delhi** *supra* at paragraph Nos.21 and 22 supra, it is observed that there is a clear distinction between a false promise to marry and a subsequent breach of a genuine promise to marry. To

attract criminal liability, it must be established that the accused had no intention to marry the prosecutrix from the very inception and had made the promise solely to obtain her consent for sexual relations. Mere failure to fulfil a promise of marriage, by itself, would not constitute an offence, as each case has to be examined in the light of its own facts and circumstances. The Court further observed that the consent of a woman given voluntarily, with full understanding of the nature and consequences of the relationship, cannot be construed as consent obtained under a misconception of fact merely because the relationship subsequently ended.

19. Furthermore, in **Bhawar Singh v. State of Madhya Pradesh**[4] the Hon'ble Apex Court set aside the order of the High Court of Madhya Pradesh rejecting the request for grant of pre-arrest bail to the petitioner therein, and granted pre-arrest bail to the petitioner for the offence punishable under Section 69 of 'the BNS'.

20. The Hon'ble Apex Court in catena of decisions held that promise to marriage and subsequent physical relationship between the two with consent would not amount to rape.

21. It is profitable to refer the Judgment of the Hon'ble Apex Court in **Prithivirajan v. State**[5] wherein at para Nos.6 and 7 it is held as under:

> *"6. This Court has time and again reiterated that only because physical relations were established based on a promise to marry, it will not amount to rape. For the offence of rape to be attracted, the following conditions need to be satisfied : first, the accused promised to marry the prosecutrix solely to secure consent for sexual relations without having any intention of fulfilling said promise from the very beginning; second, that the prosecutrix*

[4]@SLP (Crl.)No.3475 of 2025
[5]2025 SCC OnLine SC 696

> *gave her consent for sexual relations by being directly influenced by such false promise of marriage.*
> *7. The instant case is one of consensual relationship between the appellant and prosecutrix. Even otherwise, it does not appear from the record that the initial promise to marry allegedly made by the appellant was false to begin with. Perusal of FIR itself suggests that the alleged promise to marry could not be fulfilled by the appellant due to intervening circumstances. Consequently, the relationship ended because of which the present FIR came to be registered. Under these circumstances, letting the appellant face trial would be nothing short of an abuse of the process of the Court. This cannot be permitted".*

22. Therefore, the Hon'ble Apex Court in **Prithivirajan** *supra* has repeatedly held that merely because physical relations were established on a promise to marry, it would not, by itself, amount to rape. In the present case also, the relationship between the petitioner/Accused No.1 and respondent No.2 appears to have been consensual.

23. Further, in **Pramod Suryabhan Pawar v. State of Maharashtra**[6]**,** the Hon'ble Supreme Court at para Nos.12, 18, and 21 held under:

> *"12... This Court has repeatedly held that consent with respect to Section 375 IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action.*
> *18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. 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. 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.*
> *21. The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations in the FIR indicate that the complainant was aware that there existed obstacles to marrying the appellant since 2008,*

[6](2019) 9 SCC 608

> *and that she and the appellant continued to engage in sexual relations long after their getting married had become a disputed matter. Even thereafter, the complainant travelled to visit and reside with the appellant at his postings and allowed him to spend his weekends at her residence. The allegations in the FIR belie the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 IPC has occurred".*

24. Thus, the Hon'ble Apex Court in **Pramod Suryabhan Pawar** *supra*, it is observed that consent must involve an active and reasoned deliberation by a woman, having regard to the nature and consequences of the proposed act. To establish that consent was obtained under a misconception of fact on the basis of a promise of marriage, it must be shown that the promise was false from its inception, made in bad faith and without any intention to fulfil it. Further, such false promise must have a direct nexus with the woman's decision to engage in sexual relations. Mere failure to fulfil a promise of marriage at a subsequent stage would not, by itself, constitute an offence, unless the requisite dishonest intention existed at the time of making the promise.

25. Furthermore, in **Maheshwar Tigga v. State of Jharkhand**[7] the Hon'ble Apex Court at para Nos.10, 12, 13, 14, and 18 held as under:

> "*10...The appellant belonged to the Scheduled Tribe while the prosecutrix belonged to the Christian community. They professed different religious beliefs in a traditional society. They both resided in the same Village Basjadi and were known to each other. The nature and manner of allegations, coupled with the letters exchanged between them, marked as exhibits during the trial, make it apparent that their love for each other grew and matured over a sufficient period of time. They were both smitten by each other and passions of youth ruled over their minds and emotions. The physical relations that followed was not isolated or sporadic in nature, but regular over the years. The prosecutrix had even gone and resided in the house of the appellant. In our opinion, the delay of four years in lodgement of the FIR, at an opportune time of seven days prior to the appellant solemnising his marriage with another girl, on the pretext of a promise to*

[7](2020) 10 SCC 108

the prosecutrix raises serious doubts about the truth and veracity of the allegations levelled by the prosecutrix. The entire genesis of the case is in serious doubt in view of the admission of the prosecutrix in cross-examination that no incident had occurred on 9-4-1999.

12. The prosecutrix acknowledged that an engagement ceremony had also been performed. She further deposed that the marriage between them could not be solemnised because they belonged to different religions. She was therefore conscious of this obstacle all along, even while she continued to establish physical relations with the appellant. If the appellant had married her, she would not have lodged the case. She denied having written any letters to the appellant, contrary to the evidence placed on record by the defence. The amorous language used by both in the letters exchanged reflect that the appellant was serious about the relationship desiring to culminate the same into marriage. But unfortunately for societal reasons, the marriage could not materialise as they belonged to different communities.

13. The question for our consideration is whether the prosecutrix consented to the physical relationship under any misconception of fact with regard to the promise of marriage by the appellant or was her consent based on a fraudulent misrepresentation of marriage which the appellant never intended to keep since the very inception of the relationship. If we reach the conclusion that he intentionally made a fraudulent misrepresentation from the very inception and the prosecutrix gave her consent on a misconception of fact, the offence of rape under Section 375 IPC is clearly made out. It is not possible to hold in the nature of evidence on record that the appellant obtained her consent at the inception by putting her under any fear. Under Section 90 IPC a consent given under fear of injury is not a consent in the eye of the law. In the facts of the present case, we are not persuaded to accept the solitary statement of the prosecutrix that at the time of the first alleged offence her consent was obtained under fear of injury.

14. Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eye of the law. <u>But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest</u>. The prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings given to her.

18. We have given our thoughtful consideration to the facts and circumstances of the present case and are of the considered opinion that the appellant did not make any false promise or intentional misrepresentation of marriage leading to establishment of physical relationship between the parties. <u>The prosecutrix was herself aware of the obstacles in their relationship because of different religious beliefs</u>. An engagement ceremony was also held in the solemn belief that the societal obstacles would be overcome, but unfortunately differences also arose whether the marriage was to solemnised in the church or in a temple and ultimately failed. It is not possible to hold on the evidence available that the appellant right from the inception did not intend to marry the prosecutrix ever and had fraudulently misrepresented only in order to establish physical relation with her. The prosecutrix in her letters acknowledged that the appellant's family was always very nice to her".

26. A fortiori, the Hon'ble Apex Court in **Maheshwar Tigga** *supra*, it is observed that a prolonged consensual relationship, coupled with the parties' conscious understanding of the obstacles to their marriage, would not, by itself, establish that the promise of marriage was false from its inception. The Court further observed that a considerable delay in lodging the complaint, particularly in the circumstances surrounding the relationship, may raise doubts regarding the veracity of the allegations. Consent given as a conscious and informed choice over a prolonged period cannot be treated as consent obtained under a misconception of fact. It was ultimately held that, in the absence of proof of fraudulent intention or intentional misrepresentation from the inception, the failure of the relationship to culminate in marriage would not constitute an offence of rape.

27. More importantly and recently the Hon'ble Supreme Court in **Santhosh Kumar N.P. v. State-Station House Officer**[8], at paragraphs 43 to 46, it is held that consensual sexual relations between adults during a subsisting relationship cannot retrospectively be treated as rape merely because the relationship subsequently failed. Courts must examine the relationship holistically and distinguish genuine cases of sexual assault or deception from attempts to criminalize failed relationships or misuse the criminal justice process for vengeance.

28. On perusal of the record, it appears that the petitioner and Respondent No.2, as per the version of the Respondent No.2, were in love with each other

[8]2026 SCC OnLine SC 2296

and frequently communicated over the phone. In the month of May, 2025, the petitioner took Respondent No.2 to Ramnivas Hotel at Lankelapalem and had sexual intercourse with her. Respondent No.2 further stated that the petitioner had sexual intercourse with her on several occasions on the pretext of marrying her. In the month of August, 2025, she became pregnant, whereupon the petitioner advised her to take abortion pills. In spite of her reluctance, Respondent No.2 because of pressure mounted by petitioner, she consumed the tablets, resulting in termination of the pregnancy. Subsequently, when the matter was placed before the elders, the efforts to settle the matter and arrange their marriage did not materialise. On 30.09.2026, on the birthday of Respondent No.2, the petitioner called her and informed her that he was not interested in marrying her and thereafter blocked her telephone number. He also informed her that there were caste barriers between them. On 03.10.2026, Respondent No.2 came across certain photographs on Facebook indicating that the petitioner had got engaged to another woman.

29. Indeed, the petitioners without approaching the learned Sessions Judge at the first instance seeking pre-arrest bail has directly approached this Court, which procedure is contrary to the law laid down by the Hon'ble Apex Court in **Mohammed Rasal.C v. State of Kerala**[9] and **Jagdeo Prasad v. State of Bihar and others**[10]**.**

[9] Special Leave to Appeal (Crl) Nos. 6588 of 2025, dated 08.09.2025.
[10] Crl. Appeal @ SLP (Crl) No. 17805 of 2024 etc.

30. The Hon'ble Apex Court in ***Mohammed Rasal. C*** *supra* at paragraph Nos.7, 8 and 9 held as follows:-

> *"7. The Sessions Judge exercises powers under Section 438 Cr.P.C in relation to all cases registered with the police stations in the particular District. This area-wise distribution of work would make it much more convenient and facilitate expeditious disposal, if the application for pre-arrest bail is first filed before the Sessions Court which would have a direct and first-hand assistance of the concerned Public Prosecutor appointed for that particular District. The Sessions Court would also have an immediate access to the Case Diary thereby facilitating a better appreciation of facts of the case.*
>
> *8. We further feel that if the practice of entertaining the applications for pre-arrest bail directly in the High Court is encouraged, and the parties concerned are not relegated to first approach the Sessions Court concerned, the High Court would be flooded with a spate of pre-arrest bail applications thereby creating a chaotic situation. We say so, because if the parties are required to approach the Sessions Court concerned for seeking remedy of pre-arrest bail, there is a strong probability that significant number of applications would be allowed at that level only thereby acting as a filtration process before the process reaches the High Court.*
>
> *9. It is trite that in most of the States, there is a consistent practice requiring the litigant concerned to first approach the Sessions Court for seeking relief of pre-arrest bail and only in the event of denial of such relief, the litigant would be granted access to approach the High Court for seeking such relief. This is, of course, subject to just exceptions and the High Court, for reasons to be recorded, may entertain an application for pre-arrest bail directly in special/ extra-ordinary circumstances."*

31. Of course, the Hon'ble Apex Court in ***Jagdeo Prasad*** *supra* also at para No. 6 held as under:

> *"6. However, before parting, we do wish to express our sincere concern with the haste at which the High Court has dealt with this matter. While the scheme of Criminal Procedure Code, 1973 (now Bharatiya Nagarik Suraksha Sanhita, 2023) provides concurrent jurisdiction to the High Court and Sessions Court for entertaining applications for anticipatory bail, this Court has time and again observed that High Court should always encourage exhausting an alternative/concurrent remedy before directly interfering itself. This approach balances the interests of all the stakeholders, first by giving the aggrieved party a round of challenge before the High Court. Second, this*

> *approach provides the High Court an opportunity to assess the judicial perspective so applied by the Sessions Court, in concurrent jurisdiction, instead of independently applying its mind from the first go. Further, the High Court fails to record any reason for directly granting anticipatory bail without impleading the appellant-complainant as a party."*

32. The learned Senior Counsel for the Petitioner relied on the judgment of the Division Bench of this Court in **Vidadala Rajani v. State of A.P.,**[11] wherein at paragraph Nos.22 & 23 it is held,while adverting to the authoritative decisions of the Hon'ble Supreme Court in **Prathvi Raj Chauhan v. Union of India**[12], **Shajan Skaria v. State of Kerala**[13], and **Vilas Pandurang Pawar v. State of Maharashtra**[14], that the embargo engrafted under Sections 18 and 18A of 'the SCs & STs (POA) Act.,' is not absolute but conditional upon the existence of a *prima facie* case. It is categorically observed that the Hon'ble Supreme Court has consistently held that when the foundational material does not disclose a *prima facie* offence under 'the SCs & STs (POA) Act.,' the constitutional right of an accused to invoke Section 438 of 'the Cr.P.C.,' for anticipatory bail remains unimpaired. It has further clarified that the Hon'ble Supreme Court, in the aforementioned decisions, had not adjudicated upon the forum for entertaining such applications, but confined itself to the maintainability thereof vis-à-vis the statutory bar. Consequently, this Court, upon a meticulous examination of the statutory scheme and judicial dicta, concluded that the statutory prohibition under Sections 18 and 18A of 'the SCs & STs (POA) Act.,' is attracted only when *prima facie* incriminatory material

[11]2025 SCC OnLine AP 3404
[12](2020) 4 SCC 727
[13]2024 SCC OnLine SC 2249
[14](2012) 8 SCC 795

exists, and conversely, in its absence, the bar stands inoperative, thereby preserving the jurisdiction of the Court to entertain a petition under Section 438 of 'the Cr.P.C.'

33. However, in view of the Judgments of the Hon'ble Supreme Court in **Amol Bhagwan Nehul v. State of Maharashtra[15], Kunal Chatterjee v. State of West Bengal[16], Bhawar Singh v. State of Madhya Pradesh[17], Mahesh Damu Khare v. State of Maharashtra[18] and Rajnish Singh v. State of U.P[19],** in the present case the foundational material clearly does not disclose a *prima facie* offence under the provisions of 'the BNS.' Further, even under the provisions of 'the SCs & STs (POA) Act.,' the allegations do not specifically involve caste-based abuses and assault. Therefore, the ratio in Vidadala Rajani *supra* does not assist the respondent No.2, and the statutory bar remains is operative.

34. Considering the ratio lay down by the Hon'ble Apex Court in ***Kunal Chatterjee***, ***Prithivirajan, Pramod Suryabhan Pawar, Naim Ahmed, Maheshwar Tigga and Santhosh Kumar N.P.*** *supra*, the gravity and nature of the allegations levelled against the Petitioner/Accused, this Court deems it fit to grant pre-arrest bail to him with the following conditions:

> i. In the event of his arrest, Petitioner/Accused shall be enlarged on bail subject to his executing a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand

[15] MANU/SC/0787/2025
[16] Spl Leave Petition (Crl.) No.7004 of 2025
[17] @SLP (Crl.)No.3475 of 2025
[18] (2024) 11 SCC 398
[19] (2025) 4 SCC 197

only) with two sureties for the like sum each to the satisfaction of the arresting police officials;

ii. The Petitioner/Accused shall make himself available for investigation as and when required;

iii. The Petitioner/Accused shall appear before the Station House Officer concerned once in a week i.e., on every Saturday between 10.00 a.m. and 5.00 p.m., till filing of the charge sheet.

iv. The Petitioner/Accused shall not leave the limits of the State of Andhra Pradesh without the express permission from the Station House Officer concerned.

v. The Petitioner/Accused shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him/her from disclosing such facts to the Court.

vi. The Petitioner/Accused shall surrender his passport, if any, to the Investigating Officer. If he claims that he does not have passport, he shall submit an affidavit to that effect to the Investigating Officer.

vii. The Petitioner/Accused shall furnish his permanent and temporary address details to the Investigating Officer/Station House Officer concerned.

35. In the result, the Criminal Petition is allowed.

_____

DR. Y. LAKSHMANA RAO, J

Date: 11.11.2026.

VMM

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION NO: 9659 of 2026

Date: 11.11.2026
VMM