IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.MP(M) No: 160 of 2026
Reserved on: 21.04.2026
Decided on : 23.04.2026

Deepak Sharma ...Petitioner

Versus

State of Himachal Pradesh & Anr. ...Respondents

Coram
Hon'ble Mr. Justice Ranjan Sharma, Judge
[1] *Whether approved for reporting? Yes.*

For the petitioner : Mr. Kulbhushan Khajuria, Advocate.

For the respondents : Mr. P.K.Nadda, Additional Advocate General, for respondent No.1-State.

None for Respondent No.2 though served.

Ranjan Sharma, Judge

Bail petitioner, Deepak Sharma, who is in custody since 29.11.2023, has come up before this Court, seeking regular bail under Section 483 of the Bhartiya Nagarik Suraksha Sanhita, 2023 *[hereinafter referred to as 'BNSS']*, originating from FIR No.61 of 2023, dated 29.11.2023, under Sections

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[1] *Whether reporters of Local Papers may be allowed to see the judgment? Yes*

376, 354C and 506 of the Indian Penal Code and Section 67A of the Information Technology Act registered at Women Police Station Chamba, District Chamba, [HP].

FACTUAL MATRIX:

2. Learned Counsel has set up a case that a false case has been registered against the bail petitioner in which he was arrested on 29.11.2023. It is further averred that the petitioner is innocent and he has been falsely implicated and there is no evidence to connect him with alleged offence. It is averred that investigation is complete and nothing is to be recovered from him. It is averred that 15 PWs have been examined and even the deposition of PWs reveals that no case is made out against him. It is averred that the petitioner is facing incarceration for more than two years and four months and therefore, prolongation of incarceration merely by presuming the guilt at this stage is violative of Article 21 of the Constitution of India. It is further averred that the deposition

of the Medical Officer and RFSL Reports do not support the prosecution case, which is clear from Annexure P-2 and Annexure P-3. It is averred that the petitioner moved an application for bail [Bail Application No.236 of 2023] before Learned Special Judge, Chamba, which was dismissed on 21.02.2024 [Annexure P-4] and thereafter the petitioner filed another bail application Cr.MP(M) No. 325 of 2024, which was dismissed on 30.05.2024 [Annexure P-5] and this is the third bail application by the petitioner. It is averred that there is no likelihood of bail petitioner absconding or jumping over the bail and he undertakes to appear in the trial as and when required to do so. Bail petitioner has given an undertaking that he shall not cause any inducement, threat or promise to any person acquainted with the case and shall not dissuade them in any manner shall not tamper with the prosecution evidence in any manner. It is further averred that bail petitioner is ready and willing to furnish bail bonds and surety bonds as may

be directed by this Court. Instant bail petition has been filed through his mother, [namely, Smt. Brejna] with the prayer for releasing the petitioner on bail.

PROCEEDINGS BEFORE THIS COURT:

3. In the instant bail application, notice was issued by this Court on 06.03.2026 directing the State Authorities to file the Status Report and notice was issued to victim, with direction to file objection, if any, to the claim for bail. Despite service of notice, the victim chose not to participate in instant proceedings. Pursuant to orders dated 6.3.2026, the State Authorities have filed the Status Report dated 17.03.2026 and the copy of the same was supplied to Learned Counsel for the bail petitioner, who prayed for time to go through the Status Report and to make submissions. Thereafter, the matter was taken up on 07.04.2026, when, Learned State Counsel, was permitted to file Fresh Status Report which was filed on 09.04.2026, when at the request of Learned Counsel for petitioner

the matter was adjourned for 21.04.2026 on which date the matter was finally heard.

STAND OF STATE AUTHORITIES IN STATUS REPORT(S):

4. Status Report(s) dated 29.11.2023 and Fresh Status Report dated 09.04.2026 are pari-materia.

4(i). Perusal of the Status Reports narrate the factual matrix that victim "X" through her mother had lodged a complaint with Police Station, Chamba against the bail petitioner, with the averments that while she had gone to stay with her sister-in-law in Village "Y" in District "Z", the accused had committed wrongful acts with her and after the said incident, she went back to join her duties at Chandigarh in G.M.H Company Kurali and thereafter in J.S.K Company at Nalagarh. It is averred that about two days back on 27.11.2023 she came to know that the accused had made a video of the victim while resorting to unwarranted acts which was made viral on social media. In

this background, the complainant had lodged an F.I.R on 29.11.2023 with Women Police Station, Chamba.

4(ii). Status Reports indicate that at the time of alleged occurrence of offence on 29.11.2023 the victim was 21 years of age and she had gone to stay with her sister-in-law at village "Y" in District "Z" about a year back where the petitioner-accused was alleged to have committed unwarranted acts with her. Status Reports indicate that after the registration of F.I.R the victim was made to undergo medical examination in medical college on 29.11.2023 wherein, the statement of victim was recorded before Learned Judicial Magistrate First Class on 1.12.2023. Status Reports indicate that police started investigation and on 4.10.2023 alleged DVDs containing viral video were taken into possession. Status Reports indicate at behest of victim the spot was inspected/photographed on 29.12.2023. Status Report indicate that URL Link containing alleged video could not be recovered by the authorities.

Status Reports indicate that even RFSL submitted a report, there is no evidence that semen or blood was detected in samples. Status Report indicate that investigation was completed and Final Police Report-Challan was presented before jurisdictional Court on 19.02.2024 and thereafter Supplementary Challan was filed before the Court on 24.06.2024, indicating that 25 PWs were to be examined by the prosecution in support of the case.

4(iii). Status Reports indicate that in case the petitioner is released on bail, then there is every possibility that he may influence the witnesses. It is in this background, the State Authorities have prayed for dismissal of the bail application.

5. Heard, Mr. Kulbhushan Khajuria, Learned Counsel for the petitioner and Mr. P. K. Nadda, Learned Additional Advocate General for respondent-State and despite service of notice, respondent No.2 - Victim "X" chose not to participate in proceedings and have gone through the material on record.

MANDATE OF LAW ON BAIL:

6. Broad parameters have been mandated by the Hon'ble Supreme Court regulating the claim for bail in the cases of **Gurbaksh Singh Sibbia versus State of Punjab** (1980) 2 SCC 565, **Ram Govind Upadhyay versus Sudarshan Singh** (2002) 3 SCC 598; **Kalyan Chandra Sarkar versus Rajesh Ranjan,** (2004) 7 SCC 528; **Prasanta Kumar Sarkar versus Ashish Chatterjee,** (2010) 14 SCC 496**;** reiterated in **P. Chidambaram versus Directorate of Enforcement,** (2019) 9 SCC 24**, Sushila Aggarwal versus State- NCT Delhi,** (2020) 5 SCC 01; **CBI versus Santosh Karnani** (2023) 6 SCALE 250**;** which have been reiterated by the Hon'ble Supreme Court in **State of Haryana versus Dharamraj, 2023** SCC Online SC 1085, that after taking into account the accusation, gravity, status, position in society claim for bail is to be examined. While considering the claim for bail the factum as to whether the allegations were frivolous or groundless is to be seen. Depending upon the facts of each

case, the bail can be refused, in case, prima facie case or reasonable grounds exits and if an offence is serious. Severity of punishment including reasonable apprehension of fleeing away from investigation and trial and the character, past antecedents, behavior, means, position and standing of an accused; likelihood of offence being repeated; reasonable apprehension based on cogent and convincing material that the accused may thereafter threaten the witnesses or the victim, may be examined and danger of justice being thwarted by grant of bail etc. are relevant factors for denying the concession of bail. It is mandated that bail can neither be by way of a punishment nor can it be preventative, as prolonged incarceration or accusation curtails the personal liberty of an accused under Article 21 of the Constitution of India. However, while examining the claim for bail, a balance has to be carved between the personal liberty of an accused under Article 21, vis-à-vis the rights of victim and societal interests also.

6(i). The Hon'ble Supreme Court in **Criminal Appeal No. 3840 of 2023, Saumya Churasia versus Directorate of Enforcement,** decided on 14.12.2023 held that the claim for bail, is to be examined by a Court, without delving into the evidence on merits but by forming a prima-facie opinion on totality of facts in the light of broad-parameters referred to above. Recently, while dealing with the claim for bail the Hon'ble Supreme Court has reiterated the above principles for grant of bail in **Criminal Appeal Nos. 3528–3534 of 2025 (Arising from SLP (Crl.) Nos. 516–522 of 2025), in State of Karnataka versus Sri Darshan, etc.** and mandated that neither a detailed examination of the evidence nor any findings touching the merits of the case is to be resorted to. In the backdrop of above parameters, this Court proceeds to analyze the claim for bail, in the instant case.

ANALYSIS OF CLAIM FOR BAIL IN INSTANT CASE:

7. Taking into account the entirety of the facts and circumstances and the material on record as is borne out from the Status Report(s), this Court is of the considered view, that the bail petitioner *[Deepak Sharma],* is entitled to be enlarged on bail, for the *following reasons*:

PRIMA FACIE ACCUSATION AGAINST BAIL PETITIONER DOUBTFUL:

7(i). Status Reports indicate that the prima facie accusation under Section 376 IPC is not made out against the bail petitioner. Perusal of the deposition of PW-1-victim indicates that petitioner accused and victim knew each other since 2018 and both were facebook friends. She has deposed that both knew each other and had met each other on several occasions since February, 2021 and in February, 2023 both were engaged and they will marry each other and whenever she came to stay with her Bhabhi at place “Y” in district “Z” and recently the accused resorted to unwarranted acts with her. She has

deposed that their engagement broke in July, 2023 [few months ago prior to lodging of FIR in November, 2023] and even thereafter both used to talk but a few days prior to FIR the petitioner-accused had made the video viral revealing unwarranted acts with her. Earlier, in the year 2021 matter was reported to police at P.P.Gehra and after compromise the relation of victim and petitioner accused continued. She deposed that victim went back of to her job, about six months back [i.e. in July, 2023]. Even deposition of PW-6 Medical Officer states that victim had revealed that she had a consensual relationship with petitioner for last four years. Moreover, RFSL Report indicates that no semen or blood was detected in exhibits of the victim. Based on the Status Reports and the PW-Evidence on records, the accusation with respect to Section 376 IPC prima-facie is not made out against the bail petitioner, at this stage which appears to be a consensual affair-relationship before engagement and even

after engagement with promise to marry each other, which promise due to subsequent events did not materialise.

7(i-a). The Hon'ble Supreme Court in **Pramod Suryabhan Pawar versus State of Maharashtra and Another (2019) 9 SCC 608** reads as under:-

> "14. In the present case, the "misconception of fact" alleged by the complainant is the appellant's promise to marry her. Specifically in the context of a promise to marry, **this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled.** In Anurag Soni v. State of Chhattisgarh, this Court held: (SCC para 12)
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> > "12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused

> that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 IPC and can be convicted for the offence under Section 376 IPC."

Similar observations were made by this Court in Deepak Gulati v. State of Haryana (2013) 7 SCC 675:

> "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;"

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.

19.2. The complainant and the appellant met regularly, travelled great distances to meet each other, resided in each other's houses on multiple occasions, engaged in sexual intercourse regularly over a course of five years and on multiple occasions visited the hospital jointly to check whether the complainant was pregnant.

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 to marrying the appellant since 2008, 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."

7(i-b). While dealing with Section 376 IPC, in context of false a promise to marry on misconception of fact vis-à-vis mere breach of promise to marry after having acknowledged consensual physical relationship due to subsequent events or due to the circumstances which were unforeseen or were beyond his control despite intention to marry has not been termed as rape in accordance with the principles outlined by the Hon'ble Supreme Court, in **Anurag Soni Versus State of Chhattisgarh (2019) 13 SCC 01**, in the following terms:-

"10.2. In **Deepak Gulati** v. State of Haryana, (2013) 7 SCC 675 this Court observed and held in paras 21 and 24 as under:

> "21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. 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. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

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."

11. So far as the decisions upon which reliance has been placed by the learned counsel appearing on behalf of the accused referred to hereinabove are concerned, the same shall not be applicable to the facts of the case on hand. In Tilak Raj, the prosecutrix was an adult and matured lady of around 40 years at the time of the incident. It was admitted by the prosecutrix in her testimony that she was in a relationship with the accused for last two years prior to the incident and he used to stay overnight at her residence. Therefore, considering the evidence as a whole, including FIR, testimony of the prosecutrix and the MLC report, this Court found that the story of the prosecutrix regarding sexual intercourse on false pretext of marrying her is concocted and not believable and on facts it was found that the act of the accused seems to be consensual. It is

> required to be noted that before this Court the accused was acquitted for the offence under Section 376 IPC, however, the High Court convicted him under Sections 417 and 506 IPC. Therefore, on facts, the said decision shall not be of any assistance to the appellant in the present case."

7(i-c). While dealing with a similar situation, the Hon'ble Apex Court has held in **Dhruvaram Murlidhar Sonar versus State of Maharashtra and Others (2019) 18 SCC 191,** carving out a distinction between rape and consensual sex, in the following terms:-

> "23. Thus, there is a **clear distinction between rape and consensual sex.** The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. **There is also a distinction between mere breach of a promise and not fulfilling a false promise.** If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in

> sexual acts, such an act would not amount to rape. 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 the misconception created by accused, or where an accused, on account of circumstances which he could not have forseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC."

7(i-d). While dealing with distinction between a false promise to marry and breach of promise to marry which was not rape in context of Section 376 IPC in **Nain Ahamed versus State (NCT of Delhi) 2023 SCC Online SC 89,** in the following terms:-

> "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 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 fulfill his promise. **So, it would be a folly to treat such 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."

7(i-e). While dealing with a similar eventuality relating to accusation under Section 376 IPC, where the promise to marry was breached despite having acknowledged the consensual physical relationship with each other does not attract accusation under Section 376 IPC, this Court based on the principles in the case of **Pramod Suryabhan Pawar, Anurag Soni, Dhruvaram Murlidhar Sonar and Nain Ahamed** has granted the bail in the case of **Himanshu Jaswal versus State of Himachal Pradesh**, **Cr.MP(M) No. 588 of 2024** decided on 30.04.2024, held as under:

> 10(iv). .... In the background of the mandate of the law, as referred to above and on facts of the instant case, which is borne out from the status report including the statement of the complainant-victim (X) under Section 161 and 164 of Cr.P.C., this Court is of the prima facie view, at this stage, that the accusation of Section 376 IPC against the bail petitioner, is not made out, for the reason that the complainant-victim (X) and the bail petitioner were having love affair with promise to marry

each other, leading to mutual-consensual sexual relations since 2020 till 15/18.02.2024, as referred to above, but on 27/28.02.2024 and due to subsequent events, the mother of the bail petitioner refused to give effect or to accept the marriage with the complainant (X); due to which the complainant (X) threatened the bail petitioner with dire consequences, therefore, in these circumstances, this Court is of the considered view, in view of the material on record, at this stage, that no prima facie accusation or reasonable grounds exists pointing out towards the involvement against the bail petitioner, at this stage, unless contrary is proved in trial in accordance with law.

7(i-f). Even in terms of the Status Reports and the evidence on record and the principles outlined by the Hon'ble Supreme Court, as above, prima facie accusation under Section 376 IPC appears to be highly doubtful, at this stage. Moreover, the accusation is yet to be tested, examined and proved during the trial. Presumption of guilt cannot be invoked at this stage, so as to prolong the incarceration of the bail petitioner.

7(i-g). Even, prima facie the accusation under Section 354C IPC and under Section 67A of the Information Technology Act is not borne out at this stage in view of the fact that Status Report reveals that URL Link cannot be recovered and unless URL link is established, till then, the accusation against the bail petitioner cannot be inferred, at this stage. Even otherwise, accusation is yet to be examined, tested and proved by the prosecution in the trial.

7(i-h). So far as accusation under Section 506 IPC is concerned, the accusation regarding criminal intimidation is yet to be examined, tested and proved during the trial.

Based on the principles mandated by the Hon'ble Supreme Court and the evidence on record and the facts that the prima facie accusation and based on other factors as detailed herein, the claim of the bail petitioner be accepted. Ordered accordingly.

INFRINGMENT OF PERSONAL LIBERTY UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA:

8. While reiterating the principle that *bail is a rule and jail is an exception* and no accused can be deprived of personal liberty on mere accusation and an accused is to be treated as innocent in the eyes of law, the Hon'ble Supreme Court has outlined the object of bail, in ***Guddan alias Roop Narayan Versus State of Rajasthan, 2023 SCC OnLine SC 1242,*** in the following terms:-

> "11. In the case of **Sanjay Chandra V. Central Bureau of** Investigation**, (2012) 1 SCC 40**, while hearing a bail Application in a case of an alleged economic offence, this court held that the **object of bail is neither punitive nor preventative**. It was observed as under:
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> > "21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. **The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment,** unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

23. Apart from the question of prevention being the object of **refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct** whether the accused has been convicted for it or not or to **refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson.**

25. The provisions of Cr PC confer discretionary jurisdiction on criminal courts to grant bail to the accused pending trial or in appeal against convictions; **since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general.** In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, is a denial of the whole basis of our system of law and **normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognised, then it may lead to chaotic situation and would jeopardise the personal liberty of an individual.**

27. This Court, time and again, has stated that bail is the rule and committal to jail an exception. It has also observed that **refusal of**

bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution."

12. Further, in the case of Sandeep Jain v. National Capital Territory of Delhi, (2000) 2 SCC 66, this Court, while hearing a bail application held that **conditions for grant of bail cannot become so onerous that their existence itself is tantamount to refusal of bail.** This Court held as under:

> "We are unable to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs. 2 lakhs to be set at liberty. If he had paid it is a different matter. But the fact that he was not able to pay that amount and in default thereof he is to languish in jail for more than 10 months now, is sufficient indication that he was unable to make up the amount. Can he be detained in custody endlessly for his inability to pay the amount in the range of Rs.2 lakhs? If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a ground to suggest to the payee of the cheques to resort to the legal remedies provided by law.
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> Similarly if the Court was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring the cheques issued by him, the Court could have directed the appellant to substitute him with another surety. **But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper.** It must be remembered that the Court has not even come to the conclusion that the allegations

made in the FIR are true. That can be decided only when the trial concludes, if the case is charge-sheeted by the police."

PROLONGED INCARCERATION AND INFRINGMENT OF PERSONAL LIBERTY UNDER ARTICLE 21 OF THE CONSTITUTION OF INDIA:

9. While reiterating the grant of bail, despite statutory embargoes in Special Enactments, Hon'ble Supreme Court in ***Criminal Appeal No.5266 of 2024 (Arising out of SLP (CRL.) No. 13870 of 2024,*** titled as ***Partha Chatterjee Versus Directorate of Enforcement,*** decided on 13.12.2024, ***2024 SCC Online SC 3729,*** has been reiterated, by treating the right to life and liberty under Article 21 of the Constitution of India to be of paramount importance and action of prolonging the incarceration so as to make such incarceration punitive has been deprecated by granting bail. Prolonged detention of petitioner, in facts of this case, shall certainly amount to depriving and curtailing the personal liberty of the petitioner on mere accusation or conjectures or surmises, which are yet to be tested, examined and proved during the trial.

Detention of the bail petitioner can neither be punitive nor preventative, so as to make the petitioner to taste imprisonment as a lesson. Denial of bail shall certainly violate the principle that *"bail is rule and jail is an exception".* Even, the State Authorities, have failed to ensure *speedy trial* and still considerable time is likely to be taken for conclusion of trial, and therefore, the claim of the petitioner for bail carries weight.

GRANT OF BAIL BY HON'BLE SUPREME COURT IN IDENTICAL CASES:

10. While dealing with the claim for bail originating from F.I.R. under Sections 363, 366-A, 342, 376-D of IPC and under POCSO Act, the Hon'ble Supreme Court in **Special Leave to Appeal (Crl.) No. 3931/2022, Ankit versus The State of Rajasthan,** decided on 15.12.2022 has enlarged the accused on bail, taking into account the facts that chargesheet was filed, trial has commenced and the accused was behind the bars for almost 2 years and 4 months, in

the following terms:

> This is a petition seeking bail.
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> Learned counsel appearing for the respondent vehemently opposes the petition.
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> **Taking into consideration the nature of allegations and further that the chargesheet is filed and the trial has commenced and the petitioner is behind the bars for almost two and a half years, we are inclined to allow the prayer for bail.**
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> Accordingly, the petitioner is directed to be released on bail in connection with FIR No. 123/2020 dated 06.04.2020 registered at Police Station Sadar Neem Ka Thana, District Sikar, Rajasthan, on such terms and conditions as may be deemed fit and appropriate by the learned Trial Judge.
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> The special leave petition is, accordingly, disposed of Pending applications, if any, stand disposed of.

10(i). While dealing with a similar fact-situation coupled with the aspect of consensual relationship and prolonged incarceration of about six months, the Hon'ble Supreme Court in ***2024 SCC Online SC 2709***, titled ***Deshraj alias Musa v. State of Rajasthan and Another***, decided on 21.11.2024 has allowed the concession to the petitioner therein in following terms:

> "4. The appellant/accused was arrested on 08.05.2024 and the chargesheet was filed

before the POCSO Court, Sikar on 05.06.2024.

9. Learned counsel for the appellant submitted that the appellant has been in jail since May, 2024 that in fact he was only eighteen and a half years at that time of the alleged commission of the offence whereas the victim was about sixteen years, **that there was a consensual relationship between the parties. The chargesheet was filed on 05.06.2024 and there are as many as twelve witnesses to be examined; that the trial will be prolonged and having regard to the fact that the parties were in a consensual relationship**, the High Court was not right in sustaining the order of rejection of bail by the Trial Court.

12. **Considering the facts on record, in our view, the case for bail is made out.**"

PERSONAL LIBERTY AND CLAIM FOR BAIL:

11. While dealing with the concept of bail the personal liberty of an accused under Article 21 of the Constitution of India is sacrosanct, the Hon'ble Supreme Court, held in ***Criminal Appeal No.2787 of 2024,*** titled as ***Javed Gulam Nabi Shaikh versus State of Maharashtra and Another,*** in the following terms:-

"18 **Criminals are not born out but made. The human potential in everyone is good and so, never write off any criminal as beyond redemption. This humanist fundamental is often missed when dealing with delinquents, juvenile and adult. Indeed, every saint has a past and every sinner a future. When a**

crime is committed, a variety of factors is responsible for making the offender commit the crime. Those factors may be social and economic, may be, the result of value erosion or parental neglect; may be, because of the stress of circumstances, or the manifestation of temptations in a milieu of affluence contrasted with indigence or other privations.

19 **If the State or any prosecuting agency including the court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution <u>then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.</u>**

20 We may hasten to add that the petitioner is still an accused; not a convict. The over-arching postulate of criminal jurisprudence that an accused is presumed to be innocent until proven guilty cannot be brushed aside lightly, howsoever stringent the penal law may be.

21 We are convinced that the manner in which the prosecuting agency as well as the Court have proceeded, the right of the accused to have a speedy trial could be said to have been infringed thereby violating Article 21 of the Constitution.

22 In view of the aforesaid, this appeal succeeds and is hereby allowed. The impugned order passed by the High Court is set aside."

<u>ADHERANCE TO PRINCIPLE:- BAIL IS RULE</u>:

12. Depriving the petitioner of the concession of bail shall negate the principle that '*bail is a rule and jail is an exception'*, as outlined by the Hon'ble

Supreme Court, in **Manish Sisodia** vs **Directorate of Enforcement, SLP (Criminal) No.8781 of 2024,** as under:-

> "49. We find that, on account of a long period of incarceration running for around 17 months and the trial even not having been commenced, the appellant has been deprived of his right to speedy trial.
>
> **50. As observed by this Court, the right to speedy trial and the right to liberty are sacrosanct rights. On denial of these rights, the trial court as well as the High Court ought to have given due weightage to this factor.**
>
> 52. The Court also reproduced the observations made in Gudikanti Narasimhulu (supra), which read thus:
>
> "10. In the aforesaid context, we may remind the trial courts and the High Courts of what came to be observed by this Court in Gudikanti Narasimhulu v. Public Prosecutor, High Court reported in (1978) 1 SCC 240. We quote:
>
> "What is often forgotten, and therefore warrants reminder, is the object to keep a person in judicial custody pending trial or disposal of an appeal. Lord Russel, C.J., said [R v. Rose, (1898) 18 Cox]:
>
> "I observe that in this case bail was refused for the prisoner. It cannot be too strongly impressed on the, magistracy of the country that ***bail is not to be withheld as a punishment, but that the requirements as to bail are merely to secure the attendance of the prisoner at trial""***
>
> 53. The Court further observed that, over a period of time, the trial courts and

the High Courts have forgotten a very well-settled principle of law that **bail is not to be withheld as a punishment.** From our experience, we can say that it appears that the trial courts and the High Courts attempt to play safe in matters of grant of bail. **The principle that bail is a rule and refusal is an exception is, at times, followed in breach.** On account of non-grant of bail even in straight forward open and shut cases, this Court is flooded with huge number of bail petitions thereby adding to the huge pendency. **It is high time that the trial courts and the High Courts should recognize the principle that "bail is rule and jail is exception".**

55. As observed by this Court in the case of Gudikanti Narasimhulu (supra), **the objective to keep a person in judicial custody pending trial or disposal of an appeal is to secure the attendance of the prisoner at trial.**

56. In the present case, the appellant is having deep roots in the society. **There is no possibility of him fleeing away** from the country and not being available for facing the trial. In any case, conditions can be imposed to address the concern of the State.

57. Insofar as the apprehension given by the learned ASG regarding the possibility of tampering the evidence is concerned, it is to be noted that the case largely depends on documentary evidence which is already seized by the prosecution. **As such, there is no possibility of tampering with the evidence. Insofar as the concern with regard to influencing the witnesses is concerned, the said concern can be addressed by imposing stringent conditions upon the appellant."**

NOTHING ADVERSARIAL REGARDING TAMPERING WITH EVIDENCE OR WITNESSES ETC:

13. Status Reports filed by State Authorities have neither pointed out cogent and convincing material revealing adversarial circumstances that after release on bail, the petitioner is likely to tamper with evidence or may cause inducement, threat or promise to any person or persons acquainted with the facts of the case. However, the apprehension if any, of the State Authorities are being safeguarded, by imposing stringent conditions in this bail order.

NOTHING ADVERSARIAL REGARDING OBSTRUCTING OR ATTEMPTING TO THWARTLING JUSTICE :

14. Status Reports filed by State Authorities have neither pointed out any adversarial circumstances nor placed on record any cogent and convincing material on record to infer that after release on bail, the petitioner may obstruct or thwart the cause of justice in any manner. In absence of any cogent and convincing material, the plea for bail, deserves to be granted to the petitioner, in the instant case.

NOTHING ADVERSARIAL LIKELIHOOD OF FLEEING AWAY FROM TRIAL OR JURISDICTION OF COURT:

15. In order to safeguard the rights of bail petitioner and to take care of apprehensions of State that the bail petitioner may flee away [notwithstanding the fact that no such apprehension has been pointed out in Status Report] yet, in peculiar facts of this case, this Court stringent conditions in the bail orders, in later part of this order.

CONCLUSION:

16. In the facts of instant case, the plea of petitioner for bail carries weight, *for the reason*, that *firstly*, *prima facie* prosecution story appears to be highly doubtful and improbable at this stage as discussed hereinabove; and *secondly*, the Status Report reveals that the bail petitioner is in custody since 29.11.2023 and is undergoing incarceration for about *two years and four months*; and *thirdly*, conclusion of trial is likely to take considerable time, when out of total 25 PWs, Learned State

Counsel states that 18 PWs have been examined and the trial is still likely to take considerable time; *and* *fourthly*, delay in trial is not attributable to the petitioner; *and* *fifthly, bail petitioner-accused* is presumed to be innocent unless proven guilty; *and* *sixthly*, the continued detention can neither be punitive nor preventative ; and *seventhly*, continued detention in guise of penalizing the petitioner by presuming guilt cannot be permitted; and *eighthly,* even the State Authorities have not placed any cogent and convincing material that after release on bail there is possibility of accused fleeing away from trial or accused is likely to threaten the witnesses or is likely to thwart justice; and *ninthly*, the accusation is yet to be tested, examined and proved during the trial; and *tenthly,* the denial of the right of speedy trial as mandated in Article 21 is also an added factor for granting bail, when, delay in completion of trial is not attributable to the petitioner herein; and *lastly*, even as per prosecution story and the evidence on record of

the victim, her mother and the Medical Officer deposed that victim and petitioner-accused had relations with each other and both were engaged with promise to marry but due to subsequent events-circumstances their engagement did not proceeded ahead but still both continued to talk with each other. It is not the case of the prosecution or the victim that the promise to marry after engagement was false and based on this relationship appears to be consensual and the prima facie accusation appears to be highly doubtful at this stage. In order to safeguard the right of bail petitioner and the victim vis-à-vis the interests of the State, this Court imposes stringent condition in this order hereinafter mandating that infraction, violation or misuse of the concession-liberty, shall entitle the State Authorities to seek cancellation of the concession extended to the petitioner. Denial of bail shall deprive and curtail the sacrosanct fundamental rights of personal liberty and right of speedy trial under Article 21 of the Constitution of India

of the petitioner at this stage. On totality of facts and circumstances and the mandate of law, referred to above, the claim of the petitioner ***[Deepak Sharma]*** for enlargement on bail carries weight, in peculiar facts-situation of this case, as discussed above.

DIRECTIONS:

17. Based on the above discussion and the material on record and the mandate of law and for the reasons recorded hereinabove and in peculiar facts of case, the **instant petition is allowed;** and the *State Authorities are directed to release the petitioner [Deepak Sharma] on bail,* subject to the observance of following conditions:-

(i) Respondent-State Authorities shall release bail petitioner *[Deepak Sharma]* on furnishing personal bond of Rs.50,000/- each {Rupees Fifty Thousand each} with two sureties in the like amount to the satisfaction of Learned Trial Court;

(ii) Petitioner shall undertake to appear in the trial hereinafter, except for his medical exigencies and the exemption granted therefore, if any, in accordance with law;

(iii) Petitioner shall abide by all or any other condition(s), which may be imposed by the Learned Trial Court, in view of this order;

(iv) Petitioner shall neither involve himself nor shall abet the commission of any offence hereinafter. Involvement in any offence whatsoever or abetting thereof shall entail automatic cancellation of bail granted in terms of this order ;

(v) Petitioner shall disclose his functional E-Mail IDs/ WhatsApp number and that of his surety to the Learned Trial Court;

(vi) Petitioner after release, shall report to Investigating Officer or SHO of Police Station concerned, on 2nd Sunday of every month at 11.00 a.m., only for having an update on good conduct and behaviour;

(vii) Petitioner shall not jump over the bail and also shall not leave the country without the prior information of the Court;

(viii) Petitioner shall not tamper with the evidence in any manner;

(ix) Petitioner shall not cause any inducement, threat or promise {directly or indirectly} to witnesses or the victim or any other person acquainted with the case;

(x) Bail petitioner directly or indirectly shall not make any attempts to re-associate with the victim girl in any manner either through a device or in-person;

(xi) Petitioner is free to seek modification of any condition contained hereinabove, if need arises;

(xii) Learned Trial Court can impose any other condition, if so desires, to ensure the presence and effective progress of trial hereinafter;

(xiii) State Authorities are free to move this Court for seeking alteration/modification

of any of the condition contained in this order or any condition imposed by the Learned Trial Court as a sequel to this order, in fact situation of instant case or circumstances so necessitate, at any time herein-after;

(xiv) State Authorities are free to move this Court for seeking cancellation of the concession of bail, in case, the petitioner violates any of the conditions contained in this order.;

18. Observations made in this judgment shall not be construed in any manner as an indictive of findings, for or against the parties herein, either for the purpose of investigation or for trial, which shall proceed in-accordance with law, irrespective of any of the observations contained hereinabove.

19. Petitioner is permitted to produce/use copy of this order, downloaded from the web-page of the High Court of Himachal Pradesh, before the authorities concerned, and the said authorities shall not insist for production of a certified copy, but if required, may verify about the passing of this order from the *Website* of this Court.

20. Registry is directed to forward a copy of this order to Superintendent of Police, Chamba

District Chamba, [H.P.], for information and with the direction to intimate the concerned SHO including Women Police Station, Chamba, [H.P.] to keep an update on good conduct and behaviour of the bail petitioner *[Deepak Sharma]* in terms of this order.

In aforesaid terms, the instant petition and all pending miscellaneous application(s), if any, shall also stand disposed of.

(Ranjan Sharma)
Judge

23rd April, 2026
[tm]