2026:AHC:208883

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. ANTICIPATORY BAIL APPLICATION U/S 482 BNSS No. - 10461 of 2026

Hitesh Kumar

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite Party(s)

Counsel for Applicant(s)	:	Sayyed Kashif Abbas Rizvi
Counsel for Opposite Party(s)	:	G.A.

Court No. - 71

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard learned counsel for the applicant and learned A.G.A for the State and perused the record.

2. The present application has been filed on behalf of the applicant in Case Crime No. 180 of 2026, under Section 69 BNS, Police Station Haldaur, District Bijnor with a prayer to grant him anticipatory bail.

3. Learned counsel for the applicant submits that the applicant is absolutely innocent and has been falsely implicated in the present case; he has nothing to do with the alleged offence in spite of that the police are trying to arrest the applicant. It is further contended by the learned counsel that a false and frivolous first information report was lodged by the informant-victim, wherein she alleged that she was subjected to rape on the false promise of marriage. It is admitted case of the victim that she was a major girl, about 24 years of age and that she had been in touch with the applicant for the last four years and during this period they enjoyed a consensual relationship. It is next submitted that the FIR is a result of broken relationship and the same was lodged when the relationship turned sour between them. The version of the victim kept changing and does not inspire much confidence to prosecution case.

4. Further submission was made by the learned counsel that ocular version is not corroborated with medical evidence. It is also submitted that throughout the prolonged period of four years, the victim kept

completely quite about the alleged sexual abuse, meted out to her, by the applicant until she learnt that the applicant was not going to marry her. Additionally, the long gap of four years between the first alleged act of sexual intercourse and continued relationship for four years, till the filing of the first information report makes it clear that the matter pertains to a love affair. When the relationship turned sour, the FIR was lodged by the victim due to ulterior motives. A case of consensual relationship between two adults have been converted into a criminal offence.

5. Learned counsel for the applicant further submits that the applicant undertakes to cooperate during investigation and trial and shall appear as and when required by the Investigating Agency or the Court concerned. It has also been stated that, in case the applicant is granted anticipatory bail, he shall not misuse the liberty of bail, shall cooperate with the investigation, and shall abide by all the conditions that may be imposed by the Court.

6. On the other hand, learned A.G.A. has opposed the application for anticipatory bail, however, he does not dispute the factual aspect.

7. I have heard the rival submissions of both sides and perused the record.

8. In **Sushila Aggarwal and others vs. State (NCT of Delhi) and another, (2020) 5 SCC 1**, the Hon'ble Apex Court has held that while considering an application for grant of anticipatory bail, the court has to consider the nature of the offence, the role of the person, the likelihood of his influencing the course of investigation, or tampering with evidence including intimidating witnesses, likelihood of fleeing justice, such as leaving the country, etc. It has further been held that Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the role attributed to the applicant, and the facts of the case, while considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion.

9. In **Siddharth Vs. State of Uttar Pradesh & Another, (2022) 1 Supreme Court Cases 676**, the Hon'ble Apex Court has held that personal liberty is an important aspect of our constitutional mandate. The

occasion to arrest an accused during investigation arises when custodial investigation becomes necessary or it is a heinous crime or where there is a possibility of influencing the witnesses or accused may abscond. Merely because an arrest can be made because it is lawful does not mandate that arrest must be made. A distinction must be made between the existence of the power to arrest and the justification for exercise of it. If arrest is made routine, it can cause incalculable harm to the reputation and self-esteem of a person. If the Investigating Officer has no reason to believe that the accused will abscond or disobey summons and has, in fact, throughout cooperated with the investigation, then there is no compulsion on the officer to arrest the accused.

10. In the case of **Mahesh Damu Khare Versus State of Maharashtra and Another, (2024) 11 Supreme Court Cases 398,** the Hon'ble Supreme Court has made observation that where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise of marriage. A woman may have reasons to have physical relationship other than the promise of marriage like, personal liking for the male partner.

11. In case of **Prashant Versus State of NCT of Delhi, (2025) 5 Supreme Court Cases 764**, the Hon'ble Supreme Court has observed that it is inconceivable that the complainant would continue to meet the accused or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part.

12. Furthermore, the Hon'ble Supreme Court in the case of **Samadhan Versus State of Maharashtra and Another, 2025 SCC OnLine SC 2528** observed that on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are given the colour of criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every sour relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse

of the criminal justice machinery in this regard is a matter of profound concern for the judiciary already facing a heavy load and calls for condemnation.

13. The Hon'ble Supreme Court in **Rajnish Singh @ Soni Vs. State of U.P. And Another, 2025 (4) SCC 197** held that where a woman willingly engages in a long-term relationship with a man, fully aware of its nature, and there is no cogent evidence to show that such relationship was induced by a misconception of fact or a false promise of marriage made in bad faith from the inception, the man cannot be held guilty of rape under Section 376 of the IPC.

14. In the case of **Pramod Kumar Navratna Versus State of Chhattisgarh and Others, 2026 SCC OnLine SC 154**, the Hon'ble Supreme Court held that the Courts have to be extremely careful and cautious in identifying the genuine cases filed under Section 376(2)(n) of the IPC by identifying the essential ingredients to constitute the said offence. Such genuine cases must be clearly demarcated from the litigation that arises from the cases of consensual relationships between consenting adults going acrimonious on account of dispute and disagreement or a future change of mind.

15. The Hon'ble Supreme Court in the case of **Ravish Singh Rana Versus State of Uttarakhand & Anr., 2025 SCC OnLine SC 1055** has made observation that the two able minded adults, if maintained a long term physical relations, then the presumption would arise that they have voluntarily chose the consensual relationship and subsequent non-fulfillment of promise of marriage would not attract any offence.

16. The Hon'ble Supreme Court in the case of **Pramod Suryabhan Pawar Versus State of Maharashtra And Another, (2019) 9 Supreme Court Cases 608** held that where the promise to marry is false and the intention of the maker, at the time of making the promise, itself was not to abide by it, but to deceive the woman so as to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". However, mere breach of a promise cannot be said to be a false promise. Therefore, to establish a false promise, it would have

to be demonstrated that the maker of the promise had no intention of upholding his word at the time of making the promise.

17. In **Sonu @ Subhash Kumar Vs. State of Uttar Pradesh and Another, (2021) 18 SCC 517**, the Hon'ble Supreme Court quashed the FIR and the proceedings upon noticing that relationship between the accused and the victim was of consensual nature and parties were in relationship for a period of one and a half years, and subsequently the accused had expressed disinclination to marry the prosecutrix which led to registration of FIR.

18. Considering the settled principle of law regarding anticipatory bail, submissions of the learned counsel for the parties, nature of accusation, role of applicant and all attending facts and circumstances of the case, without expressing any opinion on merits, and the case of the applicant is squarely covered by the aforesaid judgments, a case for anticipatory bail is made out.

19. Accordingly, the anticipatory bail application is **allowed** with following directions:-

(i) In the event of arrest of the applicant-**Hitesh Kumar** involved in aforesaid case shall be released on anticipatory bail till the conclusion of trial, on his furnishing a personal bond of Rs.50,000/- with two sureties each of the like amount to the satisfaction of the Station House Officer of the police station concerned or to the court concerned;

(ii) The applicant shall co-operate with the Investigating Officer during investigation and shall report to the Investigating Officer as and when required for the purpose of conducting investigation;

(iii) The applicant 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 from disclosing such facts to the Court or to any police officer; and

(iv) The applicant shall not leave India without the previous permission of the Court.

20. In default or misuse of any of the conditions, the Public Prosecutor/ Investigating Officer/ first informant-complainant is at liberty to file appropriate application for cancellation of anticipatory bail granted to the applicant, before the concerned court.

(Vivek Kumar Singh,J.)

October 6, 2026
Lalit Shukla

Digitally signed by :-
LALIT KUMAR SHUKLA
High Court of Judicature at Allahabad