

**WWW.LIVELAW.IN**  
**HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT JAMMU**

Bail App No. 206/2021  
CrIM No. 1690/2021  
CrIM No. 1691/2021  
in  
CRM (M) No. 395/2021  
CrIM No. 1279/2021

**Reserved on : 08.02.2022**  
**Pronounced on : 21.02.2022**

Ashok Kumar

.....Applicant(s)

Through: Mr. Neeraj Gupta, Advocate

**Vs**

Union Territory of Jammu and Kashmir

..... Respondent(s)

Through: Mr. Sumeet Bhatia, GA  
Mr. Sudesh Sharma, Advocate for  
complainant

**Coram: HON'BLE MR. JUSTICE MOHAN LAL, JUDGE**

**JUDGMENT**  
**21.02.2022**

1. Provisions of Section 439 of the Code of Criminal Procedure have been pressed into service by applicant/accused for grant of anticipatory bail in his favor on the grounds averred in the application to the fact, "that he has been falsely implicated in FIR No. 0155 of 2021 registered by Police Station Rehmbal for the commission of offences under Section 376 IPC for the alleged story by complainant/victim that she came in contact with applicant in the month of March, 2016 through social media via facebook and whatsapp whereby applicant started texting her on regular basis and told her that he really likes her and wanted to be friend with her, to which complainant/victim flatly refused and informed the applicant that he should talk to her parents for the

[WWW.LIVELAW.IN](http://WWW.LIVELAW.IN)

marriage, applicant insisted the victim to become friend with him and time and again tried to make contact with her on whatsapp, she (victim) kept ignoring the advances of the applicant believing that eventually the applicant will back out from following her, but unfortunately in the month of March, 2017 the applicant again approached the victim/complainant and made a proposal that he really likes her and want to marry her, whereby the applicant kept on approaching the victim with same proposal and made promises that he will provide all the love and care of the husband to her and even approached the family of the victim and told them that he wants to marry her, whereby she (complainant/victim) believing the promise made by the applicant accepted his proposal and both of them decided to enter into relationship, whereby applicant forced her to have physical relation with him to which complainant/victim objected as they are not married but she got convinced by the applicant as he will definitely marry her within short span of time, she (victim) did not read the malafide intention and believing on his false assurances and the applicant made sexual relations with her many times, she consented to sexual relations with the applicant under the misconception of fact that applicant will marry her, that in the month of April i.e. on 13<sup>th</sup> of April, 2021, she tried to contact the applicant on mobile phone and inquired about when he will marry her but the applicant/accused avoided talking to her about the topic and started ignoring her under one pretext or the other, and on 14<sup>th</sup> of April 2020 the applicant called her on mobile phone and told her that when he will come back to Udhampur he will marry her, but the applicant flatly refused and openly told her that he made false promises about marrying, and also threatened her that she will face dire consequences if she ever tried to call him;” that the applicant is a respectable citizen of the society and is commanding

[WWW.LIVELAW.IN](http://WWW.LIVELAW.IN)

good reputation in the society and is an Army Personnel, presently posted at Jodhpur Rajasthan as Sepoi (GDR) and is having good service records, the story so projected in the FIR shows that the same is created only to falsely implicate the applicant and to extract money from him which is totally false, fictitious and absurd, applicant has not committed any offence in case and has been trapped by the police, his image and reputation will be dashed to grounds and his service career will also be put to stake, applicant undertakes to abide by all the terms and conditions if the court deems fit at the time of granting bail, prayer has been made for grant of anticipatory bail and its confirmation.

2. This court vide it's order dated 27.07.2021 on the application of applicant/accused, granted interim bail to him subject to furnishing of two sureties by him in the sums of Rs. 50,000/- with the directions that he will appear before the Investigating Officer and shall not contact with any prosecution witness.
3. On 14.09.2021, Sh. Sudesh Sharma, learned counsel for complainant/prosecutrix filed an application for cancellation/revocation of interim bail granted to applicant dated 27.07.2021, wherein it has been specifically contended that applicant/accused is continuously harassing and threatening the prosecutrix after the grant of bail, and moreso on 29.09.202, the applicant/accused came at the residence of the prosecutrix and threatened her of dire consequences and pressurized her and other family members to withdraw the FIR, whereby the prosecutrix, her family members and other neighbors have sworn affidavits to show that applicant/accused has threatened them. The applicant/accused through his counsel filed objections to the application of the prosecutrix for cancellation/revocation of interim bail by contending therein that applicant/accused has not contacted any of the prosecution witnesses as well as the

[WWW.LIVELAW.IN](http://WWW.LIVELAW.IN)

prosecutrix, and it is the prosecutrix who is hell bent and harassing the applicant, the affidavits filed by the prosecutrix make mention of different dates which is 29.07.2021, whereas they have deposed their affidavits in the month of September, 2021 thereby waiting for a long period of more than one month, and in their affidavits they have not made mention of any neighbors which creates shadow on their story, only to harass and humiliate the applicant.

4. Sh. Sumeet Bhatia, learned GA, respondent of UT of J&K has opposed the grant of anticipatory bail to the applicant by filing objections and contending therein, that accused is involved in heinous offence of rape whereby by deceitful means he has obtained the consent of the prosecutrix on the promise of marriage, inducing her to get into relationship with him which amounts to commission of offence of rape, there is cogent evidence and material against accused in the form of statements of prosecutrix recorded under Section 164 Cr.P.C which directly connects accused with the commission of crime, when the accused is involved in heinous crime there is every possibility he will skip out of the bail; the complainant/victim has admitted of her close intimacy with accused and has filed the complaint after four years when the accused refused to marry her which by no stretch of imagination is a delay for alleging of FIR, the mind of complainant/victim was impregnated with an idea and hope of marriage with accused who distanced himself where after complainant/prosecutrix was left with no option but to resort to the available means of lawful ways in lodging FIR against the accused wherein she has specifically narrated that her consent was obtained in lieu of the promise of marriage.
5. Sh. Neeraj Gupta, learned counsel for the applicant/accused while seeking bail in anticipation of arrest in favor of the accused has

[WWW.LIVELAW.IN](http://WWW.LIVELAW.IN)

vehemently argued, that applicant/accused and the prosecutrix remained for a long duration of about four years in their consensual physical relation, there is no allegations by the complainant/prosecutrix that a false promise of marriage was made by the applicant/accused only with the purpose of establishing physical relation, it appears from the facts that it is simply a case of courtship and consensual physical relation between accused and the prosecutrix who are two grownup persons which did not end up in tying nuptial knot. It is argued, that if the parties develop physical intimacy during their courtship and the boy later on resiles from promise to marry, the same cannot be brought within the scope of Section 376 RPC and the same would amount an act of promiscuity on the part of prosecutrix, the allegations in the FIR alleged by the prosecutrix are not that of forcible commission of sexual intercourse with the prosecutrix, the allegations are that the accused committed repeated sexual intercourse with the prosecutrix for about four/five years under the pretext or promise that he will marry her, but has now backed out and nowhere in the FIR or the statements of the prosecutrix recorded under Section 164 Cr.P.C, it has been alleged by the prosecutrix that even false promise of marriage was made by the accused only with the purpose of establishing physical relation with her. It is vehemently argued, that there is distinction between 'breach of promise' and not fulfilling a false promise, the applicant/accused and prosecutrix knew each other since 2016 and were intimate since 2017 where they establish their sexual relations, the allegations in the FIR do not on their face indicate that the promise by the applicant/accused was false, or that the prosecutrix engaged in sexual relations on the basis of the said promise, there is no allegations in FIR that when accused promised to marry the victim/prosecutrix, it was done in bad faith

or with intention to deceive, accused's failure in 2021 to fulfill his promise made in 2016-17 cannot be construed that the promise itself was false, even if the facts set out in the FIR and in the statement of prosecutrix recorded under Section 164 Cr.P.C accepted in totality, no offence under Section 375 of the IPC has occurred, therefore, offence of rape is not established against the appellant and the strong case for anticipatory bail is made out by him. To support his arguments, learned counsel for applicant/accused has relied upon the rulings reported in **(i) 2018 2 Crimes (HC) 264 of Jammu and Kashmir High Court in Case No. 561-A Cr.P.C No. 08/2018 and M.P. No. 61/2018 titled Tanveer Iqbal – Petitioner versus State and others – Respondents decided on 06.03.2018 and (ii) 2019 0 Supreme (SC) 901 of Supreme Court of India in Case No. Criminal Appeal No. 1165 of 2019 titled Pramod Suryabhan Pawar – Appellant versus The State of Maharashtra and another – Respondents decided on 21.08.2019.**

6. Sh. Sumeet Bhatia, learned G.A and Sh. Sudesh Sharma, learned counsel for the prosecutrix, per contra have vehemently opposed the bail of applicant/accused by portraying arguments, that the delay in lodging the FIR cannot be used as ritualistic formula for doubting the prosecution case and discarding the same on grounds of delay in lodging the first information report, the delay is not fatal for prosecution as the courts cannot overlook the fact that in sexual offences delay in lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which surely concerns the reputation of the prosecutrix and the honor of her family which could be a blot/stigma on her face, and therefore, only after giving it a cool thought, the complaint of sexual offences is generally lodged. It is argued, that

[WWW.LIVELAW.IN](http://WWW.LIVELAW.IN)

applicant/accused has committed sexual intercourse with the prosecutrix on false promise of marriage by deceitful means and he obtained the consent of the prosecutrix, the relationship of accused with the prosecutrix was not consensual but obtained by exercising deceit and it is only on refusal of accused to marry the prosecutrix the question of making criminal complaint arose, and as long as commitment of marriage subsisted relationship between parties could not be describes as offence of rape. It is strenuously argued, that the offence of rape is grave and heinous offence and is against the society, the general interest of society outweighs the individual interest of the applicant/accused, therefore, the anticipatory bail to the accused may be rejected. To support their arguments, learned counsel for respondent have relied upon the decisions reported in the judgments of **Supreme Court of India in case (i) Criminal Appeal No. 549 of 2005 titled Dildar Singh – Appellant vs. State of Punjab – Respondent decided on 20.07.2006 (ii) Criminal Appeal No. 616 of 1985 titled State of Punjab – Appellant vs. Gurmit Singh and others – Respondent decided on 16.01.1996 (iii) Criminal Appeal No. 601 of 2008 titled Karthi @ Karthick – Appellant vs. State, Tamil Nadu – Respondent decided on 01.07.2013 (iv) Criminal Appeal No. 629 of 2019 titled Anurag Soni – Appellant vs. State of Chhattisgarh – Respondent decided on 09.04.2019.**

7. Heard and considered.
8. I have thoroughly scanned the ratio's of the judgments and the principle of law deduced therein cited by the learned counsel for the parties. FIR No. 0155 of 2021 has been registered by Police Station Rehmbal for the commission of offences under Section 376 IPC against applicant/accused on 14.07.2021. For the sake of clarity, the crux of FIR in question is reproduced as under:

[WWW.LIVELAW.IN](http://WWW.LIVELAW.IN)

“Brief facts of the case are that this time complainant namely Neha Devi D/o Sh. Beli Ram R/o Ward No. 01, Megani Tehsil and Distril Udhampur accompied with Ashu Devi, Panch Ward no. 01 Sansoo came in this P/S and produced a written complaint in English and the contents of the said complaint is given as :- To the Incharge/Station House Officer Police Station Rehambal, Teshil and District – Udhampur, Jammu and Kashmir, UT. Subject:- Application for registration of FIR against Ashok Kumar son of Sh. Raj Kumar Resident Manwal, Majalta, District-Udhampur, Jammu and Kashmir, UT of for commission of offence punishable under section 376 IPC and other relevant provisions of law. Sir, Respectfully it is submitted as under:- 1. That the accused came in contact with the applicant through FACEBOOK and started text messaging the applicant and messaging on whatsapp in the month of March 2016. 02. That the accused started texting the applicant on regular basis and told her that the accused really likes the applicant and wanted to be friend with her to which the applicant flatly refused and informed the accused person that she is the resident of village Megani and talk to my parents for my marriage. 03. That the accused insisted the applicant to become friend with him and time and again tried to make contact with the applicant and followed her on social media and kept on texting her on whatsapp. The applicant kept on ignoring the advances of the accused person believing that eventually he will back out from following and contacting the applicant. 04. That unfortunately in the month of March 2017 the accused person again approached the applicant and made a proposal that the accused really liked the applicant and he wants to marry her and the accused kept on approaching her with the same proposal and made promises the he will provide all the love and care of a husband to her and even approached the family of the applicant and told them that he wants to marry the applicant. 05. That after some time the applicant believing the promises made by the accused person accepted his proposal and they both decided to enter into relationship. The accused persons forced to have the physical relation with him to which the applicant objected to as they were not married to which the accused convinced the applicant that he will definitely solemnize the marriage with her in a short time. The applicant did not read the malafide intention and believing on his false assurances, the accused made

sexual relations with the applicant many times. The applicant consented to sexual relations with the accused under the misconception to sexual relations with the accused under the misconception of facts that the accused will marry her. 06. That even the family members of accused as well as the family members of the applicant were aware of the fact that accused person will marry the applicant. 07. That in the month of 13 April 2021, the applicant tried to contact the accused person on mobile phone and inquired about when he will marry to the applicant, the accused person avoiding talking to her about the topic and started ignoring her under on one pretext or another. It is pertinent to mentioned here that the accused avoid attending the phone calls of the applicant and slowly ignoring the applicant citing excuses like he is very busy with his job and many time he would switch off his cell phone just to avoid the applicant. 08. That 14<sup>th</sup> April 2021 the accused called the applicant on her mobile phone and when he will come back to Udhampur and solemnize the marriage with her to which the accused flatly refused and openly told her that he made false promises about marrying the applicant and further acknowledged that he never had any intention to marry the applicant right from the beginning and openly threatened the applicant that she will face dire consequences if she ever tried to call or contact the accused. 09. That after hearing these words from the applicant, the applicant went into the state of shock and felt shattered, deceived and cheated by the accused person who had no right to play with the life of the applicant on account of false promises just to satisfy his nefarious designs. 10. That the applicant/victim who bonafidely believed on the promises of the marriage made by the accused person and consented to the physical relations based on misconception of facts with regard to the promise of marriage and suffered at the hands of accused person. 11. That the accused has committed a heinous crime against the applicant by playing with the dignity of the applicant which has offended my self-esteem and dignity which has left a permanent scar on the honour of the applicant by cheating and deceiving the applicant. The accused has committed the crime against the applicant not only physically but mentally, emotionally and morally also. Keeping in the view above mentioned facts it is therefore requested to your good self that an FIR may kindly be

**WWW.LIVELAW.IN**

registered against the accused person for commission of offence punishable under section 276 IPC and other relevant provision of law and the accused be punished severely for the heinous crimes committed by the accused against the applicant. Yours sincerely Miss Neha Devi daughter of Sh. Beli Ram Resident of Ward no-1, Village: Megani, Panchayat – Sansoo, Tehsil and District: Udhampur, Jammu and Kashmir, UT Mobile: 9086187436, Dated: 14-07-2021. Copy of the: i) Senior Superintendent of Police, Udhampur, SD in English of complainant. As per the contents of said complaint offence under Section 376 IPC has been made out. In this regard, an instant case under relevant sections stands registered in this P/S. Copy of the FIR will be submitted to concern Court accordingly and Investigation of the case entrusted to PSI Mohd. Shafi Raina EXJ 196304 under the guidance of ASI Gopal Chand EXJ 875780. As the said case is special in nature which is 1<sup>st</sup> of the locality/area, 2<sup>nd</sup> of its own kind and nature and total 45<sup>th</sup> special reported case of the year. Special report- “A” will be submitted separately to concern quarters.”

9. Bare reading of the contents of the FIR depict that there is not an iota of whisper that applicant/accused has made false promise or the applicant/accused engaged in sexual relations with the victim on the basis of the false promise. There is also no allegation in FIR that when applicant/accused promised to marry the complainant/victim, it was done in bad faith or with intention to deceive her. From the contents of FIR, it appears that there is a failure on the part of applicant/accused to fulfill his promise of marriage made in the year 2017 which he could not fulfill in 2021.
10. In the case law reported in **AIR 2019 (Prmod Suryabhan Pawar vs State of Maharashtra and another)**, Hon’ble Apex Court while setting aside impugned judgment and the order of the High Court of Judicature at Bombay dated 07 February 2019 and quashing the FIR, in Para 20 of the judgment at Page 11 observed as under:

[WWW.LIVELAW.IN](http://WWW.LIVELAW.IN)

“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 IFR 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 fulfill 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, 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 in 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 of the IPC has occurred.”

Ratio of the judgment (supra) makes the legal proposition abundantly clear, that when there is no allegation in the FIR that the promise made by the accused was false and only on the pretext that promise to marry did not mature into marriage, the physical relationship of the accused with the victim does not amount to offence of rape within the meaning of Section 375 of IPC.

11. In another case law relied by learned counsel for applicant/accused titled **Sonu @ Subash Kumar versus State of Uttar Pradesh and another in Criminal Appeal No. 233/021 (arising out of SLP (CrI) No. 11218 of 2019)**, Hon’ble the Supreme Court while quashing the charge sheet and setting aside the impugned judgment and order of the High Court of Judicature at Allahabad dated 26<sup>th</sup> September, 2019, in paras 08 & 11 of the judgment held as under:

**WWW.LIVELAW.IN**

“.....8.The contents of the FIR as well as the statement under Section 164 of Cr.P.C leave no manner of doubt that, on the basis of the allegations as they stand, three important features emerge:

- (i) The relationship between the appellant and the second respondent was of a consensual nature;
- (ii) The parties were in the relationship for about a period of one and a half years; and
- (iii) Subsequently, the appellant had expressed a disinclination to marry the second respondent which led to the registration of FIR.

11. Bearing in mind the tests which have been enunciated in the above decision, we are of the view that even assuming that all the allegations in the FIR are correct for the purposes of considering the application for quashing under Section 482 of Cr.P.C, no offence has been established. There is no allegation to the effect that the promise to marry given to the second respondent was false at the inception. On the contrary, it would appear from the contents of the FIR that there was a subsequent refusal on the part of the appellant to marry the second respondent which gave rise to the registration of the FIR. On these facts, we are of the view that the High Court was in error in declining to entertain the petition under Section 482 of Cr.P.C on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established.”

Ratio of the judgment (supra) further makes a legal proposition abundantly clear, that when there is no allegation that the promise to marry was given by the accused to the respondent was forced at the inception, no offence can be made out where the relationship between the parties are of consensual nature for years together and even the accused has not expressed his inclination to marry the prosecutrix.

12. In **2018 (2) Crimes (HC) 264 titled Tanveer Iqbal vs State and others**, Hon’ble High Court of J&K while quashing the FIR registered under Section 376 IPC on the pretext that the accused

WWW.LIVELAW.IN  
WWW.LIVELAW.IN

was alleged to have been committing sexual intercourse with prosecutrix under the pretext to marry her and finally refused, in Para 08 of the judgment held as under:

“...8. Clearly, the allegation in the complaint filed by the prosecutrix is not that of forcible commission of sexual intercourse with the prosecutrix by the petitioner. Going by the statement in the complaint, there was rather a long duration consensual physical relation between the two. The allegation, however, is that the petitioner committed repeated sexual intercourse with the prosecutrix for 4 to 5 years under the pretext or promise that he will marry her but has now backed out. It has not been alleged by the prosecutrix even that the false promise of marriage was made by the petitioner only with the purpose of establishing physical relation with her.”

Ratio of the judgment (supra) further makes the legal proposition abundantly clear that when there is a long duration of consensual physical relation between the two under the pretext or promise that the accused will marry her but now backed out and it has not been alleged even by the prosecutrix that false promise of marriage was made for establishing physical relation, it is thus simply a case of courtship and consensual physical relation between the two grownup which even did not end up tying nuptial knot is not a case of commission of rape. From the ratios of the judgments (supra) relied by learned counsel for the applicant/accused, the law is well settled that promise to marriage whereby the two adults engaged in physical sexual relationship is a case of courtship and love affair, and by no stretch of imagination would come within the definition of Section 375 of IPC, and only when there is a case of false promise made with the purpose of obtaining consent of woman for sexual favor, the same amounts to misrepresentation and consent so obtained cannot exonerate a person from criminal liability for commission of rape.

[WWW.LIVELAW.IN](http://WWW.LIVELAW.IN)

While applying the ratios of judgments (supra) to the facts of the case in hand, it is discernable that from the contents of FIR it does not depict that applicant/accused made false promise to marriage to complainant/prosecutrix and obtained her consent for the purpose of committing sexual intercourse with her. Contents of FIR demonstrates that applicant/accused though has agreed to marry the prosecutrix and both of them were involved in physical sexual relations and it is thus simply a case of courtship and consensual physical relation which in my considered view does not amount to commission of rape.

13. In **AIR 2006 (SC) 3084 titled Dildar Singh vs. State of Punjab** relied by learned counsel for respondent, it has been held that the delay in lodging FIR cannot be fatal and a ground for disbelieving the case of prosecution. In **AIR 1996 (SC) 1393 titled State of Punjab vs. Gurmit Singh and others**, relied by learned counsel for the respondent, Hon'ble the Supreme Court held, that the delay in lodging FIR in sexual offences is not fatal. In **AIR 2013 (SC) 2645 titled Karthi @ Karthick vs. State, Rep. by Inspector of Police, Tamil Nadu**, relied by learned counsel for the respondent, Hon'ble the Supreme Court has held, that sexual intercourse by a man with a woman on a false promise of marriage is not consensual sex and the relationship between them amount to offence of rape. In **AIR 2019 (SC) 1857 titled Anurag Soni vs. State of Chhattisgarh**, also relied by learned counsel for the respondent, the Division Bench of Hon'ble the Supreme Court has held, that sexual relationship on the false promise of marriage amounts to rape.

14. From the facts of the case, that there is not a whisper in the FIR or even in the statement of the prosecutrix recorded under Section

164 Cr.P.C that applicant/accused gave false promise to the prosecutrix to marry her and on that assurance/pretext he established sexual relationship with her. The judgments (supra) relied upon by learned counsel for respondent in the facts and circumstances of the case are distinguishable and inapplicable to the case in hand. On the contrary, the judgments relied upon learned counsel for the applicant/accused fully apply to the facts of the case in hand.

15. In view of the settled position of the law as discussed above, applicant/accused has carved out a strong case of anticipatory bail in his favor. The anticipatory bail granted to applicant/accused vide order dated 27.07.2021 is made absolute subject to the conditions that applicant/accused if required by the investigating agency shall appear before the Investigating Officer during the course of investigation and shall not threaten or intimidate any prosecution witnesses.

16. The bail application (Bail App No. 206) is disposed of accordingly.

**CRM (M) No. 395/2021**

Learned counsel for the parties shall adduced detailed arguments on the next date of hearing.

List on 25.02.2022.

**(Mohan Lal)  
Judge**

**Jammu**  
21.02.2022  
Manan