

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 20.05.2025

Pronounced on 30.05.2025

CRM(M) No.216/2025

Bail App No.62/2025

Bail App No.72/2025

SHAKIR-UL-HASSAN & ORS.

... PETITIONER(S)

Through: - Mr. Shafqat Nazir, Advocate.
Mr. Shabir Ahmad, Advocate.

Vs.

UT OF J&K & another

...RESPONDENT(S)

Through: - Mr. Ilyas Laway, GA-for R1.
Mr. Mian Tufail, Adv-for R2.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By this common judgment above numbered two bail applications along with petition under Section 528 of BNSS are proposed to be disposed of.

2) Vide petition bearing CRM(M) No.216/2025, the petitioners/accused have thrown challenge to FIR No.83/2025 for offences under Section 69 and 351(3) of BNS registered with Police Station, Anantnag. Vide Bail App No.62/2025, petitioner/accused Shakir-ul-Islam has sought bail in anticipation of his arrest while as vide Bail App No.72/2025, petitioners Mohammad Ashraf Bhat and Javid Ahmad Bhat have sought bail in anticipation of their arrest in the aforesaid FIR.

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(I) FACTS:

3) As per the allegations made in the impugned FIR, which came to be registered pursuant to the directions of the Special Mobile Magistrate, Anantnag, issued in the complaint made by respondent No.2/complainant, petitioner No.1 invited the complainant to his home with the aid and assistance of petitioners No.2 and 3 along with one Ruhi Rifat. It is pertinent to mention here that petitioners No.2 and 3 happen to be the brothers of petitioner No.1. It was alleged that the complainant was invited by petitioner No.1 so as to develop close relations with her with the idea of getting monetary aid from her family. Respondent No.2 is stated to have accepted the invitation of petitioner No.1 in the month of March, 2021. It is alleged that petitioner No.1 borrowed a sum of Rs.10.00 lacs from respondent No.2 for meeting his educational expenses, whereafter he developed close association with respondent No.2. It is alleged that petitioner No.1 by deceitful tactics promised to marry the complainant and exploited her position by meeting her off and on at various places by giving her impression that for all practical purposes she is his wife. It is further alleged that petitioner No.1 cohabited with the complainant, both at his residential house situated at Gund Jaffar, Anantnag, and also at Delhi, several times by representing that she is his

wife, which, according to the complainant, is clear from phone calls and messages exchanged between the two. It is further alleged that the petitioners again invited the complainant on 13th and 14th March, 2025, along with her friends at their residence at Gund Jaffar, Anantnag, for a formal conference. However, petitioner No.1 in the midst of night took the complainant in a separate room where he disrobed her and committed rape upon her several times. She is stated to have raised a hue and cry, whereafter other family members reached the spot and when the complainant narrated her story to the other petitioners, they gave a beating to her and warned her of dire consequences. It has been alleged that petitioner No.1 always gave an impression to the complainant that she is his wife and that formal marriage would take place soon.

(II) Stand of the petitioners:

4) The petitioners have challenged the impugned FIR and claimed bail in anticipation of their arrest on the grounds that petitioner No.1 is a highly qualified person having a distinguished academic record without there being any criminal antecedents. It has been further contended that the petitioners No.2 and 3 have no connection with the allegations levelled by the complainant/respondent No.2. It has been pleaded that petitioner No.1 came into contact with

respondent No.2 through social media and a consensual relationship developed between the two. According to the petitioners, in the year 2023, petitioner No.1 proposed marriage to the complainant/respondent No.2, following which preliminary inquiries regarding complainant's background were initiated by the petitioners. During the enquiry, it came to the fore that multiple criminal cases are registered against the complainant/respondent No.2 and that she had previously engaged herself in deceptive relationship with certain individuals for financial gain. In this regard, the petitioners have made reference to FIR No.154/2020 registered with Police Station, Shergari, Srinagar, which relates to an incident of theft of gold ornaments from Shah Ornaments, Mehjoor Nagar, Srinagar, by respondent No.2. It has been submitted that because of these revelations, petitioner No.1 chose to end his relationship with respondent No.2 in the month of August, 2023.

5) According to the petitioners, after a lapse of more than one year, respondent No.2 started harassing them and she started making demands of Rs.17.00 lacs in lieu of giving up her demand for marriage. Petitioner No.1, apprehending criminal intimidation on the part of respondent No.2, filed a criminal complaint for offence under Section 308(6) of BNS

before the Court of District Mobile Magistrate, Anantnag, in which a notice was issued by the learned Magistrate to respondent No.2. It has been contended that on 27.02.2025, when petitioner No.1 was away in Delhi, respondent No.2 trespassed into his residential house and started making monetary demands for settlement of the issue, whereafter the local Auqaf Committee submitted a report before the SHO concerned.

6) It has been contended by the petitioners that as a counterblast to the complaint filed by petitioner No.1 against respondent No.2, she filed a complaint before the Special Mobile Magistrate, Anantnag, which culminated into registration of the impugned FIR. It has been further contended that the petitioners No.2 and 3 reside away from the residence of petitioner No.1 and their sister is residing at Delhi but respondent No.2, with malafide intentions, has roped in all the siblings of petitioner No.1.

7) The petitioners have contended that the allegations made in the impugned FIR, even if taken at their face value, do not, prima facie, constitute any offence against the petitioners as the basic ingredients of offences under Section 69, 351(3) of BNS are not made out. It has been further contended that the allegations made in the impugned FIR

are apparently frivolous and vindictive made with a view to extort money from the petitioners. It has further been contended that the learned Special Mobile Magistrate, Anantnag, had only issued a direction to the police to conduct enquiry into the matter and report the facts but instead of doing so, the police straightaway registered the impugned FIR thereby overreaching the order of the learned Magistrate.

8) It has also been contended that mere breach of promise of marriage cannot form a basis for prosecution under Section 69 of BNS. According to the petitioners, petitioner No.1 was involved in a consensual relationship with respondent No.2 for a substantial period of time, during which he made promise to marry her in good faith based on mutual understanding but due to subsequent developments, he could not fulfil his promise, which, according to the petitioners, does not amount to criminality. It has been further contended that there has been a considerable delay of about one month in lodging the FIR without there being any explanation from the complainant.

(III) Stand of respondent No.2/complainant:

9) According to respondent No.2, petitioner No.1, from the very inception of his association with her, established a

relationship on the false assurance of marriage which he never intended to fulfil. It has been submitted that the WhatsApp messages exchanged between the two clearly establish that petitioner No.1 had extended promise of marriage to the complainant solely for the purpose of gaining sexual access to her. It has been contended that petitioner No.1 has repeatedly attempted to intimidate the complainant and for this purpose, he, in order to pre-empt the lodging of FIR against him, filed the complaint against the complainant before the Court of learned District Mobile Magistrate, Anantnag. It has been submitted that petitioner No.1 has been constantly sending emails to the employer of the complainant with a view to intimidate her and to coerce her to withdraw her complaint. It has been further submitted that the petitioners have beaten up the complainant and they are making every effort to cause harm to her. The complainant has denied the allegation that she had demanded any money from the petitioners for settlement of the case and has, in fact, alleged that she has been purchasing clothes, household items etc. for the petitioners and their family. It has been submitted that the complainant belongs to a respectable family and her father has retired as a Zonal Education Officer whereas her sister is a doctor.

10) It has been contended that petitioner No.1 has committed a heinous offence by violating the bodily integrity of the complainant, as such, he does not deserve the concession of bail. It has been further contended that petitioner No.1 has misused the trust of the complainant which he gained through social media and made sexual advances and exploitation of the complainant. Respondent No.2 has filed photocopies of screenshots of her cell phone depicting WhatsApp chats exchanged between her and petitioner No.1.

11) The stand of the official respondent is same as has been taken by respondent No.2 in her reply.

12) I have heard learned counsel for the parties and perused record of the case

(IV).Discussion:

13) The first ground urged by learned counsel for the petitioners for impugning the FIR and for seeking bail in anticipation of their arrest is that the FIR has been registered by the police without there being any direction from the learned Magistrate to this effect. It has been contended that only a direction for holding an enquiry and submitting report was extended by the learned Special Mobile Magistrate, Anantnag, to the SHO Police Station, Anantnag, but instated

of holding an enquiry, the impugned FIR came to be registered straightaway thereby circumventing the orders of the learned Magistrate. It has been contended that such a course adopted by respondent No.1 is impermissible in law. In support of this contention, the petitioners have placed reliance upon of judgment this Court in the case of **Farooq Ahmad and others vs. State of J&K and another** (CRM(M) No.827/2021 decided on 10.03.2023).

14) To counter the aforesaid argument, learned counsel for respondent No.1 has placed on record copy of the complaint that was forwarded by learned Special Mobile Magistrate, Anantnag, to SHO, P/S Anantnag, which contains an endorsement to the following effect:

“Copy of application is forwarded to SHO P/S concerned to take action under law and to file compliance report by or before next date i.e. on 28/04/2025.”

15) From a perusal of the aforesaid endorsement, it is clear that the learned Magistrate had, under his signatures, forwarded the complaint filed by respondent No.2 to the concerned SHO with a direction to take action under law and to file a compliance report. Although actually the learned Magistrate had passed an order directing enquiry into the complaint filed by respondent No.2 yet the fact of the matter remains that the order which was forwarded to the SHO

concerned provides for taking action under law. The SHO
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concerned, it seems, thought it proper to register an FIR keeping in view the nature of the allegations made in the complaint. It was never conveyed to the SHO concerned that he had only to make an enquiry and submit report to the SHO concerned court.

16) In **Farooq Ahmad's** case (supra), upon which reliance has been placed by learned counsel for the petitioners, the SHO concerned was specifically directed to hold enquiry and the submit report to the Magistrate whereas in the instant case, the order which was conveyed to the SHO provided for taking action under law. It is a settled law that even if a Magistrate does not say so in so many words while directing the SHO to take action under law, it is the duty of the officer incharge of the Police Station to register the FIR regarding the cognizable offence disclosed by the complaint because the police officer can take further steps contemplated in under Chapter XII of the Cr.P.C only thereafter. Reference in this regard is made to the judgments of the Supreme Court in the cases of **Mohd. Yousuf v. Smt. Afaq Jahan & Anr**, (2006) 1 SCC 62 and **Hemant Yashwant Dhage vs. State of Maharashtra and others**, (2016) 6 SCC 273.

17) Thus, once it was conveyed to the SHO concerned that he has to take action under law and he found that cognizable

offence is made out from the allegations made in the complaint filed by respondent No.2, he had no choice but to register the FIR. The order of holding enquiry was never conveyed to the SHO. Therefore, the ratio laid down in **Farooq Ahmad's** case (supra) would not be attracted to the facts of the present case.

18) The main contention raised by learned counsel for the petitioners for impugning the FIR is that even as per the case of the complainant, there was a long-standing consensual relationship between petitioner No.1 and respondent No.2. It has been contended that unless it is shown that physical relationship between petitioner No.1 and respondent No.2 was direct result of false promise of marriage made by petitioner No.1, it cannot be stated that respondent No.2 had given her consent under a misconception of fact. The learned counsel has argued that the complainant knowingly entered into a consensual sexual relationship with petitioner No.1 over a long period of time and it was only when petitioner No.1 decided to snap this relationship because of the subsequent developments, that the complainant decided to lodge criminal prosecution against him and his siblings. It is being contended that in the facts and circumstances of the case, a presumption arises that respondent No.2 had

voluntarily chosen to have sexual relationship with
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petitioner No.1 and it was not based upon any promise of marriage. To support his contention, the learned counsel has relied upon the judgments of the Supreme Court in the cases of **Mandar Deepak Pawar vs. State of Maharashtra and anr.**, 2022 LiveLaw (SC) 649, **Rajnish Singh @ Soni vs. State of UP and another**, 2025 LiveLaw (SC) 279, **Biswa Jyoti Chatterji vs. State of West Bengal and anr.**, 2025 LiveLaw (SC) 404, and **Ravish Singh Rana vs. State of Uttarakhand and anr.** (Criminal Appeal No.2438 of 2025 decided on 28th April, 2025), and the judgments of this Court in the cases of **Rajinder Singh vs. State & others**, 2013(4) JKJ[HC] 209 and **Riyaz Hussain vs. UT of J&K & anr.**, 2025 (2) JKJ[HC] 144.

19) There can be no dispute to the legal proposition that unless it is shown from the facts and circumstances of a particular case that the accused had extended the promise of marriage to a victim with a view to obtain her consent for sexual intercourse, the offence under Section 69 of BNS would not be constituted. It is also a settled proposition of law that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date cannot be said to be given under a misconception of fact.

20) However, there is no straightjacket for determining as to whether consent given by the prosecutrix to sexual intercourse is voluntary or whether it is given under a misconception of fact. Reference in this regard is made to the ratio laid down by the Supreme Court in **Biswajyoti Chaterjee's** case (supra). Ultimately, it is the surrounding circumstances of a particular case that would determine as to whether the prosecutrix had given her consent to the accused to enter into a sexual intercourse under a misconception of fact or it was done by her voluntarily.

21) The Supreme Court has in the case of **Yedla Srinivasa Rao vs. State of AP**, (2006) 11 SC 615, held that it is always a matter of evidence whether the consent was obtained willingly or the consent has been obtained by holding out a false promise which the accused never intended to fulfil. The Court went on to observe that if from the facts the court comes to the conclusion that the consent has been obtained under misconception and the accused persuaded the girl that he would marry her then in that case it can always be said that the consent was not obtained voluntarily but under a misconception of fact and that the accused right from the beginning never intended to fulfil the promise and such consent cannot condone the offence.

22) With the aforesaid legal position in mind, let us now advert to the facts of the present case as are emanating from the material placed on record by the parties. In the impugned FIR, respondent No.2 has alleged that she accepted the invitation of petitioner No.1 in the year 2021 in the month of March and petitioner No.1 visited her residence. She further states that she funded the education of petitioner No.1 and they came close to each other, whereafter petitioner No.1 extended the promise of marriage to her. She goes on to allege that petitioner No.1 exploited her by meeting her at various places giving her impression that, for all practical purposes, she is his wife. She further alleges that petitioner No.1 cohabited with her, both at his residence at Anantnag and also at Delhi, several times by prevailing upon her that she is his wife. These allegations levelled by respondent No.2 find support from the WhatsApp chats exchanged between the two. A perusal of the WhatsApp chats exchanged between the two would reveal that petitioner No.1 has been expressing not only his love for respondent No.2 but he has been time and again assuring her that he would enter into wedlock with her. The chats reveal that at one point in time, respondent No.2 showed her reluctance to enter into sexual relationship with petitioner No.1 but petitioner No.1 assured her that if he is going to

marry, he would be marrying her only and nobody else. In another chat, petitioner No.1 assures respondent No.2 that he would be entering into a wedlock with her in the month of April. The chats reveal that petitioner No.1 got infuriated when respondent No.2 informed him that her mother is looking for a bridegroom for her. All these chats, prima facie, show that petitioner No.1 has been extending promises of marriage to respondent No.2 from time to time and extracting sexual favours from her. In fact, petitioner No.1 in his petition has candidly admitted that he was intending to marry respondent No.2 but subsequent developments persuaded him not to go for marriage with respondent No.2.

23) The question whether petitioner No.1 had genuine reasons for backing out from the promise of marriage and whether the screenshots of chats placed on record by respondent No.2 are genuine, are matters which can be determined only after investigation of the case. Similarly, the question whether the promise of marriage extended by petitioner No.1 to respondent No.2 was only for the purposes of extracting sexual favours from her, is also a matter which requires to be investigated. At this stage and in these proceedings, this Court cannot hold a min-trial to ascertain the veracity of the respective stands taken by the parties.

24) The Supreme Court in the case of **Madhavrao Jiwaji Rao Scindia & Anr. Etc vs Sambhajirao Chandrojirao Angre & Ors.** (1988) 1 SCC 692. has held that when a prosecution at the initial stage was asked to be quashed, the test to be applied by the court was as to whether the uncontroverted allegations as made prima facie establish the offence. It has been held that it is also for the court to take into consideration any special features which appear in a particular case to consider whether it was expedient and in the interest of justice to permit a prosecution to continue.

25) In the present case, as already stated, the investigation of the case is still at inception and the facts are hazy. However, the allegations made in the complaint, which are supported by the material on record, clearly go on to indicate that cognizable offences are made out against petitioner No.1. Therefore, it would not be appropriate for this Court to scuttle the investigation of the case so far as it pertains to petitioner No.1 as the same would amount to stifling a genuine prosecution. The same is impermissible in law.

26) Learned counsel for the petitioners has also argued that the impugned FIR has been lodged by respondent No.2 as a counterblast to the complaint filed by petitioner No.1 against her. It is true that the impugned FIR has been lodged

by respondent No.2 after the notice in the complaint filed by petitioner No.1 against her was issued by District Mobile Magistrate, Anantnag. However, it is to be noted that respondent No.2, as per petitioners own case, had gone to the house of petitioner No.1 on 27.02.2025 where she protested the action of petitioner No.1 in resiling from the promise of marriage, which led the Auqaf Committee of the Village to intervene in the matter. It is quite possible that it is petitioner No.1 who, as a counterblast to the aforesaid action of respondent No.2, proceeded to file complaint against her with a view to pre-empt lodging of FIR by her against him. The contention of learned counsel for the petitioners in this regard is, therefore, without any merit.

27) So far as the case of petitioners No.2 and 3 is concerned, the same stands on a different footing. There are no allegations in the impugned FIR to the effect that they are privy to the sexual relationship between petitioner No.1 and respondent No.2. It is the case of the complainant that she has cohabited with petitioner No.1 at his residence and also at Delhi several times. She has nowhere alleged that petitioners No.2 and 3 have aided and abetted petitioner No.1 in these activities. The allegations made in the impugned FIR against petitioners No.2 and 3, even if taken at their face value, do not constitute any offence against

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them nor do they establish any link between the alleged activities of petitioner No.1 and petitioners No.2 and 3. The continuance of prosecution as against petitioners No.2 and 3 would, therefore, be an abuse of process of law. Thus, the same deserve to be quashed at this stage itself.

28) That takes us to the prayer of petitioner No.1 for grant of bail in anticipation of his arrest. The Supreme Court has laid down the principles governing grant of bail in anticipation of arrest in Constitution Bench judgment in the case of **Gurbaksh Singh Sibbia and ors vs. State of Punjab**, (1980) 2 SCC 565, which has been consistently followed by the Supreme Court in various other judgments like **Siddharam Satlingappa Mhetre v. State Of Maharashtra And Ors**, (2011) 1 SCC 694, Constitution Bench judgement in the case of **Sushila Aggarwal and others vs. State (NCT of Delhi) and another**, (2020) 5 SCC 1, and **Pratibha Manchanda and another vs. State of Haryana and another**, (2023) 8 SCC 181.

29) After analysing the legal position set out by the Supreme Court in the aforesaid judgments, it comes to the fore that the grant or refusal of bail in anticipation of arrest is a matter of discretion and there are several factors which are required to be taken into consideration while taking a

call on an application for grant of anticipatory bail. These factors cannot be exhaustively enumerated and the combined effect of such factors has to be taken into account by the court while granting or refusing anticipatory bail. The general considerations with which the Court has to be guided while considering the bail application are the nature and gravity of offence, the role attributed to the applicant and the facts peculiar to a particular case. In short, the Court has to strike a delicate balance between the right to liberty of an applicant and need for a free and fair investigation. Thus, the attending circumstances of a particular case are crucial in determining the question as to whether or not an applicant/accused is entitled to anticipatory bail.

30) In the light of the aforesaid principles, let us now advert to the facts of the present case. As already stated, there is material on record to suggest that petitioner No.1 has extended promise of marriage to respondent No.2 which he has failed to fulfil. There is also material on record to prima facie show that while extracting sexual favours from respondent No.2, petitioner No.1 has assured her that he would be entering into wedlock with her. Thus, it is not a case where the allegations against petitioner No.1 are frivolous in nature but it is a case where there is prima facie

material to support the allegations made in the FIR. The investigation of the case is still at its inception and the allegations made against petitioner No.1 are very serious in nature.

31) It is alleged that petitioner No.1 has sexually exploited respondent No.2/complainant over a long period of time by engaging her on social media and assuring her that he would be entering into wedlock with her. Granting bail in anticipation of arrest to petitioner No.1 at this stage would not only have an adverse impact on the investigation of the case but it will also have a discouraging effect upon the prosecutrix who, it appears, has fought against all odds to prosecute petitioner No.1.

32) With a view to ascertain the veracity of the allegations made by the complainant against petitioner No.1, the Investigating Agency will have to seize the electronic gadgets including cell phone of petitioner No.1 and analyse the data and in case petitioner No.1 is granted bail in anticipation of his arrest, it is likely that he would succeed in destroying the electronic evidence. The same will have an adverse impact on the investigation of the case. Therefore, grant of bail to petitioner No.1 at this stage would thwart the course of investigation.

(V).Conclusion:

33) For what has been discussed hereinabove, it is ordered that:

(I) Petition bearing CRM(M) No.216/2025, to the extent of petitioner No.1 is dismissed. However, to the extent of petitioners No.2 and 3, the petition is allowed and the impugned FIR and investigation thereof to the extent of said petitioners is quashed.

(II) Bail application bearing Bail App No.62/2025 filed by petitioner No.1 is dismissed.

(III) Bail App No.72/2025 filed by petitioners No.2 and 3 has been rendered infructuous on account of quashment of impugned FIR against them

(Sanjay Dhar)
Judge

Srinagar,
30.05.2025
"Bhat Altaf-Secretary"

Whether the order is reportable: **YES**