

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

Case No: Bail App No. 156/2026

Reserved on : 01.09.2026
Pronounced on : 11.09.2026
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Vikrant Kotwal

...Petitioner(s)/Appellant(s)

Through: Mr. K. Nirmal Kotwal, Sr. Advocate with Mr.
R.S.Isher, Advocate

Vs.

U.T.of J&K and another

.... Respondent(s)

Through: Mr. Vishal Bharti, Dy.AG
Ms. Vasudha Sharma, Advocate

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

JUDGMENT

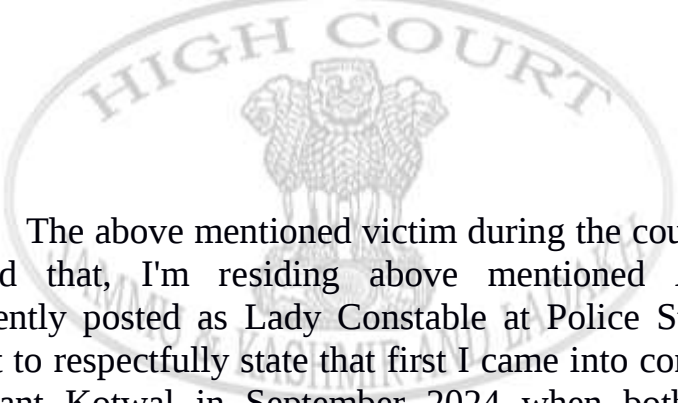
1. Through the medium of the instant petition, the petitioner seeks bail in anticipation of his arrest in FIR No. 178/2026, registered at Police Station Samba, for offences punishable under Sections 69, 83, 88 and 115(2) of the Bharatiya Nyaya Sanhita, 2023 (BNS).
2. The facts giving rise to the filing of instant petition are that the aforesaid FIR came to be registered on the basis of the complaint made by respondent No.2 (hereinafter referred to as "prosecutrix").

The contents of the complaint are as under:-

“..She is posted at P/S Samba and she came into contact with PSI Vikrant Kotwal in September 2024 while both of us were posted at P/S Samba. PSI Vikrant proposed marriage to me and on the basis of his repeated assurance; we entered into a live-in

relationship and stayed together openly as husband and wife for several months. During this period, I became pregnant twice. Both times, he (non-complainant) persuaded me to terminate the pregnancies by assuring me that we would marry soon. Thereafter, he made me consume unwanted-pills regularly. Later, I discovered that he was already married, a fact he had deliberately concealed from me. Despite this, he continued assuring me that he did not wish to live with his wife and only wanted to marry me. Whenever, I raised the issue of marriage, he kept postponing it with different excuses. He also physically assaulted me when I threatened to report the matter to higher authorities. Despite repeated promises, he never married me and continued maintaining a physical and emotional relationship with me.

Recently, I again became pregnant. The moment I informed him and shared the pregnancy report. He blocked me from everywhere and completely abandoned me. He is now denying the relationship and refusing all responsibility. She further stated that she mentally and emotionally shattered due to his conduct. I humbly request your kind intervention, a proper inquiry into his actions, and appropriate legal and departmental/under law action against him, so that I may receive justice, protection, and support C. Enquiry: During the course of enquiry, E/O called the complainant namely Nancy Devi L/Ct. No. 214 of P/S Samba and recorded her statement which are re-produced as under:-



The above mentioned victim during the course of inquiry stated that, I'm residing above mentioned Address, and presently posted as Lady Constable at Police Station Samba, want to respectfully state that first I came into contact with PSI Vikrant Kotwal in September 2024 when both of us were posted at Police Station Samba. Our interaction started through Instagram where we followed each other. Before that also, we already knew each other normally in P/S Samba.

Thereafter, we started meeting each other, on 8 October 2024, Vikrant was posted as an In-charge at Police Post Rakh Amb Talli, he called me to meet him, and for the first time we met near the Mansar side while sitting in the car. We talked for a long time, and after that we continued meeting regularly. We liked each other's behavior and became emotionally attached.

On 11 April, it was Vikrant's birthday, so we went out toward the Pathankot side, even further ahead of Pathankot. While roaming around there, it became evening. After that, we bought a cake from Pathankot and stayed overnight at hotel Zone by The Park Pathankot. We cut the cake there in the room itself. Then he told me, "Let's go to the bar and enjoy a little," but I refused to go to the bar. So he ordered non-vegetarian

food along with beer for me and whisky for himself inside the room. After cutting the cake, he told me that he did not have any friends with him and asked me to give him company. He gave me beer while he drank whisky. We both sat there and drank. As far as I remember, I drank about one bottle of beer, so I was also intoxicated, and he was intoxicated too. After that, I remember there was physical touch between us, and that day was the first time we became completely physical and intimate with each other. The next day, we returned home.

After that, he started telling me that we would get married soon and that he would never betray me in life. Thereafter, he proposed marriage to me. When he said that we should get married, I asked him when we should proceed so that I could speak to my family. However, from that point onward, he kept giving me dates after dates for the marriage, first saying after two or three months, then January, then February and he continued postponing the matter month after month. During this period, we started living together. From around November onwards, we began sharing a room together. We slept in the same room and lived together like husband and wife. Except for duty hours, we remained together day and night. After duty hours, I used to stay with him in his room, cook food for him, and take care of everything as a wife would. He kept me with him openly before everyone.

During this relationship, I became pregnant twice. When I conceived for the first time, I informed him clearly. He brought medicines for termination of pregnancy and persuaded me to terminate it by saying that it was not the right time and that we would properly plan children after marriage, which according to him was going to happen very soon. Thereafter, I again became pregnant, and once again he repeated the same conduct by arranging medicines and convincing me that it was not the right time. Meanwhile, we continued living together normally. Gradually, people around us started talking about our relationship. At that point, he stopped me from speaking about our relationship to my colleagues and told me that people did not want us to stay together. He repeatedly told me that I only needed to trust him because he considered himself my husband. Such was my trust in him that his phone used to remain with me all the time. He had blocked his wife everywhere. It was only when his wife, out of frustration, changed her True Caller name to _____ that I became suspicious and questioned him about her identity. Only then, after being confronted, he admitted to me that he was married. Even after admitting this fact, he continuously told me that he did not share a good relationship with his wife. He said that she harassed his mother, never cared for his family, never cooked for them, and that he did not want to continue living with her.

By that time, however, a lot had already happened, including my two miscarriages caused because of his assurances. Thereafter also, he continued staying with me. I trusted him completely. Around that time, since he had not

gone home for almost a year, his family members became suspicious and when they came to Samba and called him, he refused to meet them and said, "you go back home. I don't want to meet you." At that point, I told him that I would approach higher authorities and inform the IGP that I had been deceived. On hearing this, he physically assaulted me. He slapped me twice, threw away the keys of my Scooty, pushed me inside the room, and prevented me from leaving.

After realizing what he had done, he picked up a beer bottle lying nearby and struck it on his own head, causing bleeding injuries to himself. Thereafter, when the matter spread among people and everyone came to know about the incident, he got himself in Government District Hospital Samba. His family members were informed and they came and took him away from the hospital. Even at that time, he secretly called me from the hospital washroom and assured me that we were together and that he was only going home for few days due to his condition. Even after reaching home, he remained in contact with me through calls and messages. However, after four days, he permanently stopped communicating with me.

Whenever I contacted his family, they falsely informed me that he had suffered a brain hemorrhage, and was being taken to Chandigarh. Lies after lies were told to me. When his mother came to know about our relationship, she even asked me how much money I would require to step back from the relationship. Thereafter, people started spreading rumors that I had taken money from him and therefore had not taken any action against him. However, the truth is that our relationship had never ended. After going home, he got himself transferred to District Jammu. Even while going there, he did not properly meet me because according to him, his family had forbidden him from meeting me.

Despite all this, after joining at Nawababad Police Station he again contacted me on the very first day of duty and assured me that all rumors were false, that he only wanted to marry me, and that he wanted to stay with me alone. He repeatedly stated that he had no relationship with his wife and did not want any future with her. Thereafter, he resumed meeting me continuously. His routine became such that he used to spend two nights with me and one night at home. We travelled together, spent time together everywhere, and continued our relationship normally.

When his transfer later took place to DKR Range, Doda, he still continued the relationship. Around Shivratri, we observed fast together, visited a temple together, and in front of God he assured me there also that he would marry me formally very soon. Whenever, I questioned him honestly and told him that if he wanted to stay with his wife and family then I would step back, he repeatedly insisted that he only wanted to live with me and not with her. Even after joining district Doda, whenever he came on leave or for court attendance, he stayed with me regularly. Whenever I raised the issue of marriage, he

kept postponing it and giving excuses. At one point, I asked him to marry me in Arya Samaj Mandir. However, he refused by saying that if there was documentary proof of marriage, his wife could use it to file a case of bigamy against us and affect his promotion.

Thereafter, I suggested marriage in a temple. He again avoided it by saying he did not get sufficient leave and that whenever he came to meet me, I only spoke about marriage instead of spending peaceful time with him.

On 10 April, around my birthday, we even left for Arya Samaj Mandir at Kathua along with my sister. However, after reaching there, he showed me on Google that the temple had closed. Instead, he took me to Patnitop, then to Doda and Bhaderwah where we stayed together for 4 days before returning. Even after all this, he continued assuring me that he only wanted to stay with me and not with his wife and we will soon get marry formally.

Then on 3 May, Vikrant came to meet me from Doda. I told him, "Let's get married in a temple." He said that it would get late and that he would reach by around 8 pm. I replied, "It's okay, then we can call a Pandit here." He agreed and said, "Call the Pandit." After that, we called a Pandit in the morning and got married on the morning of 4 May. After marriage Vikrant now tells me that he needs 4 years' time to inform his family. When I refused to give him that much time, he then said, "Give me 1 year. My promotion is due, and after that I will make everything right and keep you with me officially as my wife." Thereafter also, he continued staying with me physically and emotionally. On 7 May also, he stayed with me during the night. On morning 8 May, he went home. During this time, he again assured me that after one year he would inform his family and formally settle everything.

However, thereafter my health deteriorated and I underwent medical testing, through which I came to know that I was pregnant again. The moment I sent him the pregnancy report, he blocked me from everywhere. His wife even contacted me asking whether we were still in touch. However, before his family, he completely denied our relationship and even swore falsely upon his parents that he had no connection with me. Despite my repeated attempts to contact him, he has completely refused to speak to me. I sent him the pregnancy reports, but he ignored everything and has now started behaving as if none of these incidents, meetings, or promises ever happened.

Today I am left completely alone with this pregnancy. I have heard many rumors that I took money from him and therefore did not take any action, whereas the truth is that our relationship had never ended. Even till 7 May, he was continuously telling me that he loved only me and wanted to spend his life with me. Despite my repeated attempts to contact him, he has now clearly refused to maintain any relationship with me and is telling me that I may do whatever I want and

approach any authority I wish, as he no longer wishes to keep any relation with me.

In this manner, PSI. Vikrant Kotwal has completely ruined and devastated my life. By giving me false promises of marriage, he continued to sexually exploit me. On two earlier occasions, he also made me undergo miscarriage/abortion, and now for the third time, I am carrying his child again.

I seek justice and desire legal action against Vikrant Kotwal.”

3. It appears that the aforesaid complaint was made by the prosecutrix before the higher authorities of the Police Department, which led to the holding of a fact-finding inquiry by the Inquiry Officer (Additional SP, Samba). It also appears that during the course of the inquiry, a questionnaire was served upon the petitioner-accused, and he responded to the said questionnaire. The Inquiry Officer also obtained the photographs of the marriage between the petitioner and the prosecutrix and he also recorded the statement of the Pandit who had solemnized their marriage. After conducting the inquiry, the Inquiry Officer recommended that the matter requires proper investigation, as, according to the Inquiry Officer, the petitioner, despite being a married person, duped the prosecutrix on false assurances and promises of marriage and did not solemnize a real marriage with her. It was recommended by the Inquiry Officer that a detailed investigation be conducted and, on the basis of this recommendation, the aforesaid FIR came to be registered.
4. It has been contended by the petitioner that the prosecution case itself reveals that the allegations arose out of a prolonged relationship between two adults who remained in a consensual relationship for several months. It has been submitted that, even as per the prosecution case, despite the prosecutrix coming to know about the marital status

of the petitioner, she continued to maintain her relationship with the petitioner; therefore, it is not a case where the consent of the prosecutrix was obtained under misconception of facts.

5. It appears that, prior to approaching this Court, the petitioner had approached the Court of learned Principal Sessions Judge, Samba, for grant of bail in anticipation of his arrest, but the application came to be dismissed by the said Court in terms of order dated 23.07.2026. Learned Sessions Judge, while dismissing the application of the petitioner, has observed that the material on record suggests that the petitioner had extended promises of marriage to the prosecutrix time and again, which he had failed to fulfil, and that he had extracted sexual favours from her on the assurance that he would enter into wedlock with her without fulfilling these promises. Thus, according to the learned Sessions Judge, once there was material supporting the allegations levelled in the FIR and the investigation was still at its inception, having regard to the gravity of the offence, the petitioner did not deserve the concession of bail.
6. It has been contended by the petitioner that the order passed by the learned Sessions Judge is not sustainable in law, as the said Court has been swayed by the seriousness of the allegations made against the petitioner, without considering that there is no material to substantiate the allegations.
7. The respondent-State as well as the prosecutrix have contested the bail application and they have also filed their respective versions.
8. The respondent-State, after narrating the allegations made in the FIR against the petitioner and the facts revealed during the course of the

departmental inquiry, has contended that the petitioner is evading his arrest and is presently absconding. It has been contended that the petitioner has committed a serious offence and, if he is enlarged on bail, there is a reasonable apprehension that he would tamper with the prosecution witnesses.

9. Respondent No. 2 (prosecutrix), in her reply to the bail application, after narrating the allegations levelled by her in the FIR, has submitted that, right from the day of registration of the FIR, the police agency has not taken any action against the petitioner and that he is being continuously shielded by his own department. It has been contended that the petitioner has committed a very serious offence and, having regard to the fact that the petitioner is a police official who is supposed to be a protector of law, his offence becomes all the more grave in nature.

10. I have heard learned counsel for the parties and perused the record of the case including the case diary.

11. So far as the principles governing the grant of anticipatory bail are concerned, the same have been laid down by the Constitution Bench of the Supreme Court in **Gurbaksh Singh Sibbia and others Vs. State of Punjab, (1980) 2 SCC 565**. The Court, while observing that the question whether bail should be granted or not depends for its answer upon a variety of circumstances, the cumulative effect of which must enter into the judicial verdict, held as under:-

“In regard to anticipatory bail, if the proposed accusation appears to stem not from motives of furthering the ends of justice but from some ulterior motive, the object being to injure and humiliate the applicant by having him arrested, a direction

*for the release of the applicant on bail in the event of his arrest would generally be made. On the other hand, if it appears likely, considering the antecedents of the applicant, that taking advantage of the order of anticipatory bail he will flee from justice, such an order would not be made. But the converse of these propositions is not necessarily true. That is to say, it cannot be laid down as an inexorable rule that anticipatory bail cannot be granted unless the proposed accusation appears to be actuated by mala fides; and, equally, that anticipatory bail must be granted if there is no fear that the applicant will abscond. There are several other considerations, too numerous to enumerate, the combined effect of which must weigh with the court while granting or rejecting anticipatory bail. The nature and seriousness of the proposed charges, the context of the events likely to lead to the making of the charges, a reasonable possibility of the applicant's presence not being secured at the trial, a reasonable apprehension that witnesses will be tampered with and "the larger interests of the public or the state" are some of the considerations which the court has to keep in mind while deciding an application for anticipatory bail. The relevance of these considerations was pointed out in *The State v. Captain Jagjit Singh*, which, though, was a case under the old Section 498 which corresponds to the present Section 439 of the Code. It is of paramount consideration to remember that the freedom of the individual is as necessary for the survival of the society as it is for the egoistic purposes of the individual. A person seeking anticipatory bail is still a free man entitled to the presumption of innocence. He is willing to submit to restraints on his freedom, by the acceptance of conditions which the court may think fit to impose, in consideration of the assurance that if arrested, he shall be enlarged on bail".*

12. Again the Constitution Bench of the Supreme Court in the case of **Sushila Aggarwal Vs. State (NCT of Delhi)** , 2020(5) SCC 1 has held that the 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 assessing whether to grant anticipatory bail or refusing it. It has been held that whether to grant or not is a matter of discretion and that anticipatory bail can be granted depending upon the conduct and behaviour of the accused.

13. In the light of the aforesaid legal position, let us now advert to the facts of the present case. It has been vehemently contended by learned Senior Counsel appearing for the petitioner that, when the contents of the impugned FIR are read as a whole, it becomes clear that the physical relationship, if any, between the petitioner and the prosecutrix was consensual in nature and that there was no fraud or deception on the part of the petitioner while obtaining her consent for the physical relationship. On this ground, it is being contended that, even if the allegations made in the FIR are taken to be true at their face value, it appears to be a case of false implication of the petitioner; hence, he deserves to be enlarged on bail.

14. There is no doubt about the fact that the offences for which the petitioner has been booked are grave in nature, and there is no quarrel with the proposition of law that the gravity of the offence and the severity of punishment are important considerations while considering a plea for grant of anticipatory bail to the accused. However, a prima facie view of the genuineness of the charge against the accused is a factor which is always required to be considered.

15. In the above context, if we have a look at the allegations made in the FIR, the prosecutrix is stated to have come into contact with the petitioner while both of them were posted at Police Station, Samba, in the month of September, 2024. According to the prosecutrix, the petitioner extended a proposal of marriage to her and, on the basis of his repeated assurances, they entered into a live-in relationship and stayed openly together as husband and wife for several months, during which she became pregnant twice and, on both occasions, she was persuaded by the petitioner to terminate the pregnancy. It is stated in the FIR that the prosecutrix later discovered that the petitioner was already married, a fact which he had concealed from her. She goes on to state that, despite knowing this fact, the petitioner continued to extend assurances to her that he would marry her, but kept on postponing the marriage on different pretexts, as a result of which the prosecutrix continued to maintain a physical and emotional relationship with the petitioner and again became pregnant. It is mentioned by the prosecutrix in the FIR that, when she confronted the petitioner about his marital status, he admitted that he is a married person, but at the same time told her that he does not want to live with his wife and continued to stay with the prosecutrix. She further alleged that the family members of the petitioner came to Samba, but he refused to meet them. She has further alleged that even the mother of the petitioner came to know about their relationship and told her to back out and offered her money for the said purpose.

16. After narrating the events with regard to the continuation of their relationship even after coming to know about the marital status of the

petitioner, the prosecutrix has stated that, on 03.05.2025, they called a Pandit and got married in the morning of 04.05.2025. It is further stated that, when she came to know about her third pregnancy, she disclosed this fact to the petitioner, upon which the petitioner blocked her. She further stated that even the wife of the petitioner was in touch with her. The prosecutrix further alleged that, despite her repeated attempts to contact the petitioner, he refused to maintain the relationship with her.

17. During the course of investigation, the prosecutrix recorded her statement before the Magistrate under Section 183 of the BNSS, 2023. In her statement recorded before the Magistrate, the prosecutrix reiterated and reaffirmed the allegations made by her in the FIR. She also produced photographs of her marriage with the petitioner, which, according to her, had taken place on 07.05.2025.

18. From the narration of the aforesaid facts, it does appear that, initially, the prosecutrix was not aware of the marital status of the petitioner and the two of them started liking each other and entered into a physical relationship. The prosecutrix conceived twice during this period and, on both occasions, she was persuaded to terminate the pregnancy. However, the matter does not end here. The prosecutrix, even after coming to know that the petitioner was a married person having two children, continued to have a relationship with him. She conceived for the third time. Despite being an educated, major girl aged about 25 years working in the Police Department, she entered into wedlock with the petitioner, knowing fully well that he was already a married person and that his marriage with her was not valid

in the eyes of law. It is not a case where the petitioner, after concealing his marital status, induced the prosecutrix into a wedlock; rather, it is a case where both of them were aware that the petitioner was a married person and that his second marriage during the subsistence of his first marriage was not valid. Thus, prima facie it can be stated that while the petitioner developed physical relationship with the prosecutrix he did not obtain her consent on the belief that her marriage with the petitioner is valid.

19. In the light of the aforesaid sequence of events, the question arises whether there is material on record to support the allegations of the prosecutrix that her consent for physical relationship was obtained under misconception of fact. In this regard, the legal position has been analyzed by the Supreme Court in the case of **Mahesh Danu Khare v. State of Maharashtra, (2024) 11 SCC 398**, in the light of the facts of the said case, in the following manner:-

“30. It may be also noted that there may be occasions where a promise to marry was made initially but for various reasons, a person may not be able to keep the promise to marry. If such promise is not made from the very beginning with the ulterior motive to deceive her, it cannot be said to be a false promise to attract the penal provisions of Section 375 IPC, punishable under Section 376 IPC.

31. In the present case, even assuming that the appellant had made the promise since 2008 when they met for the first time, the fact that they remained unmarried for a long period till 2017 without there being any protest or objection by the complainant, does not indicate the intention at the initial stage itself to make the promise falsely to marry the complainant. Making an allegation of non-fulfilment of promise to marry without undue delay by the promisee would, on the other hand, be an indicator of a false promise being made from the initial stage. In the present case, what is not in dispute is that the physical relationship between the appellant and the complainant continued for a long period of about a decade and as such it is difficult to infer that the appellant had made a false promise since the initial stage and continued to make false

promises to marry her on the basis of which she also continued to have physical relationship with him.

32. In the present case, the nature of relationship between the appellant and the complainant can be characterised by the following attributes:

32.1. The appellant and the complainant were acquainted with each other since 2008. The complainant herself admits that the appellant has been in physical relationship since then till 2017 without protest in spite of alleging that the appellant had done so without her consent.

32.2. The physical relationship was going on routinely. But the complainant in her complaint states that after she got a rented room in Shirvane, Nerul Sector 1, Navi Mumbai, in December, 2010, the appellant used to come every day and had sexual intercourse every day, though without her consent and by giving false promise of marriage.

32.3. The complainant does not appear to be a naive and gullible woman who was susceptible to deceit while maintaining physical relationship with the appellant and the allegation of false promise surfaced only when the appellant refused to provide further financial and other assistance.

32.4. The conduct of the complainant clearly shows that she is a mature person clearly capable of understanding the consequences of her acts and she was fully aware of the kind of illicit relationship she was maintaining with a married person.

32.5. The complainant was fully aware that the appellant was already married and had two wives, though one of them was not keeping well.

33. Thus, from the above it appears that it is more of an extra-marital affair during the aforesaid period without any insistence by the complainant for getting married to the appellant. The fact that the complainant continued to have a physical relationship for a long time without any insistence on marriage would indicate the unlikelihood of any such promise made by the appellant for marrying her and it rather indicates that the relationship was a consensual one.

34. In our opinion, the longer the duration of the physical relationship between the partners without protest and insistence by the female partner for marriage would be indicative of a consensual relationship rather than a relationship based on false promise of marriage by the male partner and thus, based on misconception of fact.

35. Moreover, even if it is assumed that a false promise of marriage was made to the complainant initially by the appellant, even though no such cogent evidence has been brought on record before us to that effect, the fact that the relationship continued for nine long years, would render the plea of the complainant that her consent for all these years was under misconception of fact that the Appellant would marry her implausible. Consequently, the criminal liability attached to such false promise would be diluted after such a long passage of time and in light of the fact that no protest was registered by the complainant during all those years. Such a prolonged continuation of physical relationship without demurral or remonstrance by the female partner, in effect takes out the sting of criminal culpability and neutralises it.

36. It will be very difficult to assume that the complainant, who is otherwise a mature person with two grown up children, was unable to discover the deceitful behaviour of the appellant who continued to have sexual relationship with her for such a long period on the promise of marriage. Any such mendacious act of the appellant would have been exposed sooner without having to wait for nine years.

37. The inference one can draw under the circumstances is that there was no such false promise made to the complainant by the appellant of marriage by continuing to have physical relationship so as to bring this act within the province of Section 376 IPC and therefore, there was no vitiation of consent under misconception of fact.

38. Further, it appears that discontinuance of financial support to the complainant, rather than the alleged resiling from the promise to marry by the appellant appears to be the triggering point for making the allegation by the complainant after a long consensual relationship for about nine years.

39. In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful.

40. It is evident from the large number of cases decided by this Court dealing with similar matters as discussed above that there is a worrying trend that consensual relationships going on for prolonged period, upon turning sour, have been sought to be criminalised by invoking criminal jurisprudence.”

20. From the above analysis of legal position on the issue it is clear that once there is a prolonged association or physical relationship, it would be inconceivable that the same would not be consensual in nature, unless there are circumstances which indicate to the contrary. In the present case, as already stated, the petitioner and the prosecutrix lived together for a period of more than a year, during which period the prosecutrix conceived as many as three times. During this relationship, the prosecutrix came to know about the marital status of the petitioner, but, in spite of knowing the same, she continued to maintain relationship with the petitioner in the hope that he would divorce his wife and enter into wedlock with her. The prosecutrix, as per her own statement, despite knowing that the petitioner had a family, including two children, and that his mother and wife were not in favour of his divorce from his wife, continued to maintain the relationship with the petitioner and entered into a marriage which, to her own knowledge, was not valid in law. From these circumstances, it can prima facie be inferred that her relationship with the petitioner was consensual in nature. Although initially she may not have been aware of the marital status of the petitioner, her subsequent conduct of continuing the relationship with him despite knowing his marital status gives rise to an inference that her relationship with the petitioner was not based upon a misconception of fact.

21. Although it would be premature for this Court to deeply analyze the material collected by the Investigating Agency in support of its case against the petitioner, yet, for the limited purpose of deciding this application, it does appear that there is force in the contention of the

petitioner that the promise of marriage by a married man to a woman is improbable and that it is highly unlikely that an unmarried woman would give her consent to having a sexual relationship with a married man by believing his promise of marriage. This Court would not like to comment upon the merits of the allegations made by the prosecutrix; however, the material on record does suggest that the prosecutrix and the petitioner were deeply in love with each other, which resulted in sexual intercourse between the two.

22. Having regard to the foregoing discussion, particularly keeping in view the fact that the prosecutrix continued her relationship with the petitioner despite knowing his marital status, her conduct in levelling allegations on account of a false promise of marriage against the petitioner creates a genuine doubt, which the Investigating Agency will have to address and answer during the course of investigation of the case, so as to ascertain whether the ingredients of cheating are made out in the present case.

23. So far as the contention of the Investigating Agency that the petitioner is not cooperating with the investigation of the case is concerned, the same is belied by the stand of the police department, inasmuch as the petitioner has submitted himself before the Inquiry Officer and has answered the questionnaire administered to him. It is not the case of the police department that the petitioner is not attending his duties; therefore, the very assertion of the Investigating Agency that the petitioner is absconding cannot be believed. In any case, the petitioner, being an employee of the police department, is not only under the investigative control of the said department but he is also

subject to its disciplinary control. It is always open to the police department to take coercive measures against the petitioner so as to secure his attendance for the purpose of investigation. Hence, the possibility of abscondence of the petitioner is minimal.

24. For the foregoing reasons, the petition is allowed and it is directed that the petitioner be admitted to bail in the event of his arrest in the aforesaid FIR, subject to the following terms and conditions:

- (i) That the petitioner shall be released on bail on furnishing bail bond in the sum of Rs. 50,000/- and a personal bond of the like amount to the satisfaction of the Investigating Officer concerned.
- (ii) That the petitioner shall remain available before the Investigating Officer and shall appear before him as and when required in connection with the investigation of the aforesaid case.
- (iii) That the petitioner shall not, directly or indirectly, attempt to thwart the process of investigation or tamper with the prosecution witnesses in any manner whatsoever.
- (iv) That the petitioner shall not leave the territorial limits of the Union Territory of Jammu and Kashmir without the prior permission of the Investigating Officer.
- (v) That in the event the Investigating Agency notices any violation of any of the conditions imposed upon the petitioner; the Investigating Agency shall be at liberty to move an appropriate application for cancellation of the bail granted to the petitioner.

25. The case diary produced by learned counsel for the respondent No.1 is returned to him in the open Court.

(Sanjay Dhar)
Judge

Jammu
11.09.2026
Madan Verma-Secy

Whether order is speaking?	Yes
Whether order is reportable?	Yes