

**HIGH COURT OF TRIPURA
AGARTALA
A.B. No.44 of 2025**

Sri Pranab Biswas,
S/o-Sri Ratan Biswas, resident of vill-Jolaibari, Bangali Para, near
Debdaro H.S. School, P.S.-Baikhora, Dist.-South Tripura, Pin-799141.

---- Accused applicant(s)

Versus

The State of Tripura

----Respondent(s)

For Applicant(s)	:	Mr. Bibhal Nandi Majumder, Sr. Adv. Mr. Dhruba Jyoti Saha, Adv.
For Respondent(s)	:	Mr. Raju Datta, P.P. Mr. Rajib Saha, Addl. P.P.

HON'BLE MR. JUSTICE BISWAJIT PALIT

Order

11/06/2025

This pre-arrest bail application under Section 482 of BNSS, 2023 is filed for granting bail to the accused applicant, Sri Pranab Biswas in connection with West Agartala Women PS case No.2025 WAW 017 under Sections 376/323/417/506 of IPC.

Heard Learned Senior Counsel, Mr. Bibhal Nandi Majumder assisted by Learned Counsel, Mr. Dhruba Jyoti Saha appearing on behalf of the accused-applicant. Also heard Learned P.P., Mr. Raju Datta along with Learned Addl. P.P., Mr. Rajib Saha appearing on behalf of the State-respondent.

Learned P.P. has produced the case diary. The records from the concerned Court below is also received.

In course of hearing, Learned Senior Counsel appearing on behalf of the accused applicant submitted before this Court that from the contents of the F.I.R., no allegation for commission of offence of

rape could be made out against the accused applicant. According to Learned Senior Counsel, from the contents of the F.I.R. to the extent formal charge under Section 417 can be made out, if ultimately the case is ended in charge-sheet. Learned Senior Counsel also drawn the attention of this Court referring different contents of the F.I.R. and submitted that in the present case both the alleged victim and the accused applicant are major and matured enough and if the statement of the victim is to be believed, in that case if the first offence is committed in the year 2021 then why till 2025 i.e. before the date of filing of F.I.R. the victim totally remained silent without approaching to any forum. Furthermore, from the contents of the F.I.R. it is clear that with the consent of the victim both the present accused applicant and the victim herself continued physical relation with each other. So, Learned Senior Counsel submitted that there is no evidence of commission of rape against the accused applicant. Learned Senior Counsel further drawn the attention of this Court referring Annexure-2 annexed with this bail application i.e. the legal notice wherein in para No.9 it was clearly informed by the present victim to the accused that he is to ensure production of order of divorce with his wife which shows that the victim never alleged commission of rape against the accused applicant and there was no false promise of marriage on his part. Finally, Learned Senior Counsel referred Annexure-4 i.e. the copy of order dated 06.05.2022 passed by Learned Special Judge (NDPS), West Tripura, Agartala in Sidhai P.S. Case No.56 of 2020 wherein it appears that the present victim was one of the accused in an NDPS case which shows the conduct of the victim. Learned Senior Counsel

further referred the following citations and urged for releasing the accused applicant on bail in any condition.

Learned Senior Counsel referred one citation of the Hon'ble Supreme Court of India in **Pramod Suryabhan Pawar vs. The State of Maharashtra & Anr., (2019) 9 SCC 608** wherein in para Nos.9, 10, 14, 16 and 21, Hon'ble the Apex Court observed as under:

"9. The present proceedings concern an FIR registered against the appellant under Sections 376, 417, 504 and 506(2) IPC and Sections 3(1)(u), (w) and 3(2)(vii) of the SC/ST Act. Section 376 IPC prescribes the punishment for the offence of rape which is set out in Section 375. Section 375 prescribes seven descriptions of how the offence of rape may be committed. For the present purposes only the second such description, along with Section 90 IPC is relevant and is set out below:

"375. *Rape*.—A man is said to commit "rape" if he—

under the circumstances falling under any of the following seven descriptions—

Firstly.—

Secondly.—Without her consent.

Explanation 2.—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity."

"90. *Consent known to be given under fear or misconception*.—A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or"

10. Where a woman does not "consent" to the sexual acts described in the main body of Section 375, the offence of rape has occurred. While Section 90 does not define the term "consent", a "consent" based on a "misconception of fact" is not consent in the eye of the law.

14. In the present case, the "misconception of fact" alleged by the complainant is the appellant's promise to marry her. Specifically in the context of a promise to marry, this Court

has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. In *Anurag Soni v. State of Chhattisgarh* [*Anurag Soni v. State of Chhattisgarh*, (2019) 13 SCC 1 : 2019 SCC OnLine SC 509] , this Court held : (SCC para 12)

"12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the prosecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 IPC and can be convicted for the offence under Section 376 IPC."

Similar observations were made by this Court in *Deepak Gulati v. State of Haryana* [*Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] (*Deepak Gulati*) : (SCC p. 682, para 21)

"21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused;"

16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a "misconception of fact" that vitiates the woman's "consent". On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. The "consent" of a woman under Section 375 is vitiated on the ground of a "misconception of fact" where such misconception was the basis for her choosing to engage in the said act. In *Deepak Gulati* [*Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] this Court observed : (SCC pp. 682-84, paras 21 & 24)

"21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and *whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused*, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention

whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. *In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance*". Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, [Ed. : The matter between two asterisks has been emphasised in original.] *unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her* [Ed. : The matter between two asterisks has been emphasised in original.] ."

(emphasis supplied)

21. The allegations in the FIR do not on their face indicate that the promise by the appellant was false, or that the complainant engaged in sexual relations on the basis of this promise. There is no allegation in the FIR that when the appellant promised to marry the complainant, it was done in bad faith or with the intention to deceive her. The appellant's failure in 2016 to fulfil his promise made in 2008 cannot be construed to mean the promise itself was false. The allegations 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 the case that she was deceived by the appellant's promise of marriage. Therefore, even if the facts set out in the complainant's statements are accepted in totality, no offence under Section 375 IPC has occurred."

Learned Senior Counsel further referred another citation of Hon'ble Apex Court in **Rajnish Singh alias Soni vs. State of Uttar Pradesh & Anr., (2025) 4 SCC 197** wherein in para Nos.36, 38 and 41, Hon'ble the Apex Court observed as under:

"36. Further, on the perusal of the statement made by the complainant under Section 161CrPC, it is evident that she came to know about the relations between the appellant and Namrata in the year 2020-2021. Thus, once the complainant was aware that the appellant had broken the ties with her and was involved in a relationship with another woman, there was no reason for her to hold back from filing the FIR.

38. It is trite that there is a distinction between rape and consensual intercourse. This Court in *Deepak Gulati v. State of Haryana* [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] , differentiated between a mere breach of promise and not fulfilling a false promise and held that an accused will only be liable if the Court concludes that his intentions are mala fide and he has clandestine motives. The relevant extract is reproduced hereinbelow : (SCC pp. 682-84, paras 21 & 24)

"21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The 'failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance'. Section 90IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

(emphasis in original and supplied)

41. Thus, by no stretch of imagination, can this Court be convinced that present is a case wherein the appellant is liable to be prosecuted for having sexually exploited/assaulted the complainant based on a false promise of marriage. The allegations of the complainant are full of material contradictions and are ex facie unbelievable. Throughout the prolonged period of 16 years, the complainant kept completely quiet about the alleged sexual abuse, meted out to her by the appellant until she learnt that the appellant had married another woman. Further in complete contradiction to the case set up in the FIR, the complainant has on many occasions portrayed herself to be the wife of the appellant and thus, evidently, they lived together as man and wife. Additionally, the long gap of 16 years between the first alleged act of sexual intercourse, continued relations for one-and-a-half decade till the filing of

the FIR convinces us that it is a clear case of a love affair/live-in relationship gone sour.”

Further, Learned Senior Counsel referred another citation of Hon’ble Supreme Court of India in **Batlanki Keshav (Kesava) Kumar Anurag vs. State of Telangana & Anr., 2025 SCC OnLine SC 1258** wherein in para Nos.23 and 31, Hon’ble the Apex Court observed as under:

“23. The de-facto complainant is a highly educated woman aged 30 years. In FIR No. 751 of 2021, she has only alleged about a single sexual encounter dated 24th June, 2021. On the contrary, in the impugned FIR No. 103 of 2022 which came to be lodged on 1st February, 2022, 4-5 such incidents have been referenced each of which ante-date the FIR No. 751 of 2021. It is thus inherently improbable that the complainant would have forgotten or omitted to mention these incidents of sexual intercourse made under a false promise of marriage while filing the earlier FIR No. 751 of 2021 because all the incidents had already taken place as per the version of the complainant up to 7th June, 2021 whereas, the FIR No. 751 of 2021 came to be lodged on 29th June, 2021.

31. Resultantly, FIR bearing Crime No. 103 of 2022 dated 1st February, 2022, FIR bearing Crime No. 751 of 2021 dated 29th June, 2021, and all proceedings sought to be taken as a consequence thereof, are quashed in entirety.”

Lastly, Learned Senior Counsel also relied upon another citation of Hon’ble Supreme Court of India in **Sonu alias Subhash Kumar vs. State of Uttar Pradesh & Anr., (2021) 18 SCC 517** wherein in para Nos.8, 9, 10 and 11, Hon’ble the Apex Court observed thus:

“8. In Pramod Suryabhan Pawar [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , while dealing with a similar situation, the principles of law which must govern a situation like the present were enunciated in the following observations : (SCC p. 618, para 16)

“16. Where the promise to marry is false and the intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to convince her to engage in sexual relations, there is a “misconception of fact” that vitiates the woman's “consent”. On the other hand, a breach of a promise cannot be said to be a false promise. To establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it.”

9. Further, the Court has observed : (Pramod Suryabhan Pawar case [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , SCC p. 620, para 18)

"18. To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the "consent" was vitiated by a "misconception of fact" arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

10. Bearing in mind the tests which have been enunciated in the above decision [Pramod Suryabhan Pawar v. State of Maharashtra, (2019) 9 SCC 608 : (2019) 3 SCC (Cri) 903] , 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 482CrPC, 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 482CrPC on the basis that it was only the evidence at trial which would lead to a determination as to whether an offence was established.

11. For the above reasons, we allow the appeal and set aside the impugned judgment and order of the High Court dated 26-9-2019 [Sonu v. State of U.P., 2019 SCC OnLine All 6911] . In view of the reasons which have been adduced earlier, the charge-sheet dated 25-4-2018, which has been filed in pursuance of the investigation which took place, shall stand quashed. The order of the trial court dated 3-10-2018 taking cognizance shall accordingly stand quashed and set aside."

Referring all these citations Learned Senior Counsel drawn the attention of this Court that in the case at hand there is no evidence on record that the present accused applicant made false promise of marriage to the victim and continued physical relation with her and as such no case under Section 376 of IPC is made out against him. So, Learned Senior Counsel urged for releasing the accused applicant on bail in any condition.

On the other hand, Learned P.P. appearing on behalf of the State-respondents relied upon a citation of the Hon'ble Supreme Court of India in **Naim Ahamed vs. State (NCT of Delhi)** reported in **(2023) 15 SCC 385** wherein in para No.21 Hon'ble the Apex Court observed as under:

"21. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such consent was no consent in the eye of the law and the case fell under Clause Secondly of Section 375IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfil his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court."

Referring the same, Learned P.P. submitted that in the instant case the accused applicant made physical relation with the victim under the misconception of fact that the accused applicant gave a false promise to marry her suppressing the fact of his earlier marriage and having one son. Thus, the accused applicant continued physical relation with the victim girl which amounts to rape. Learned P.P. referring the contents of the F.I.R. drawn the attention of this Court that the citations as referred by Learned Senior Counsel for the accused applicant are not applicable in the instant case and urged for dismissal of the instant bail application.

To reply, Learned Senior Counsel further submitted that he also relied upon the said judgment referred by the prosecution and in the said judgment Hon'ble the Apex Court set aside the judgment and order passed by the High Court and the Sessions Court and the appellant was acquitted. Learned Senior Counsel further submitted that the submission made by Learned P.P. cannot be accepted as the facts and circumstances of this case does not reveal commission of

offence of rape by the accused applicant and thereby urged for rejection of the submissions made by Learned P.P.

Considered.

The present prosecution was based upon submission of an F.I.R. laid by the alleged victim (name withheld) to O/C, West Agartala Women PS alleging *inter alia* that on 26.06.2021 she came into contact with the accused applicant through Facebook. After that, the accused applicant took her phone number and added her on Whatsapp. He started calling her at various times and started initiating conversations. The accused applicant also desired to meet her and accordingly, the victim invited him to her younger brother's residence at Teliamura on 17.07.2021 when there was Manasa Puja. Thus, they developed good relation. The accused applicant introduced himself as a Rifleman serving under 6th Battalion TSR and the P.G. of Commandant Mr. Jayanta Chakraborty. The accused presented himself in such a manner that the victim laid confidence upon him and shared her past activities with him. On 18.07.2021, the accused applicant called her over phone and told her that he was going to Agartala and he wanted to see her quarters as she was also serving as police personnel. Believing him the victim allowed the accused to come to her quarter when he forcefully committed rape upon her. That time she was mentally disturbed but the accused assured her that he would marry her after talking to his family. Thereafter, he started regularly visiting the quarters of the informant-cum-victim and continued physical relation with her. He also extorted Rs.20,00,000/- from her telling her about his financial hardships and she withdrew the money from her salary and GPF accounts. The accused also took her to

Shillong and Cherrapunji when they went to the residence of the sister of the victim and stayed together there as husband and wife. The accused applicant also took her to Jampui Hill. He also introduced himself to all of her relatives, staff and officers as her future groom and said that he would marry her. In February, 2022 she came to know that the accused was a married person and has a son. When she could understand that the accused cheated her she broke down. The accused assured her that he would marry her after divorcing his first wife. Not only that he also used to cause physical assault to her and he also informed the victim that he has filed a case of divorce against his wife but later on she could know that the statement was totally false and in March, 2023 the wife of the accused along with her elder brother and other members came to her quarters. They scolded and abused her and told her to go away from the life of the accused failing which they threatened to kill her. She has sent a legal notice to the accused but got no response and accordingly, she laid the F.I.R. The victim further stated in the F.I.R. that on 05.04.2025 the accused applicant came to her quarters at night stating that he would resolve the disputes with her and thereafter he again committed forceful rape upon her. But on 06.04.2025 he told her that he would not marry her and thus cheated her both mentally and physically. Hence, she laid the F.I.R. On the basis of the F.I.R. the case was registered. The investigation of the case is still in progress.

I have perused the F.I.R. and the statements of witnesses so far collected by the I.O. during investigation including the statement of the victim. There is no dispute on record that both the victim and the accused applicant developed relation with each other

from the month of June, 2021. I have also seen the application filed by the accused applicant and also the legal notice sent by the victim to the accused petitioner.

It is the admitted position that the present accused applicant cohabited with the victim with her consent. It is surprising that how the victim being a police constable knowing the consequences of the act alleged to be committed by the accused remained silent till March, 2025 without seeking any redress to any authority. It is not that the victim was a village rustic woman and having no legal understanding allowed the accused applicant to continue physical relation with her. Rather, it is clear that the victim knowing the consequences allowed the accused applicant to continue relation with her and from the legal notice itself (Annexure-2) it is clear that she asked the accused to produce the order of divorce with his wife.

In course of hearing, Learned P.P. drawn the attention of this Court that the accused applicant committed rape upon the victim with a false promise to marry her but from the contents of the F.I.R. and also from the materials so far collected by the I.O. nowhere I find that there was any false promise of marriage on the part of the accused applicant. Rather, it appears that it was a consensual relationship and the victim being a police constable easily could take recourse of law even during the year 2021. But till 2025 i.e. prior to the filing of the F.I.R. the victim totally remained silent without seeking any redress to any authority.

The citations as referred by Learned Senior Counsel appear to be more relevant in this case. On the other hand, Learned P.P.

although relied upon one citation of the Hon'ble Supreme Court but in the said case the Hon'ble Supreme Court also acquitted the appellant/accused from the charge of that case.

Here in the case at hand, at this stage there is/are no convincing materials on record that the accused had given a false promise to marry the victim and later on did not marry her and committed rape upon her. So, at this stage of investigation, considering the materials on record and on the basis of the principles of law laid down by the Hon'ble Apex Court in the afore noted cases, I do not find any scope to disallow the application filed by the accused applicant. Accordingly, the same is allowed.

The accused applicant may be enlarged on bail in the event of his arrest of his execution of bond of Rs.1,00,000/- with one surety of like amount to the satisfaction of the O/C of the concerned PS with a condition that the accused applicant shall be available before the I.O. of this case as and when called for and he shall not make any attempt to tamper the evidence on record nor shall make any attempt to threaten the informant-cum-victim or her witnesses. Further, the accused applicant shall not leave the jurisdiction of the concerned PS without prior permission of the O/C of the concerned PS failing which the I.O shall be at liberty to approach to the competent Court for cancellation of the privilege of bail granted to the accused applicant for violation of the conditions of bail.

With this observation, the anticipatory bail application stands allowed and disposed of.

Send down the LCR along with a copy of this order. Send down the CD to I.O. through Learned P.P. along with a copy of this

order. A copy of this order also be supplied to Learned Senior Counsel in course of the day for information and compliance.

JUDGE

