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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 04th November, 2026***

\# **CNR No. DLHC010507752026**

\+ BAIL APPLN. 4485/2026

ABHISHEK KUMAR .....Petitioner

Through: Mr. Ranvir Singh Kundu, Mr. Vipin Kumar Sharma, Ms. Krati Aggarwal and Mr. Yogvardhan Singh Kundu, Advs.
M: 9899827106
Email: vkassocaites2004@gmail.com

versus

STATE OF NCT OF DELHI .....Respondent

Through: Mr. Nawal Kishore Jha, APP
M: 9968257999
Mr. Kaushlender Singh and Mr. Neeraj Gahlourt, Advs. along with complainant
M: 9811383912
W/SI Manisha, PS New Ashok Nagar

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

MINI PUSHKARNA, J. *(Oral):*

1. The present application has been filed on behalf of the petitioner, i.e., Abhishek Kumar, S/o Rajeev Kumar Chaudhary, under Section 482 read with Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS"), seeking anticipatory bail in connection with the First Information Report ("FIR") being *FIR No. 528/2026* dated 11th August, 2026, registered at Police

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Station ("PS") New Ashok Nagar, East District, Delhi, under Sections 376/313 of the Indian Penale Code, 1860 ("IPC").

2. Learned counsel appearing for the petitioner submits that pursuant to the interim protection granted by this Court *vide* order dated 16th October, 2026, the petitioner has joined the investigation and has already appeared before the Investigation Officer ("IO") for interrogation on 19th October, 2026, and 27th October, 2026.

3. As regards the relationship between the petitioner and the complainant, he informs this Court that the parties were in a consensual relationship and lived together from the year 2022 till May, 2026, spanning a period of more than four years.

4. He submits that the relationship between the parties was voluntary and consensual and there was no force, coercion, threat or undue influence.

5. He further submits that the relationship between the parties eventually deteriorated owing to temperamental differences, on account of which the parties stopped living together, and the petitioner shifted back to his native place located in Bihar.

6. The aforesaid submissions made by learned counsel appearing for the petitioner are taken note of.

7. Learned Additional Public Prosecutor ("APP") appearing for the State confirms the fact that the petitioner has already joined the investigation. He, however, submits that a potency test of the petitioner is yet to be done.

8. He informs this Court that there is an allegation made by the complainant that the petitioner gave her a medicine by representing it to be for pain, but she subsequently suffered a miscarriage as she was pregnant with the child of the petitioner.

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9. He submits that the source of the said medicine and other information is yet to be verified, and the petitioner is yet to be interrogated in this regard.

10. He further submits that as per the complaint submitted by the complainant, her health deteriorated after taking the aforesaid medicine, and she was admitted to Max Hospital, Ghaziabad, where her pregnancy was terminated against her wishes on 31st March, 2023.

11. Furthermore, as per the allegations made by the complainant, the petitioner refused to marry her when she asked him to do so, following which she submitted the complaint.

12. Learned counsel appearing for the complainant submits that the petitioner and the complainant had established physical relations on the basis of the promise of the petitioner to marry the complainant.

13. Having heard learned counsel appearing for the parties, this Court notes that the petitioner has already joined the investigation.

14. This Court further notes that the complainant had earlier written a letter dated 05th June, 2026, to the Station House Officer ("SHO"), PS Ashok Nagar, wherein she had stated that she was in a relationship with the petitioner, and that she had called the police because she had a fight and an argument with the petitioner. She further admitted that she was pregnant on account of her relationship with the petitioner. However, nothing is mentioned regarding any false promise to marry, rather, it is apparent that the parties were in a consensual relationship with each other.

15. In this regard, fruitful reference may be made to the judgment of the Supreme Court in the case of ***Samadhan Versus State of Maharashtra and Another, 2025 SCC OnLine SC 2528***, wherein, it has been held as follows:

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"xxx xxx xxx

***27. In this regard, it becomes relevant to refer to the decision of this Court in the case of Mahesh Damu Khare v. State of Maharashtra, (2024) 11 SCC 398, ("Mahesh Damu") wherein the following observations were made**:*

> *"27. **In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties**.*
>
> *28. **Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact**."*

***28. We find that the present case is not a case where the appellant lured respondent No. 2 solely for physical pleasures and then vanished. The relationship continued for a period of three long years, which is a considerable period of time. They remained close and emotionally involved. In such cases, physical intimacy that occurred during the course of a functioning relationship cannot be retrospectively branded as instances of offence of rape merely because the relationship failed to culminate in marriage**.*

***29. This Court has, on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are given the colour of criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent**.*

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To convert every sour relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern and calls for condemnation*.*

30. In Prashant v. State of NCT of Delhi, (2025) 5 SCC 764, this Court speaking through one of us (Nagarathna, J.) observed that a mere break-up of a relationship between a consenting couple cannot result in the initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marriage*. The relevant portion is extracted as under:*

> *"20. In our view, taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 376(2)(n)IPC are absent. A review of the FIR and the complainant's statement under Section 164CrPC discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017.* ***Therefore, even if the prosecution's case is accepted at its face value, it cannot be concluded that the complainant engaged in a sexual relationship with the appellant solely on account of any assurance of marriage from the appellant. The relationship between the parties was cordial and also consensual in nature. A mere break up of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marital relationship****. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution."*

31. *This Court is conscious of the societal context in which, in a country such as ours, the institution of marriage holds deep social and cultural significance. It is, therefore, not uncommon for a*

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woman to repose complete faith in her partner and to consent to physical intimacy on the assurance that such a relationship would culminate in a lawful and socially recognised marriage. In such circumstances, the promise of marriage becomes the very foundation of her consent, rendering it conditional rather than absolute. It is, thus, conceivable that such consent may stand vitiated where it is established that the promise of marriage was illusory, made in bad faith, and with no genuine intention of fulfilment, solely to exploit the woman. The law must remain sensitive to such genuine cases where trust has been breached and dignity violated, lest the protective scope of Section 376 of the IPC be reduced to a mere formality for those truly aggrieved. At the same time, the invocation of this principle must rest upon credible evidence and concrete facts, and not on unsubstantiated allegations or moral conjecture.

xxx xxx xxx"

(Emphasis Supplied)

16. Accordingly, considering the aforesaid judgment and on the basis of the material placed before this Court, it is *prima facie* established that the petitioner and the complainant lived together for more than four years. This is consistent with the possibility of a physical relationship taking place without a promise of marriage. Furthermore, as regards the physical relationship between the parties being based on a false promise to marry, the same is a subject matter of trial.

17. The other issues concerning the administration of any medicine to the complainant, in respect of which the petitioner is to be interrogated, form the subject matter of investigation and trial as well.

18. In relation to the remaining interrogation of the petitioner to be conducted on different aspects of the complaint, this Court records the undertaking made by learned counsel appearing for the petitioner that the petitioner shall cooperate in the investigation being carried out by the

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concerned IO/SHO, and shall appear before the IO/SHO, as and when so called, including for any test which the police may ask the petitioner to take.

19. This Court notes that the petitioner has shared his mobile number as well as the mobile number of his father with the concerned IO.

20. This Court also takes note of the fact that while the complainant is residing in Delhi, the petitioner has already shifted back to his native place located in Begusarai, Bihar.

21. It is also to be noted that the petitioner has no prior criminal antecedents.

22. For the reasons stated above, it is directed that in the event of arrest of the petitioner in connection with *FIR No. 528/2026* dated 11th August, 2026, registered at PS New Ashok Nagar, East District, Delhi, under Sections 376/313 of the IPC, the petitioner shall be released on bail, subject to furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount, subject to the satisfaction of the IO/SHO, and further subject to the following conditions:

I. The petitioner will report to the IO on each and every occasion, as required by the IO, and will cooperate in the investigation.

II. The petitioner shall not, directly or indirectly, attempt to contact the complainant or her family, or tamper with the evidence, or otherwise indulge in any act or omission that is unlawful or prejudicial to the proceedings, nor shall he offer any inducement, threat, or promise to any person acquainted with the facts of the case.

III. The petitioner shall furnish his mobile number to the concerned IO and shall keep the said mobile phone operational and switched on at all times. The mobile number shall not be changed or switched off without

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prior intimation to the IO.

IV. The petitioner shall furnish his complete residential address to the IO, and will not change his residential address without prior intimation to the IO.

V. The petitioner shall not commit any offence during the pendency of these proceedings.

23. It is clarified that the observations made herein are solely for the purpose of adjudication of the present application and shall not be construed as an expression of opinion on the merits of the case, nor shall they prejudice the rights and contentions of the parties at any stage of the proceedings.

24. Accordingly, the present application is disposed of, in the aforesaid terms.

MINI PUSHKARNA, J

NOVEMBER 4, 2026/KR

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