

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

Reserved on: 04.12.2024.

Pronounced on: 13.12.2024

Bail App No. 192/2021

**CrIM No. 2224/2021, 2027/2021,
1212/2021**

c/w

CRM(M) No. 312/2021

CrIM No. 933/2021, 934/2021, 935/2021

Bail App No. 192/2021

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

Sat Paul,

aged 31 years

S/O Sh. Bal Krishan R/O Village

Tayari, Panchayat Halqa Tayote,

Tehsil Pouni, Reasi

Th. His Brother namely Ganesh Paul

S/O Sh. Bal Krishan R/O Village

Tayari, Panchayat Halqa Tayote,

Tehsil Pouni, Reasi

Through: Mr. P. N. Raina, Sr. Advocate with
Mr. J. A. Hamal, Advocate.

vs

1. **UT of J&K**

Th. SHO Police Station, Women Cell,
Gandhi Nagar, Jammu.

2. **Shamo Devi,**

D/O Late. Sh. Gian Chand R/O Phase
2, Mandlik Nagar, Paloura, Jammu

..... Respondent(s)

Through: Mr. P. D. Singh, Dy. AG for R-1
Mr. Dharam Vir, Advocate for R-2

CRM(M) No. 312/2021

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

Sat Paul,

aged 31 years

S/O Sh. Bal Krishan R/O Village

Tayari, Panchayat Halqa Tayote,

Tehsil Pouni, Reasi

Through: Mr. P. N. Raina, Sr. Advocate with
Mr. J. A. Hamal, Advocate.

vs

- 1) **UT of J&K** Th. Commissioner Respondent(s)
Secretary, Home Department, Civil
Secretariat, Jammu and Srinagar.
- 2) **SHO**, Janipur, Jammu
- 3) **Shamo Devi**,
D/O Late. Sh. Gian Chand R/O
Phase 2, Mandlik Nagar, Paloura,
Jammu

Through: Mr. P. D. Singh, Dy. AG for R-1 & 2
Mr. Dharam Vir, Advocate for R- 3

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

CRM(M) No. 312/2021

1. Through the medium of instant petition, the petitioner herein has invoked the inherent power of this Court for quashing FIR No. 0071 dated 31.05.2021 registered with Police Station, Janipur for offences under Sections 376 and 420 IPC along with order dated 29.05.2021 passed by the City Judge Magistrate, Jammu in the application titled as "*Shamo Devi vs. Sat Paul*".
2. The facts necessary for the disposal of the instant petition are that the respondent 3 herein is stated to have filed an application under Section 156(3) of Code of Criminal Procedure before the Chief Judicial Magistrate, Jammu for direction upon the respondent 2 herein for registering a case against the accused/petitioner herein for commission of offences under Sections 376 and 420 IPC whereupon the court of Chief Judicial Magistrate Jammu transferred the said application to the

court of City Judge/JMIC, Jammu wherein the said court in terms of order dated 29.05.2021, impugned in the instant petitioner directed respondent 2 to investigate the case, consequent to which the impugned FIR came to be registered.

3. The petitioner has maintained the instant petition on multiple grounds.
4. Response to the petition has been filed by the respondents.
5. **In the reply filed by respondents 1 and 2**, it is being stated that the FIR under challenge came to be registered in Police Station, Women Cell, Jammu in furtherance of the directions passed by the court of City Judge/JMIC, Jammu passed in an application filed by the complainant/respondent 3 herein under Section 156(3) of Code of Criminal Procedure and after registration of the same, same was transferred to the Police Station, Janipur and investigation came to be set into motion and site plan of the place of occurrence came to be prepared, statement of the respondent 3 recorded under Section 164 Cr. P.C., inasmuch as statements of other witnesses came to be recorded and on the basis of the evidence collected by the Investigating Officer, offences under Sections 376 and 420 IPC were found to be established against the petitioner, while stating further that the charge-sheet could not be presented before the competent court in view of an interim order passed by this Court.
6. **In the objections filed by the respondent 3 herein**, it is being stated that the accused/petitioner herein being a well connected person and a member of belt force, in a well concluded criminal manner fraudulently led the answering respondent to believe that he would

marry her and committed rape upon her by exercise of deceit upon her, while denying the allegations that the petitioner herein is falsely implicated in a fabricated case in order to get undue benefit from him. It is further stated that the commission of offences by the accused/petitioner herein is detailed out in detail in the complaint filed by the complainant/answering respondent and that the accused/petitioner herein allured the answering respondent to have sexual relationship while making a false promise to marry her and believing the said promise, the accused/petitioner herein would have sexual relationship with her as and when he would be in Jammu and that the FIR under challenge is not an abuse of process of law but is rather upholding the majesty of law while reiterating that the answering respondent came to be subjected to rape by the accused/petitioner herein by playing worse kind of fraud upon her besides physically, emotionally and socially destroying her life, while also denying the allegation that the answering respondent threatened the petitioner herein either herself or through any other person person, denying to have demanded Rs. 25,00,000/- from him and that the accused/petitioner herein destroyed her life and got married to another woman and in furtherance of his illegal acts got the child, conceived by the answering respondent, aborted and that the complaint lodged by her is true and not a modified one and that the accused petitioner when came to know about the complaint filed against him in the Police Station, approached the answering respondent and assured her again that he would marry her soon and even pleaded her to withdraw the

complaint and that the petitioner herein even swore an affidavit to this effect on the basis of which the said complaint was not pursued by the answering respondent and that the compromise arrived at in this regard also shows that the accused/petitioner herein had duped the answering respondent and that the affidavit sworn by the accused/petitioner in fact is an admission of guilt of the accused/petitioner and that the petitioner continued to play fraud with the answering respondent, duped her and raped her and committed the offences covered in the FIR.

Heard learned counsel for the parties and perused the record as also the CD file produced by the counsel for the respondent 1 and 2.

7. **Mr. P. N. Raina, learned senior Advocate appearing for the petitioner,** notwithstanding the multiple grounds of challenge urged in the petition would continue his submission qua the ground that the contents of the impugned FIR even if taken to be true would reveal that no offence under Section 376 IPC read with Section 420 IPC is made out against the petitioner and that the sexual relationship between the petitioner herein and respondent 3 herein is a relationship between two adult persons and the same does not fall within the ambit and scope of Section 376 IPC and that the facts would clearly demonstrate that there has been a long standing relationship between the petitioner and respondent 3 herein which did not culminate into a marriage and as such, the offence under Section 376 IPC is not made out and in support thereof would heavily rely on the judgments of the

Apex Court passed in case titled as **Pramod Suryabhan Pawar vs. State of Maharashtra and another** reported in (2019) 9 SCC 608, **Sonu Alias Subhash Kumar vs. State of Uttar Pradesh and another** reported in (2021) 18 SCC 517 and judgments passed by this Court in cases titled as **Syed Shahid Hamdani vs. UT of J&K and another** reported in 2023 SCC Online J&K 116 and **Sandeep Singh Vs. Union Territory of J&K decided on 04.08.2021.**

8. Before proceeding to advert to the submission of Mr. P. N. Raina and also the case set up by the respondents in the objections filed to the petition, it would be appropriate to reproduce hereunder the contents of complaint/application filed by the respondent 3 herein before the court below pursuant to direction of which, the impugned FIR came to be registered:-

- i. *That the applicant/complainant belongs to a very poor family and is originally resident of rural area of village Balshama, Tehsil Sunderbani District Rajouri and since 2018, the complainant is residing at Paloura, Jammu and presently at Phase-02 Mandlik Nagar, Paloura, Jammu in a rented accommodation.*
- ii. *That the applicant/complainant's father died in June 2002 and thereafter, the applicant/complainant being the elder member amongst 6 sisters and one brother fastened with responsibility to look after her mother, five sisters and a brother, as such, the complainant could not get herself married in time.*
- iii. *That in the year 2016, the aforesaid accused/culprit namely Sat Paul started making calls on the mobile phone of applicant/complainant regularly which was initially ignored by the applicant/complainant but the aforesaid culprit carried on making repeated calls on the mobile phone of applicant/complainant as such the applicant/complainant brought the matter in the notice of her mother and sisters and only then the applicant/complainant attended the call of aforesaid culprit namely Sat Paul in presence of her family*

members whereby aforesaid culprit disclosed his identity as Sat Paul of JAK-Rifles and expressed his desire to meet the applicant/complainant in presence of her mother but the applicant/complainant declined to meet him, however, after a gap of 2-3 months, suddenly the said Sat Paul visited the residence of applicant/complainant at village Balshama, Tehsil Sunderbani, District Rajouri and proposed the applicant/complainant in front of her mother and two sisters for marriage and he also suggested the applicant/complainant's mother to send the applicant/complainant to Jammu for some job.

- iv. That since the applicant/complainant's younger sister namely Rekha Devi was employee of BSF and in the year 2018, she was posted at Jammu and used to reside in a rented accommodation situated near Gopal Mandir Suraksha Vihar, Paloura Top, Jammu, as such, in June 2018 the applicant/complainant shifted to Paloura, Jammu and started a private job at Raghunath Bazar, Jammu and in July 2018 the aforesaid culprit visited therein and stayed with the applicant/complainant at Paloura, Jammu whereby the aforesaid culprit tried to forcibly sex with the applicant/complainant which was objected by the applicant/complainant but the aforesaid culprit gave false assurance to marry the applicant/complainant shortly by performing a well arranged marriage and thus, on the promise of marriage, the aforesaid culprit have sexually intercourse with the applicant/complainant which the aforesaid culprit repeated time and again as and when he used to come on leave whereby he used to visit the applicant/complainant in rented accommodation at Paloura, Jammu to have sexual intercourse with her on the promise to marry her.
- v. That on 4th day of August, 2020, the culprit namely Naik Sat Paul again visited the applicant/complainant in rented accommodation then at JK Colony, Paloura, Jammu and on the false promise to marry the complainant have repeated sexual intercourse with the applicant/complainant and thereafter, he had gone to New Delhi to join his duty whereby the applicant/complainant became pregnant and thus, the applicant/complainant immediately informed the aforesaid culprit about her pregnancy as a result of intercourse by him. The aforesaid culprit suggested the applicant/complainant to avail the anti-pregnancy dose to terminate the pregnancy whereby the aforesaid culprit transferred an amount of Rs. 2000/- in the saving account of applicant/complainant no. 0852040100001032 J&K Bank Branch Balshama, Sunderbani

and also sent the name of medicine MOFETIL-KIT medicine to terminate her pregnancy. It is relevant to mention here that the aforesaid culprit earlier also used to transfer money in the aforesaid account of the applicant/complainant to win her confidence and further, on 04.08.2020, the applicant/complainant has also taken selfie with the aforesaid culprit on her mobile while on the bed with the aforesaid culprit which is in possession of the applicant/complainant.

- vi. That the aforesaid culprit was in regular touch with the applicant/complainant telephonically and further, in the month of December 2020, the aforesaid culprit again visited the applicant/complainant at Paloura, Jammu in morning hours and he told that he has to purchase bike. He have repeated sexual intercourse with the applicant/complainant on the promise to perform Court Marriage with the applicant/complainant very soon and further assured that next year he will avail 2 months marriage leave to solemnize marriage with the applicant/complainant.
- vii. That the applicant/complainant is continuously insisted upon the aforesaid culprit many times to perform marriage with her as per the promise but he always avoided the same on one pretext or other.
- viii. That on 13.04.2021, the applicant/complainant has gone to Akhnoor from Mandlik Nagar, Paloura, Jammu to meet her younger sister namely Rekha Devi whereby the applicant/complainant received a phone call of aforesaid culprit namely Naik Sat Paul whereby he disclosed that he had visited his rented accommodation at Phase 2, Mandlik Nagar, Paloura Jammu as he came on leave and want to have sexual intercourse with the applicant/complainant but the applicant/complainant refused to have any further sexual intercourse with him unless and until he marries with the applicant/complainant as promised by him and thereafter, since 14.04.2021, the aforesaid culprit blocked the mobile number of the applicant/complainant deliberately to avoid her contact and now, he is planning to marry with some other girl after ruining the life of applicant/complainant.
- ix. That the aforesaid culprit namely Naik Sat Paul was knowing well that the applicant/complainant is not his wife and further, he also does not want to marry her from the very beginning yet under the false promise of marrying her, he had sexual intercourse repeatedly with the applicant/complainant by cheating because he has obtained consent of the applicant/complainant under misconception of fact to marry her and now, the aforesaid culprit has declined to marry the complainant, as such, under the false promise to marry with

the applicant/complainant, the aforesaid culprit had sexual intercourse repeatedly with the applicant/complainant by dishonestly inducement and cheating.

- x. That the applicant/complainant being a victim of rape was under mental shock and trauma along with her family and was thinking a lot before making the present complaint because it involves the prestige and reputation of family of the applicant/complainant and also, her future life.*
- xi. That the applicant/complainant had approached the Police of Police Station, Janipur for registration and investigation of the case, but the Police has neither registered the case nor investigated the matter and left the accused without any action. The copy of application submitted to SHO, Janipur is attached herewith.*
- xii. That on 04.05.2021, the complainant appeared along with an application before the SSP, Jammu and the SSP Jammu marked the application and directed the SHO Janipur to get the facts verified and take necessary action under law and report but Police of Police Station, Janipur has neither registered the case nor Hon'ble Court for appropriate remedy. The copy of application to SSP Jammu is attached herewith.*
- xiii. That on 06.05.2021, Bal Krishan, the father of Naik Sat Paul approached the applicant/complainant and offered to pay rupees 05 Lakh, that in case the applicant/complainant withdraw the complaint and allow his son to perform marriage with some other lady.*
- xiv. That the aforesaid culprit namely Naik Sat Paul have committed a heinous offence punishable U/s 376/420 IPC against the accused person which he has committed intentionally, deliberately against the complainant and after investigation submit the charge sheet before the court of law and the complainant shall produce the witnesses before the Investigating Officer. Dated 12 May 2021 complainant through counsel.*

9. Before proceeding further in the matter, it would be profitable to refer to the ambit and scope of inherent power vested in this Court under Section 528 BNSS *pari metaria* with Section 482 Cr.P.C. hereunder, which in fact has been dealt with by the Apex Court in a series of judgments including in case titled "**Neeharika Infrastructure Pvt.**

Ltd. vs. State of Maharashtra & Ors" reported in AIR 2021 SC 1918

wherein at Para 7 following has been laid down:-

7. While considering the aforesaid issue, law on the exercise of powers by the High Court under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India to quash the FIR/complaint and the parameters for exercise of such powers and scope and ambit of the power by the High Court under Section 482 Cr.P.C. and/or under Article 226 of the Constitution of India are required to be referred to as the very parameters which are required to be applied while quashing the FIR will also be applicable while granting interim stay/protection.

7.1 The first case on the point which is required to be noticed is the decision of this Court in the case of R. P. Kapur (supra). While dealing with the inherent powers of the High Court under Section 561-A of the earlier Code (which is pari materia with Section 482 of the Code), it is observed and held that the inherent powers of the High Court under Section 561 of the earlier Code cannot be exercised in regard to the matters specifically covered by the other provisions of the Code; the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice; ordinarily criminal proceedings instituted against an accused person must be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. After observing this, thereafter this Court then carved out some exceptions to the above-stated rule, which are as under:

"(i) Where it manifestly appears that there is a legal bar against the institution or continuance of the criminal proceeding in respect of the offence alleged. Absence of the requisite sanction may, for instance, furnish cases under this category.

(ii) Where the allegations in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or

the first information report to decide whether the offence alleged is disclosed or not.

(iii) Where the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question.

In exercising its jurisdiction under Section 561- A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained."

*7.2 In the case of **Kurukshetra University (supra)**, this Court observed and held that inherent powers under Section 482 Cr.P.C. do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice; that statutory power has to be exercised sparingly with circumspection and in the rarest of rare cases. In the case before this Court, the High Court quashed the first information report filed by the Kurukshetra University through Warden and that too without issuing notice to the University, in exercise of inherent powers under Section 482 Cr.P.C. This Court noticed and observed that the High Court was not justified in quashing the FIR when the police had not even commenced investigation into the complaint filed by the Warden of the University and no proceedings were at all pending before any Court in pursuance of the FIR.*

*7.3 Then comes the celebrated decision of this Court in the case of **Bhajan Lal (supra)**. In the said decision, this Court considered in detail the scope of the High Court powers under Section 482 Cr.P.C. and/or Article 226 of the Constitution of India to quash the FIR and referred to*

several judicial precedents and held that the High Court should not embark upon an inquiry into the merits and demerits of the allegations and quash the proceedings without allowing the investigating agency to complete its task. At the same time, this Court identified the following cases in which FIR/complaint can be quashed:

"102.(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is

maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

7.4 *In the case of Golconda Lingaswamy (supra), after considering the decisions of this Court in the cases of R. P. Kapur (supra) and Bhajan Lal (supra) and other decisions on the exercise of inherent powers by the High Court under Section 482 Cr.P.C., in paragraphs 5, 7 and 8, it is observed and held as under:*

"5. Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely: (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction.

No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves inherent powers of the High Courts.

All courts, whether civil or criminal, possess in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid aliique concedit, conceditur et id sine quo res ipsa esse non potest (when the law gives a person anything, it gives him that without which it cannot exist). While exercising powers under the section, the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the

section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice.

In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.....

8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in

its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution.

High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard- and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H. S. Chowdhary [(1992) 4 SCC 305: 1993 SCC (Cri) 36 :AIR 1993 SC 892] and Raghubir Saran (Dr.) v. State of Bihar [AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .]

It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises, arrive at a conclusion that the proceedings are to be quashed.

It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognisance has been taken by the Magistrate, it is open to the High Court to quash the same in exercise of the inherent powers under Section 482 of the Code. It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal.

The complaint/FIR has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant or disclosed in the FIR that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint/FIR is mala fide, frivolous or

vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceeding."

7.5 In the case of **Zandu Pharmaceutical Works Ltd. (supra)**, in paragraph 11, this Court has observed and held as under:

"11. ... the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage.

It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premise arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. In a proceeding instituted on complaint, exercise of the inherent powers to quash the proceedings is called for only in a case where the complaint does not disclose any offence or is frivolous, vexatious or oppressive. If the allegations set out in the complaint do not constitute the offence of which cognizance has been taken by the Magistrate, it is open to the High Court to quash the

same in exercise of the inherent powers under Section 482 of the Code.

It is not, however, necessary that there should be meticulous analysis of the case before the trial to find out whether the case would end in conviction or acquittal. The complaint has to be read as a whole. If it appears that on consideration of the allegations in the light of the statement made on oath of the complainant that the ingredients of the offence or offences are disclosed and there is no material to show that the complaint is mala fide, frivolous or vexatious, in that event there would be no justification for interference by the High Court. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings."

7.6 *In the case of **Sanapareddy Maheedhar Seshagiri (supra)**, in paragraph 31, it is observed and held as under:*

"31. A careful reading of the abovenoted judgments makes it clear that the High Court should be extremely cautious and slow to interfere with the investigation and/or trial of criminal cases and should not stall the investigation and/or prosecution except when it is convinced beyond any manner of doubt that FIR does not disclose commission of any offence or that the allegations contained in FIR do not constitute any cognizable offence or that the prosecution is barred by law or the High Court is convinced that it is necessary to interfere to prevent abuse of the process of the Court.

In dealing with such cases, the High Court has to bear in mind that judicial intervention at the threshold of the legal process initiated against a person accused of committing offence is highly detrimental to the larger public and societal interest. The people and the society have a legitimate expectation that those committing offences either against an individual or the society are expeditiously brought to trial and, if found guilty,

adequately punished. Therefore, while deciding a petition filed for quashing FIR or complaint or restraining the competent authority from investigating the allegations contained in FIR or complaint or for stalling the trial of the case, the High Court should be extremely careful and circumspect.

If the allegations contained in FIR or complaint disclose commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of FIR or the complainant. The High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482 Cr.P.C."

7.7 *In the case of **Arun Gulab Gawali (supra)**, this Court set aside the order passed by the High Court quashing the criminal complaint/FIR which was even filed by the complainant. In the case before this Court, prayer for quashing the FIR before the High Court was by the complainant himself and the High Court quashed the FIR/complaint in exercise of the powers under Section 482 Cr.P.C. Quashing and setting aside the judgment and order passed by the High Court quashing the FIR, this Court in paragraphs 13 and 27 to 29 has observed as under:*

"13. The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR/complaint, unless the allegations are so patently absurd and inherently improbable so that no

prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor can it "soft- pedal the course of justice" at a crucial stage of investigation/proceedings.

The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as "Cr.P.C") are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that stream of administration of justice remains clean and pure.

However, there are no limits of power of the Court, but the more the power, the more due care and caution is to be exercised in invoking these powers. (Vide State of W. B. v. Swapan Kumar Guha [(1982) 1 SCC 561 : 1982 SCC (Cri) 283 : AIR 1982 SC 949] , Pepsi Foods Ltd. v. Special Judicial Magistrate [(1998) 5 SCC 749 : 1998 SCC (Cri) 1400] , G. Sagar Suri v. State of U. P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513 : AIR 2000 SC 754] and Ajay Mitra v. State of M. P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])

xxx xxx xxx

27. The High Court proceeded on the perception that as the complainant himself was not supporting the complaint, he would not support the case of the prosecution and there would be no chance of conviction, thus the trial itself would be a futile exercise. Quashing of FIR/complaint on such a ground cannot be held to be justified in law. Ordinarily, the Court of Session is empowered to discharge an accused under Section 227 Cr.P.C even before initiating the trial.

The accused can, therefore, move the trial court itself for such a relief and the trial court would be in a better position to analyze and pass an order as it is possessed of all the powers and the material to do so. It is, therefore, not necessary to invoke the jurisdiction under Section 482 Cr.P.C for the quashing of a

prosecution in such a case. The reliance on affidavits by the High Court would be a weak, hazy and unreliable source for adjudication on the fate of a trial. The presumption that an accused would never be convicted on the material available is too risky a proposition to be accepted readily, particularly in heinous offences like extortion.

28. A claim founded on a denial by the complainant even before the trial commences coupled with an allegation that the police had compelled the lodging of a false FIR, is a matter which requires further investigation as the charge is levelled against the police. If the prosecution is quashed, then neither the trial court nor the investigating agency has any opportunity to go into this question, which may require consideration. The State is the prosecutor and all prosecution is the social and legal responsibility of the State. An offence committed is a crime against society and not against the victim alone. The victim under undue pressure or influence of the accused or under any threat or compulsion may resile back but that would not absolve the State from bringing the accused to book, who has committed an offence and has violated the law of the land.

*29. Thus, while exercising such power the Court has to act cautiously before proceeding to quash a prosecution in respect of an offence which hits and affects the society at large. It should be a case where no other view is possible nor any investigation or inquiry is further required. There cannot be a general proposition of law, so as to fit in as a straitjacket formula for the exercise of such power. Each case will have to be judged on its own merit and the facts warranting exercise of such power. More so, it was not a case of civil nature where there could be a possibility of compromise or involving an offence which may be compoundable under Section 320 Cr.P.C, where the Court could apply the ratio of **Madhavrao Jiwajirao Scindia [(1988) 1 SCC 692 : 1988 SCC (Cri) 234 : AIR 1988 SC 709] ."***

What emanates from the above position of law enunciated by the Apex Court in the judgment (Supra), in that the Apex Court has, *inter alia*, held that when a prayer for quashing of a FIR is made by an accused,

the Court exercising power under Section Section 482 Cr. P.C. (now Section 528 BNSS) has only to consider whether the allegations in the FIR disclose commission of a cognizable offence or not and that the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing any order which may impede the trial and also the High Court should not go into the merits and demerits of the allegations simply because the accused alleges *malus animus* against the author or FIR or the complainant and that quashment of FIR has to be an exception and a rarity than an ordinary rule as the inherent power of the Court do not confer an arbitrary power or jurisdiction upon the High Court.

10. Having regard to the aforesaid position of law and the contents of the complaint/application (Supra) of the respondent 3 filed under Section 156(3) of Cr.P.C including the impugned FIR, inasmuch as the evidence collected by the investigating agency and submissions of the counsel for the petitioner herein, the moot question that would beg consideration of this Court would be as to whether the present case is a case of mere breach of promise to marry or that the sexual relation between the petitioner and the respondent 3 was not consensual, but consent obtained on misconception of facts.

11. The moot question for consideration of this Court would be as to whether the exercise of inherent power is warranted in the instant case. In order to address to the aforesaid question, it would be pertinent and significant to refer to the provisions of Section 375 IPC, Section 90

IPC and Section 114-A of Evidence Act being relevant herein, which for the sake of brevity are extracted and reproduced hereunder:

Section 375. Rape

A man is said to commit “rape” if he’

(a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or

(b) Inserts, to any extent, any object or any part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) Manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of the body of such woman or makes her to do so with him or any other person; or

(d) Applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person,

Under the circumstances falling under any of the following seven descriptions;

Firstly- Against her will.

Secondly- Without her consent.

Thirdly- With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly- With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly- With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally understand the nature and consequences of that to which she gives consent.

Sixthly- With or without her consent, when she is under eighteen years of age.

Seventhly- When she is unable to communicate consent.

Explanation 1- For the purpose of this section, “vagina” shall also include labia major.

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:

Section 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

Consent of insane person- *If the consent is given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or*

Consent of child- *unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.*

Section 114-A

Presumption as to absence of consent in certain prosecution for rape- *In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent.*

Explanation- *In this section, “sexual intercourse” shall mean any of the acts mentioned in clauses (a) to (d) of Section 375 of the Indian Penal Code (45 of 1860)]*

A reference in regard to above to the judgment of the Apex Court in case titled as **Kaini Rajan vs. State of Kerala** reported in (2013) 9 SCC 113 would also be relevant herein, wherein at para 12 following has been observed:

“Section 375 IPC defines the expression “rape”, which indicates that the first clause operates, where the woman is in possession of her senses, and therefore, capable of consenting but the act is done against her will; and second, where it is done without her consent; the third, fourth and fifth, when there is consent, but it is not such a consent as excuses the offender, because it is obtained by putting her on any person in whom she is interested in

fear of death or of hurt. The expression “against her will” means that the act must have been done in spite of the opposition of the woman. An inference as to consent can be drawn if only based on evidence or probabilities of the case. “Consent” is also stated to be an act of reason coupled with deliberation. It denotes an active will in the mind of a person to permit the doing of an act complained of.

Section 90 IPC refers to the expression “consent”. Section 90, though, does not define “consent”, but describes what is not consent. “Consent”, for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.”

A further reference to the judgment passed by the Apex Court in case titled as **Deepak Gulati vs. State of Haryana** reported in (2013) 7 SCC 675 would also be relevant herein, wherein at Para 21 following has been held:

“21. Consent may be expressed 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.....”

A further reference to the judgment of the Apex Court passed in case titled as **Dhruvaram Murlidhar Sonar vs. State of Maharashtra** reported in **(2019) 18 SCC 191** would also be relevant herein, wherein at Para 23 following has been held:

“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant 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 later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. 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 the misconception created by 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. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC.”

Thus, the sum and substance of the aforesaid decisions emerging therefrom is 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 by misconception of fact as per Section 90 IPC and such a consent would not excuse the offender and such an offender can be

said to have committed the rape as defined under Section 375 IPC and can be convicted for the offence under Section 376 IPC.

Furthermore it is also manifest from above position of law that whether consent given by the prosecutrix to sexual intercourse is voluntary or whether it is given under misconception of fact depends on the facts of each case and in considering the question of consent, the Court is bound to **consider the evidence** before it and the surrounding circumstances before reaching a conclusion.

12. Reverting back to the case in hand, record tends to show that the respondent 3 herein has alleged that the petitioner committed rape upon her multiple times while making regular promise to marry her and she lately came to know that the petitioner has even got married to one Priya D/o Yash Pal R/o Katwari, Kalakote, Rajouri.

Perusal of the CD file produced by the counsel for the official respondents reveals that the Investigating Officer has gathered evidence, pointing to the involvement of the petitioner in the commission of alleged offence of rape covered in the FIR.

Besides above position obtaining in the matter, a plain reading of the FIR manifestly demonstrates and discloses commission of alleged offences by the petitioner herein.

13. Thus, under these circumstances, at the threshold stage, it cannot be decided by this Court, in exercise of inherent power, as to whether the consent was given voluntarily by the complainant/respondent 3 herein or that it was given under misconception of facts, in that, a decision thereon the said factual aspect of the case could be rendered after the

case is put to trial and the parties would bring evidence on record. In short, the said question is not a threshold question, which could be decided by this Court in exercise of inherent power.

14. Having regard to what has been observed, considered and analysed hereinabove, inasmuch as the law laid down by the Apex Court in **Neeharika Infrastructure Pvt. Ltd. Judgment (Supra)**, this Court is not inclined to exercise inherent jurisdiction in the backdrop of the aforesaid facts and circumstances of the case.

15. The judgments relied upon by the counsel for the petitioner in support of the case set up in the instant petition referred in the preceding paras, in view of the aforesaid analysis pale into insignificance and do not lend any support to the case of the petitioner.

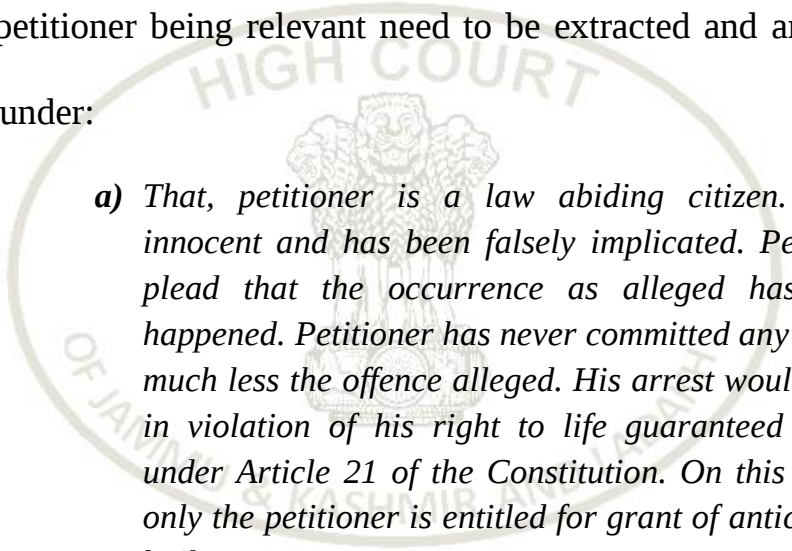
16. **Resultantly, the instant petition fails and is accordingly dismissed along with the connected applications.**

17. It is however made clear that any observation made hereinabove shall not be construed to be expression of any opinion about the guilt or innocence of the petitioner herein and any such observations shall be deemed to have been made only for the purpose of disposal of the instant petition.

Bail App No. 192/2021

1. In the instant petition, the petitioner herein has sought bail in anticipation of his arrest in FIR No. 0071 dated 31.05.2021 registered with Police Station, Janipur for offences under Sections 376 and 420 IPC.

2. It is significant to mention here that the FIR wherein the bail is being sought by the petitioner herein came to be registered upon a complaint/application filed by the respondent 2 herein and pursuant to the directions passed by the City Judge Magistrate, Jammu in terms of order dated 29.05.2021. The said facts already stand referred hereinabove while considering CRM(M) No. 312/2021 (Supra), as such, in order to avoid repetition and for the sake of brevity, the contents of the FIR (Supra) are not again referred hereunder. However, the grounds on which the bail is being sought in the instant petition by the petitioner being relevant need to be extracted and are reproduced hereunder:

- 
- a) That, petitioner is a law abiding citizen. He is innocent and has been falsely implicated. Petitioner plead that the occurrence as alleged has never happened. Petitioner has never committed any offence much less the offence alleged. His arrest would result in violation of his right to life guaranteed to him under Article 21 of the Constitution. On this ground only the petitioner is entitled for grant of anticipatory bail.*
 - b) That, it is true that the society has a vital interest in grant or refusal of bail because every criminal offence is the offence against the state. It is equally true that the order granting or refusing the bail must reflect perfect balance between the conflicting interest of the society. The law of bails dovetails two conflicting interest, namely, on the one hand, the requirements of shielding the society from the hazards of those committing crimes and potentiality of repeating the same crime while on bail and on the other hand absolute adherence of the fundamental principle of criminal jurisprudence regarding presumption of innocence of an accused until he is found guilty and the sanctity of individual liberty. The allegations against the petitioner has been made with the sole object of injuring and humiliating the*

petitioner by getting arrested in a false case. On this ground as well, the petitioner is entitled to grant of anticipatory bail.

c) That, seriousness of the charge is, no doubt, one of the relevant consideration while considering bail applications but that is not the only test or the factor. If the same is taken to be the only test or the factor it would not be balancing the constitutional rights but rather recalibration of the scales of justice. The provisions of CRPC conferred discretionary jurisdiction on criminal court to grant bail to accused pending trial or in the appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. The arrest of the petitioner would be a denial of the whole basis of our system of law and normal rule of bail system. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventive. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and found guilty. From the earliest times, it was appreciated that the person in custody pending completion of trial could be a cause of great hardship. On this ground as well petitioner is entitled to bail.

d) That, petitioner reiterate that, his is innocent and has not committed any offence. He is serving as Naik in the Army. His arrest in this false case would result in losing his job and the same would practically lead his family to starve to death, further depriving him of his right to livelihood. On this ground as well petitioner is entitled to grant of bail in anticipation of his arrest.

3. **Objections** to the petition have been filed by the respondents.

4. **In the objections filed by the official respondent,** the petition is being opposed on the premise that the petitioner herein is not entitled

to concession of bail in anticipation of his arrest, in that, the offence committed by the petitioner is heinous and against the society at large and that though the investigation of the case is nearer to completion, guilt of the petitioner for having committed the offences in question, during the course of investigation, have been established.

5. **In the objections filed by the respondent 2**, the petition seeking bail in anticipation of arrest is being opposed almost on the similar grounds on which the aforesaid petition for quashment of the FIR (Supra) has been opposed, as such, the said objections are not referred herein in order to avoid repetition.

Heard learned counsel for the parties and perused the record.

6. It is significant to note here that upon coming up of the instant petition for consideration, this Court in terms of order dated 19.07.2021 granted the concession of anticipatory bail to the petitioner, subject to various terms and conditions incorporated therein the order, whereafter, the respondent 2 herein filed an application for cancellation of said concession of bail granted to the petitioner, stating therein that the accused/petitioner after availing the concession of bail left the jurisdiction of this Court without seeking permission and in support thereof has placed on record copy of the communication dated 11.09.2021 addressed by the Police Station, Women Cell, Gandhi Nagar, Jammu to the then Additional Advocate General appearing in the matter for the official respondent, wherein it has been stated that the accused/petitioner left the jurisdiction of the competent court without cooperating with the investigation.

7. Before proceeding to advert to the petition in hand, it would be appropriate to refer to the position of law in regard to the subject of bail/anticipatory bail and issued connected therewith.

A reference in this regard to the judgment passed by the Apex Court in case titled as **Anil Kumar Yadav vs. S (NCT of Delhi) and another** reported in **2018 (12) SCC 129** would be relevant, wherein at 15, the Apex Court has held as under:

*“15. As held in **Puran case [2001 (6) SCC 338]**, while considering the question of grant of bail, court should avoid consideration of details of evidence as it is not a relevant consideration. While it is necessary to consider the prima facie case, an exhaustive exploration of the merits of the case should be avoided. We, therefore, consciously refrain from considering the merits of the materials/evidence collected by the prosecution.”*

A further reference to the judgment passed by the Apex Court in case titled as **Dr. Naresh Kumar Mangla vs. Smt. Anita Aggarwal and others** reported in **(2021) 15 SCC 777** would also be relevant, wherein at 17, the Apex Court has held as under:

*“17. In the recent decision of the Constitution Bench in **Sushila Aggarwal vs. State (NCT of Delhi)**, the considerations which ought to weight with the Court in deciding an application for the grant of anticipatory bail have been reiterated. The final conclusion of the Court indicate that:*

“92.1... The application seeking anticipatory bail should contain bare essential facts relating to the offence, and why the applicant reasonable apprehends arrest, as well as his side of the story. These are essential for the court which should consider his application, to evaluate the threat or apprehension, its gravity or seriousness and the appropriateness of any condition that may have to be imposed.

92.3... While considering an application (for grant of anticipatory bail) the court has to consider the nature of the offence, the role of the person, the likelihood of his

influencing the course of investigation, or tampering with evidence (including intimidating witnesses), likelihood of fleeing justice (such as leaving the country), etc.

92.4... Court 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 considering whether to grant anticipatory bail, or refuse it. Whether to grant or not is a matter of discretion; equally whether and if so, what kind of special conditions are to be imposed (or not imposed) are dependent on facts of the case, and subject to the discretion of the court.”

8. Keeping in mind the aforesaid position of law and reverting back to the case in hand, the petitioner herein in the application seeking bail in anticipation of arrest has essentially denied to have committed the offences in question, inasmuch as claimed to have been falsely implicated in the case. The said pleas of the petitioner, however, cannot be adverted to while considering the instant bail application, in that, the fundamental considerations to be looked into by the Court while considering an application for grant of anticipatory bail is to consider the nature of offence, role of the accused, his likelihood of influencing the course of investigation or tampering with the evidence including intimidating witnesses, in that, the question of innocence or guilt of the petitioner or his involvement or non-involvement in the commission of offences cannot be decided while deciding the bail application.
9. Furthermore, as has been noticed in the preceding paras, non cooperation of the petitioner in the investigation by the Investigating Agency in terms of letter dated 11.09.2021 has been specifically alleged and the petitioner in the objections filed to the said application

for cancellation of bail filed by the respondent 2 herein has not denied the fact that he left the jurisdiction of this Court in breach of the conditions imposed without seeking any permission from the Court, thus necessitating withdrawal of concession of bail granted to the petitioner also in view of the fact that the petitioner is an army personnel and there is every likelihood that the petitioner would directly or indirectly make inducement or threat to the respondent 2 herein in order to dissuade her from contesting the trial of the case.

10. Keeping in mind the facts and circumstances of the case, the position of law referred in the preceding paras as also the aforesaid position obtaining in the matter, the petitioner is held not entitled to continue to avail the concession of grant of anticipatory bail granted by this Court in terms of order dated 19.07.2021 more so, in view of the following observation of the Apex Court made in case titled as **Neeru Yadav vs. State of Uttar Pradesh and another** reported in (2014) 16 SCC 508:

“..... A democratic body polity which is wedded to the rule of law, anxiously guards liberty. But, a pregnant and significant one, the liberty of an individual is not absolute. Society by its collective wisdom through process of law can withdraw the liberty that it has sanctions to an individual when an individual becomes a danger to the collective and to the society. Accent on individual liberty cannot be pyramided to that extent which would bring chaos and anarchy to a society. A society expects responsibility and accountability from its members, and it desires that the citizens should obey the law, respecting it as a cherished social norm. No individual can make an attempt to create a concavity in the sem of social stream. It is impermissible. Therefore, an individual behaves in a disharmonious manner ushering in disorderly things which the society disapproves, the legal consequences are bound to follow. At that stage, the court has duty. It cannot abandon its sacrosanct obligation and pass an

order at its own whim or caprice. It has to be guided by the established parameters of law.”

11. **Viewed thus, the instant petition is dismissed along with the connected applications and the concession of bail granted to the petitioner in terms of order dated 19.07.2021 is withdrawn. The petitioner is directed to be taken into custody forthwith by the respondent 1.**
12. It is however made clear that any observation made hereinabove shall not be construed to be expression of any opinion about the guilt or innocence of the petitioner herein and any such observations shall be deemed to have been made only for the purpose of disposal of the instant petition.
13. CD filed produced by the counsel for the official respondent be returned back to him forthwith against proper receipt.
14. **A copy of this common judgment shall be placed on record file of each petition.**

(JAVED IQBAL WANI)
JUDGE

Jammu
13.12.2024
Sahil Padha

Whether the order is speaking:	Yes/No.
Whether the order is reportable:	Yes/No.