

(2026) 08 KAR CK 2090

In the Karnataka High Court, Bengaluru Bench

Case No : Criminal Petition No. 9411 of 2026

Santosh Poojary

APPELLANT

Vs

The State By Mahila Police Station, Udupi

RESPONDENT

Date of Decision : 05-08-2026

Acts Referred:

Code of Criminal Procedure, 1973 — Section 439
Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 483
Bharatiya Nyaya Sanhita, 2023 — Sections 318(2), 64(2), 3(5), 64(2)(m)
Indian Penal Code — Section 376, 376(2)(b)

Citation : (2026) 08 KAR CK 2090

Hon'ble Judges : M. Nagaprasanna, J

Bench : Single Bench

Advocate : Sri. Haleema Ameen, Sri. B.N. Jagadeesha

Final Decision : Allowed

Judgement

The petitioner - accused No.1 is before the Court seeking enlargement on bail for it having been turned down by the concerned Court in Cr.Misc.No.239/2026.

2. Heard Smt. Haleema Ameen, learned counsel appearing for the petitioner, Sri. B.N. Jagadeesha, learned SPP-I appearing for the respondent and have perused the material on record.

3. The facts adumbrated are as follows:

The petitioner and the complainant are known to each other for close to 5 years. They are said to have indulged in relationship, which was physical as well for all those years apart from the fact that the two together have invested in the stock market. The allegation springs when the stock market falls. The allegation is that the desired amount is not handed over by the petitioner to the complainant. The investment of the complainant started on 05.09.2024 with an amount of Rs.2,000/- and grew up to reaching the amount of Rs.79,50,000/-. The allegation as could be gathered from the complaint is that the returns were not

satisfactory. On the said allegation, it appears that the offence of repeated rape has sprung on consensual acts that has happened between the two for over 4 years of them knowing each other or even 2 years of their consensual acts, as is narrated in the complaint.

4. Therefore, the petitioner is entitled to grant of bail in the case at hand owing to the fact of the law laid down by the Apex Court in the case of **DHRUVARAM MURLIDHAR SONAR v. STATE OF MAHARASHTRA**¹, wherein it is held as follows:

"....

18. In *Uday v. State of Karnataka* (2003) 4 SCC 46 : 2003 SCC (Cri) 775, this Court was considering a case where the prosecutrix, aged about 19 years, had given consent to sexual intercourse with the accused with whom she was deeply in love, on a promise that he would marry her on a later date. The prosecutrix continued to meet the accused and often had sexual intercourse and became pregnant. A complaint was lodged on failure of the accused to marry her. It was held that consent cannot be said to be given under a misconception of fact. It was held thus : (SCC pp. 56-57, paras 21 & 23)

"21. **It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact.** A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

23. Keeping in view the approach that the court must adopt in such cases, we shall now proceed to consider the evidence on record. **In the instant case, the prosecutrix was a grown-up girl studying in a college. She was deeply in love with the appellant. She was, however, aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to them. She thus freely exercised a choice between resistance and assent. She must have known the consequences of the act, particularly when she was conscious of the fact that their marriage may not take place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily and consciously consented to having**

sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact."

19. In *Deelip Singh v. State of Bihar*, (2005) 1 SCC 88 : 2005 SCC (Cri) 253], the Court framed the following two questions relating to consent : (SCC p. 104, para 30)

(1) Is it a case of passive submission in the face of psychological pressure exerted or allurements made by the accused or was it a conscious decision on the part of the prosecutrix knowing fully the nature and consequences of the act she was asked to indulge in?

(2) Whether the tacit consent given by the prosecutrix was the result of a misconception created in her mind as to the intention of the accused to marry her?

In this case, the girl lodged a complaint with the police stating that she and the accused were neighbours and they fell in love with each other. One day in February 1988, the accused forcibly raped her and later consoled her by saying that he would marry her. She succumbed to the entreaties of the accused to have sexual relations with him, on account of the promise made by him to marry her, and therefore continued to have sex on several occasions. After she became pregnant, she revealed the matter to her parents. Even thereafter, the intimacy continued to the knowledge of the parents and other relations who were under the impression that the accused would marry the girl, but the accused avoided marrying her and his father took him out of the village to thwart the bid to marry. The efforts made by the father of the girl to establish the marital tie failed. Therefore, she was constrained to file the complaint after waiting for some time.

20. **With this factual background, the Court held that the girl had taken a conscious decision, after active application of mind to the events that had transpired. It was further held that at best, it is a case of breach of promise to marry rather than a case of false promise to marry, for which the accused is prima facie accountable for damages under civil law.** It was held thus: (*Deelip Singh v. State of Bihar*, (2005) 1 SCC 8 : 2005 SCC (Cri) 253], SCC p. 106, para 35)

"35. The remaining question is whether on the basis of the evidence on record, it is reasonably possible to hold that the accused with the fraudulent intention of inducing her to sexual intercourse, made a false promise to marry. We have no doubt that the accused did hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. PW 12 was also too keen to marry him as she said so specifically. But we find no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to marry her at all from the inception and that the promise he made was false to his knowledge. No circumstances emerging from the prosecution evidence establish this fact. On the other hand, the statement of PW 12 that "later on", the accused became ready to marry her but his father and others took him away from the village would indicate that the accused might have been prompted by a genuine intention to marry which did not materialise on account of the pressure exerted by his family elders. It seems to be a case of breach of promise to marry rather than a case of false promise to marry. On this aspect also, the observations of this Court in *Uday case* [*Uday v. State of Karnataka*, (2003) 4 SCC 46 : 2003 SCC (Cri) 775] at para 24 come to the aid of the appellant."

21. **In *Deepak Gulati v. State of Haryana* [*Deepak Gulati v. State of Haryana*, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] , the Court has drawn a distinction between rape and consensual sex. This is a case of a prosecutrix aged 19 years**

at the time of the incident. She had an inclination towards the accused. The accused had been giving her assurances of the fact that he would get married to her. The prosecutrix, therefore, left her home voluntarily and of her own free will to go with the accused to get married to him. She called the accused on a phone number given to her by him, to ask him why he had not met her at the place that had been pre-decided by them. She also waited for him for a long time, and when he finally arrived, she went with him to a place called Karna Lake where they indulged in sexual intercourse. She did not raise any objection at that stage and made no complaints to anyone. Thereafter, she went to Kurukshetra with the accused, where she lived with his relatives. Here too, the prosecutrix voluntarily became intimate with the accused. She then, for some reason, went to live in the hostel at Kurukshetra University illegally, and once again came into contact with the accused at Birla Mandir there. Thereafter, she even proceeded with the accused to the old bus-stand in Kurukshetra, to leave for Ambala so that the two of them could get married at the court in Ambala. At the bus station, the accused was arrested by the police. The Court held that the physical relationship between the parties had clearly developed with the consent of the prosecutrix as there was neither a case of any resistance nor had she raised any complaint anywhere at any time, despite the fact that she had been living with the accused for several days and had travelled with him from one place to another. The Court further held that it is not possible to apprehend the circumstances in which a charge of deceit/rape can be levelled against the accused.

22. Recently, this Court, in *Shivashankar v. State of Karnataka* [*Shivashankar v. State of Karnataka*, (2019) 18 SCC 204] , disposed of on 6-4-2018, has observed that it is difficult to hold that sexual intercourse in the course of a relationship which has continued for eight years is "rape", especially in the face of the complainant's own allegation that they lived together as man and wife. It was held as under: (*Shivashankar case* [*Shivashankar v. State of Karnataka*, (2019) 18 SCC 204] , SCC p. 205, para 4)

"4. In the facts and circumstances of the present case, it is difficult to sustain the charges levelled against the appellant who may have possibly, made a false promise of marriage to the complainant. It is, however, difficult to hold sexual intercourse in the course of a relationship which has continued for eight years, as "rape" especially in the face of the complainant's own allegation that they lived together as man and wife."

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 latter 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 IPC.

24. In the instant case, it is an admitted position that the appellant was serving as a Medical Officer in the Primary Health Centre and the complainant was working as an Assistant Nurse in the same health centre and that she is a widow. It was alleged by her that the appellant informed her that he is a married man and that he has differences with his wife. Admittedly, they belong to different communities. It is also alleged that the accused/appellant needed a month's time to get their marriage registered. The complainant further states that she had fallen in love with the appellant and that she needed a companion as she was a widow. **She has specifically stated that "as I was also a widow and I was also in need of a companion, I agreed to his proposal and since then we were having love affair and accordingly we started residing together. We used to reside sometimes at my home whereas sometimes at his home". Thus, they were living together, sometimes at her house and sometimes at the residence of the appellant. They were in a relationship with each other for quite some time and enjoyed each other's company. It is also clear that they had been living as such for quite some time together. When she came to know that the appellant had married some other woman, she lodged the complaint. It is not her case that the complainant has forcibly raped her. She had taken a conscious decision after active application of mind to the things that had happened. It is not a case of a passive submission in the face of any psychological pressure exerted and there was a tacit consent and the tacit consent given by her was not the result of a misconception created in her mind. We are of the view that, even if the allegations made in the complaint are taken at their face value and accepted in their entirety, they do not make out a case against the appellant. We are also of the view that since the complainant has failed to prima facie show the commission of rape, the complaint registered under Section 376(2)(b) cannot be sustained."**

(Emphasis supplied)

5. For the aforesaid reasons, the following:

ORDER

[I] The Criminal Petition is **allowed**.

[II] The petitioner-accused No.1 shall be released on bail in connection with Crime No.35/2026 of Mahila Police Station pending on the file of the II Additional Senior Civil Judge and ACJM Court, Udupi, for the offences punishable under Sections 318(2), 64(2)(m) read with Section 3(5) of the BNS, 2023, subject to the following conditions:

- a. The petitioner shall execute a personal bond for a sum of Rs.2,00,000/- (Rupees two Lakh only) with two solvent sureties for the like-sum to the satisfaction of the jurisdictional Court.
- b. The petitioner shall not indulge in tampering the prosecution witnesses or hamper the investigation, either directly or indirectly.
- c. The petitioner shall appear before the jurisdictional Court on all the future hearing dates, unless exempted by the court for any genuine cause.
- d. The prosecution is at liberty to prefer an application for cancellation of bail, if

there is any violation of the aforesaid conditions.

FOOTNOTES

1. 1(2019) 18 SCC 191