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- ABC 2025 (II) 617 Ker**  
**ACQUITTAL & BAIL CASES**  
**HIGH COURT OF KERALA**  
(Bechu Kurian Thomas,J.)  
Criminal Appeal No. 9593 OF 2025  
Decided On 25 August 2025
- MAHESH V.M** - Appellant(s).
- Versus*
- STATE OF KERALA & ANOTHER** - Respondent(s).
- Law Covered:-** (A) *Bharatiya Nagarik Suraksha Sanhita, 2023 - S. 482 (Code of Criminal Procedure, 1973 - S. 438) - BNS- Sec. 64(2)(m), 69 (IPC - S. 376 (2)(m)) - Bail Application - Anticipatory Bail - Sexual intercourse by false promise of marriage - Victim is in subsisting marriage- No legal promise possible- Held, Prima facie offence not attracted - Custodial interrogation not necessary - Anticipatory bail granted.*
- Facts:-** *Petitioner is the accused for offences punishable under Sections 64(2)(m) and 69 of the Bharatiya Nyaya Sanhita, 2023. According to the prosecution, the accused had sexually assaulted the victim under the promise of marriage at various places and even lived with the victim. The petitioner is a Sub Inspector of Police. The victim is married and is a mother of three children. The victim's marriage is subsisting. Investigation revealed that the victim had been living with the petitioner. In the meantime, the petitioner married another lady and thereafter continued to live with the victim . Since the victim is already in a subsisting marriage, allegation of sexual intercourse on the basis of a false promise of marriage cannot legally exist, at least prima facie. The prosecution was not able to convince the Court that custodial interrogation is necessary. Anticipatory bail was granted.*
- Law of relief:-** *Anticipatory bail in case of false promise of marriage- Victim in subsisting marriage- No prima facie offence made out- anticipatory bail granted.*
- Counsel:-**
- For Appellant(s):*** Shri. Muhammed Zain Shabeer P.P. & Shri. Shibu Babu, Advocates.
- For Respondent(s):*** State: Sri. Prasanth M.P., Public Prosecutor.
- Cases Referred:-**
1. *Sushila Aggarwal and Others v. State (NCT of Delhi) and Another: [2020 (5) SCC 1]*

2. *Ashok Kumar v. State of Union Territory Chandigarh*: [2024 SCC Online SC 274]

**ORDER**

***Bechu Kurian Thomas, J.:*** -

1. This bail application is filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS').

2. Petitioner is the accused in Crime No.915/2025 of Palakkad Town North Police Station, registered alleging offences punishable under Sections 64(2)(m) and 69 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS').

3. According to the prosecution, the accused had, from August 2016 till 24.07.2025, sexually assaulted the victim under the promise of marriage at various places and even lived with the victim, and thereby committed the offences alleged.

4. I have heard the learned counsel for the petitioner as well as the learned Public Prosecutor.

5. The learned counsel for the petitioner submitted that petitioner has been falsely arrayed as an accused and that he has no involvement in the alleged crime.

6. The learned Public Prosecutor opposed the bail application.

7. Petitioner is a Sub Inspector of Police, now serving in the Kerala Armed Police Battalion. The victim had married another person and is a mother of three children. In the year 2016, she is alleged to have been with the petitioner, and pursuant to a complaint by her husband, she was produced before the police station, where she refused to return and thereafter continued to live with the petitioner. Though the victim is allegedly separated from her husband, the marriage has not been dissolved by law. The investigation conducted so far has revealed that the victim had been living with the petitioner till July 2025. In the meantime, petitioner is alleged to have married another lady in January 2025 and even thereafter, he continued to live with the victim until July 2025. Though the allegations are serious, since the victim is already in a subsisting marriage, allegation of sexual intercourse on the basis of a false promise of marriage cannot legally exist, atleast prima facie.

8. In *Sushila Aggarwal and Others v. State (NCT of Delhi) and Another*, [2020 (5) SCC 1], it was held that while considering whether to grant anticipatory bail or not, Courts ought to be generally guided by considerations such as the nature and gravity of the offences, the

a role attributed to the applicant, and the facts of the case. Grant of anticipatory bail is a matter of discretion and the kind of conditions to be imposed or not to be imposed are all dependent on facts of each case, and subject to the discretion of the court.

b 9. In *Ashok Kumar v. State of Union Territory Chandigarh* [2024 SCC Online SC 274], it has been held that a mere assertion on the part of the State while opposing the plea for anticipatory bail that custodial interrogation is required would not be sufficient and that the State would have to show or indicate more than prima facie case as to why custodial investigation of the accused is required for the purpose of investigation.

c 10. In the instant case, the prosecution has not been able to convince this Court that custodial interrogation is necessary. Having regard to the nature of allegations, I am of the view that custodial interrogation of the petitioner is not necessary. However he must subject himself to interrogation for the purpose of completing the investigation under a limited custody as observed in *Sushila Agarwal's* case (supra).

d 11. Accordingly, this application is allowed on the following conditions:

e (a) Petitioner shall appear before the Investigating Officer on 08.09.2025 from 10:00 am to 05:00 pm and again on 09.09.2025 during the same time, which period shall be treated as limited custody.

f (b) If after interrogation, the Investigating Officer proposes to arrest the petitioner, then, he shall be released on bail on him executing a bond for Rs.50,000/- (Rupees fifty thousand only) with two solvent sureties each for the like sum before the Investigating Officer.

(c) Petitioner shall appear before the Investigating Officer as and when required and shall also co-operate with the investigation.

g (d) Petitioner shall not intimidate or attempt to influence the witnesses; nor shall he tamper with the evidence or contact the victim or her family members.

(e) Petitioner shall not commit any similar offences while he is on bail.

h (f) Petitioner shall not leave India without the permission of the Court having jurisdiction.

In case of violation of any of the above conditions, the jurisdictional Court shall be empowered to consider the application for cancellation, if any, and pass appropriate orders in accordance with the law, notwithstanding the bail having been granted by this Court.

**Result:-** Application allowed. Anticipatory bail granted with conditions.