

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. MP(M) No. 104 of 2026****Reserved on: 24.04.2026****Date of Decision: 30.04.2026.**

Paras Sharma**...Petitioner****Versus****State of Himachal Pradesh & another****...Respondents**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No.*****For the Petitioner : M/s Sunil Dutt Gautam and Harmohan Thakur, Advocates.****For the Respondent : Mr Ajit Sharma, Deputy Advocate General with ASI Babit Kumar, I.O. Women Police Station.****For the victim : Ms Aanchal Singh, Legal Aid Counsel.**

Rakesh Kainthla, Judge

The petitioner has filed the present petition for seeking pre-arrest bail in F.I.R. No. 02 of 2026 dated 16.01.2026, registered for the commission of an offence punishable under Section 64 of Bhartiya Nyaya Sanhita (BNS) 2023 at Women Police Station Solan, District Solan, H.P.

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. It has been asserted that the petitioner is a permanent resident of District Sirmour, H.P. He belongs to a respectable and law-abiding family. He has deep social roots, a fixed place of residence, and no criminal antecedents. As per the victim's own version, she had voluntarily accompanied her friend and others on the night of 10.01 2026 and stayed in the premises with multiple persons. She had consumed alcohol and remained conscious enough to attend a video call till about 4:30 a.m. The petitioner lay on the same bed, and the victim did not raise any alarm. The incident of sexual assault is stated to have taken place only around 5:00–5:30 a.m. The victim continued with her normal activities till 7:30 a.m. No complaint was made on the spot. No alarm was raised, and no report was lodged. The F.I.R was subsequently lodged on 16.01.2026 after due deliberation. No recovery is to be effected from the petitioner. The petitioner would abide by the terms and conditions that the Court may impose. The petitioner had applied for bail before the learned Sessions Court, but his petition was dismissed without recording any finding about his custodial interrogation. The petitioner would abide by the terms and conditions that the Court may

impose. Therefore, it was prayed that the present petition be allowed and the petitioner be released on bail.

3. The petition is opposed by filing a status report asserting that the victim's friend called her on 10.01.2026 for a night out. The victim initially ignored the calls. However, her friend told her at about 10:00 p.m. that she was coming to pick her (the victim) up. The victim enquired about the presence of the persons on the night out, and her friend revealed that petitioner Paras Sharma would also be present. The victim told her friend that she was uncomfortable with the petitioner because she had previously blocked him due to his inappropriate behaviour. Her friend assured her that everything would be fine and that she would stay with the victim. The victim went to Zero Point near Oachghat. She consumed alcohol due to peer pressure. Everybody went into the different room, and the victim was on a video call till 4:30 am. The petitioner came and lay on the other side of the bed. The victim fell asleep. The petitioner started touching the victim inappropriately. She told him to stop and resisted. The petitioner held the victim's hand and raped her. The victim pushed him away and messaged her friend to drop her off at her

home. She reported the matter to the police. The police registered the F.I.R and investigated the matter. A team from SFSL Junga also visited the spot. The petitioner joined the investigation as per the order passed by the learned Sessions Judge, and he was medically examined. No other F.I.R has been registered against the petitioner. The charge-sheet has been filed before the Court on 11.03.2026, and the matter is listed for service on 25.07.2026. The samples were sent to the SFSL, Junga, and as per the report of the SFSL, semen was not detected on the victim's samples. The petitioner's DNA was detected in the samples collected from him. As per the report of the medical Officer, the possibility of sexual assault could not be ruled out, and the petitioner is capable of performing sexual intercourse. Hence, the status report.

4. I have heard M/s Sunil Dutt Gautam and Harmohan Thakur, learned counsel for the petitioner, Mr Ajit Sharma, learned Deputy Advocate General, for the respondent/State and Ms Aanchal Singh, learned Legal Aid Counsel, for the victim.

5. Mr Sunil Dutt Gautam, learned counsel for the petitioner, submitted that the petitioner is innocent and he was falsely implicated. The prosecution's version is inherently

improbable. It is difficult to believe that the victim would not have shouted for help when she was being raped, and nobody would have visited the room at 5:30 a.m to rescue her. The victim's version is not corroborated by the medical evidence and the report of SFSL. The police have filed the charge-sheet and no fruitful purpose would be served by detaining the petitioner in custody. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

6. Mr Ajit Sharma, learned Deputy Advocate General, for the respondent/State, submitted that the allegations made against the petitioner are heinous. The victim's version cannot be disbelieved at this stage because it is not corroborated by the medical evidence. The petitioner would intimidate the victim and the witnesses in case of his release on bail. Therefore, he prayed that the present petition be dismissed.

7. Ms Anchal Singh, learned counsel for the victim, adopted the submissions of Mr Ajit Sharma, learned Deputy Advocate General and prayed that the present petition be dismissed.

8. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

9. It was laid down by the Hon'ble Supreme Court in *P. Chidambaram v. Directorate of Enforcement*, (2019) 9 SCC 24; (2019) 3 SCC (Cri) 509; 2019 SCC OnLine SC 1143 that arrest is a part of the investigation procedure. The power of pre-arrest bail is extraordinary and should be sparingly exercised. It was observed:

“69. Ordinarily, an arrest is a part of the procedure of the investigation to secure not only the presence of the accused but also several other purposes. Power under Section 438 Cr.P.C. is an extraordinary power, and the same has to be exercised sparingly. The privilege of pre-arrest bail should be granted only in exceptional cases. The judicial discretion conferred upon the court has to be properly exercised after application of mind as to the nature and gravity of the accusation; the possibility of the applicant fleeing justice, and other factors to decide whether it is a fit case for the grant of anticipatory bail. Grant of anticipatory bail to some extent interferes with the sphere of investigation of an offence, and hence, the court must be circumspect while exercising such power for the grant of anticipatory bail. Anticipatory bail is not to be granted as a matter of rule, and it has to be granted only when the court is convinced that exceptional circumstances exist to resort to that extraordinary remedy.”

10. This position was reiterated in *Srikant Upadhyay v. State of Bihar*, 2024 SCC OnLine SC 282, wherein it was held:

“25. We have already held that the power to grant anticipatory bail is extraordinary. Though in many cases it

was held that bail is said to be a rule, it cannot, by any stretch of the imagination, be said that anticipatory bail is the rule. It cannot be the rule, and the question of its grant should be left to the cautious and judicious discretion of the Court, depending on the facts and circumstances of each case. While called upon to exercise the said power, the Court concerned has to be very cautious, as the grant of interim protection or protection to the accused in serious cases may lead to a miscarriage of justice and may hamper the investigation to a great extent, as it may sometimes lead to tampering or distraction of the evidence. We shall not be understood to have held that the Court shall not pass interim protection pending consideration of such application as the Section is destined to safeguard the freedom of an individual against unwarranted arrest, and we say that such orders shall be passed in eminently fit cases.”

11. It was held in *Pratibha Manchanda v. State of Haryana*, (2023) 8 SCC 181: 2023 SCC OnLine SC 785 that the Courts should balance individual rights, public interest and fair investigation while considering an application for pre-arrest bail. It was observed:

“21. The relief of anticipatory bail is aimed at safeguarding individual rights. While it serves as a crucial tool to prevent the misuse of the power of arrest and protects innocent individuals from harassment, it also presents challenges in maintaining a delicate balance between individual rights and the interests of justice. The tightrope we must walk lies in striking a balance between safeguarding individual rights and protecting public interest. While the right to liberty and presumption of innocence are vital, the court must also consider the gravity of the offence, the impact on society, and the need for a fair and free investigation. The court's discretion in weighing these interests in the facts and

circumstances of each case becomes crucial to ensure a just outcome.”

12. It was held in *Devinder Kumar Bansal v. State of Punjab*, (2025) 4 SCC 493: 2025 SCC OnLine SC 488 that pre-arrest bail can be granted in exceptional circumstances where the Court is of the view that the petitioner was falsely implicated in the case, and the presumption of innocence cannot be a reason to grant bail. It was observed on page 501:

“21. The parameters for the grant of anticipatory bail in a serious offence like corruption are required to be satisfied. Anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has been falsely implicated in the crime or the allegations are politically motivated or are frivolous. So far as the case at hand is concerned, it cannot be said that any exceptional circumstances have been made out by the petitioner-accused for the grant of anticipatory bail, and there is no frivolity in the prosecution.

22. In the aforesaid context, we may refer to a pronouncement in *CBI v. V. Vijay Sai Reddy [CBI v. V. Vijay Sai Reddy, (2013) 7 SCC 452: (2013) 3 SCC (Cri) 563]*, wherein this Court expressed thus: (SCC p. 465, para 34)

“34. While granting bail, the court has to keep in mind the nature of accusation, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting

bail, the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond a reasonable doubt.” (emphasis in original and supplied)

23. The presumption of innocence, by itself, cannot be the sole consideration for the grant of anticipatory bail. The presumption of innocence is one of the considerations that the court should keep in mind while considering the plea for anticipatory bail. The salutary rule is to balance the cause of the accused and the cause of public justice. Over-solicitous homage to the accused's liberty can, sometimes, defeat the cause of public justice.

13. The present petition has to be decided as per the parameters laid down by the Hon’ble Supreme Court.

14. The status report specifically mentions that the victim had resisted the petitioner and asked him to stop. The petitioner continued with his activities despite the victim’s protests. The report of the medical Officer shows that the possibility of sexual intercourse could not be ruled out. Therefore, there is sufficient material to *prima facie* connect the petitioner to the commission of the crime.

15. It was submitted that the victim claimed that the rape had taken place at 5:30 am. No person in the vicinity heard the

victim's cries, which makes her version highly doubtful that she had resisted and the petitioner had acted forcibly. This submission will not help the petitioner. It was laid down by the Hon'ble Supreme Court in *Yedla Srinivasa Rao v. State of A.P.* (2006) 11 SCC 615, that when the victim says that she had not consented, the Court has to presume the absence of consent. It was observed: -

"16. If sexual intercourse has been committed by the accused and if it is proved that it was without the consent of the prosecutrix and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent. The presumption has been introduced by the legislature in the Evidence Act, looking to atrocities committed against women, and in the instant case, as per the statement of PW 1, she resisted, and she did not give consent to the accused at the first instance, and he committed the rape on her. The accused gave her assurance that he would marry her and continued to satisfy his lust till she became pregnant, and it became clear that the accused did not wish to marry her."

16. This judgment was followed in *Anurag Soni Vs State of Chhattisgarh*, 2019 (13) SCC 1. Therefore, in view of the binding precedents of the Hon'ble Supreme Court, the Court cannot infer consent when the victim stated that she had not consented to the sexual intercourse, and the submission that the petitioner had a consensual relationship with the victim cannot be accepted.

17. The petitioner is seeking pre-arrest bail. It was laid down by the Hon'ble Supreme Court in *Ms X versus State of Maharashtra and another, 2023 STPL 3386 SC:2023(2) Crimes 66 (SC)*] that pre-arrest bail should not be granted in an offence punishable under Section 376 of IPC. It was observed:

22. Surprisingly, none of the aforesaid aspects have been touched upon in both the impugned orders. The nature and gravity of the alleged offence have been disregarded. So has the financial stature, position and standing of the accused vis-a-vis the appellant/prosecutrix been ignored. The High Court has granted anticipatory bail in favour of the respondent No. 2/accused in a brief order of three paragraphs, having been swayed by the 'star variations in the narration of the prosecutrix', implying thereby that what was originally recorded in the FIR did not make out an offence of rape, as defined in Section 375 IPC, which is an erroneous assumption. Even if the first Supplementary statement of the appellant/prosecutrix recorded in the evening hours of 6th August 2022, the date on which the FIR had been registered against the respondent No.2/accused in the first half of the same day, her second Supplementary statement recorded on 6th September 2022 and the Medico-Legal Report of the doctor who had examined the appellant/prosecutrix on 8th August 2022, are kept aside for a moment, we find that there was still sufficient material in the FIR that would prima facie attract the provision of Section 376, IPC. In our opinion, these factors ought to have dissuaded the High Court from exercising its discretion in favour of the respondent. 2/accused for granting him anticipatory bail.

18. It was submitted that the charge sheet has been filed and the custodial interrogation of the petitioner is not required;

hence, the petitioner is entitled to pre-arrest bail. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in *Sumitha Pradeep v. Arun Kumar C.K.*, 2022 SCC OnLine SC 1529, that the petitioner is not entitled to pre-arrest bail simply because his custodial interrogation is not required. It was observed:

“14. It may be true, as pointed out by learned counsel appearing for Respondent No. 1, that the charge sheet has already been filed. It would be unfair to presume on our part that the Investigating Officer does not require Respondent No. 1 for custodial interrogation for the purpose of further investigation.

15. Be that as it may, even assuming it is a case where Respondent No. 1 is not required for custodial interrogation, we are satisfied that the High Court ought not to have granted discretionary relief of anticipatory bail.

16. We are dealing with a matter wherein the original complainant (appellant herein) has come before this Court praying that the anticipatory bail granted by the High Court to the accused should be cancelled. To put it in other words, the complainant says that the High Court wrongly exercised its discretion while granting anticipatory bail to the accused in a very serious crime like POCSO, and, therefore, the order passed by the High Court granting anticipatory bail to the accused should be quashed and set aside. *In many anticipatory bail matters, we have noticed one common argument being canvassed that no custodial interrogation is required and, therefore, anticipatory bail may be granted. There appears to be a serious misconception of the law that if no case for custodial interrogation is made out by the prosecution, then that alone would be a good ground to grant anticipatory bail. Custodial interrogation can be one of*

the relevant aspects to be considered along with other grounds while deciding an application seeking anticipatory bail. There may be many cases in which the custodial interrogation of the accused may not be required, but that does not mean that the prima facie case against the accused should be ignored or overlooked, and he should be granted anticipatory bail. The first and foremost thing that the court hearing an anticipatory bail application should consider is the prima facie case put up against the accused. Thereafter, the nature of the offence should be looked into along with the severity of the punishment. Custodial interrogation can be one of the grounds to decline anticipatory bail. However, even if custodial interrogation is not required or necessitated, by itself, cannot be a ground to grant anticipatory bail.” (Emphasis supplied)

19. In the present case, the trial has not commenced, and the possibility of the petitioner influencing the victim and the witnesses cannot be ruled out.

20. No other point urged.

21. In view of the above, the present fails, and it is dismissed, so also pending applications, if any.

22. The observations made hereinabove are regarding the disposal of this petition and will have no bearing, whatsoever, on the merits of the main case.

Rakesh Kainthla)
Judge

30th April, 2026.
(ravinder)