

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 5002 OF 2021

Vinit Kumar. ... Petitioner.  
V/s.  
The State of Maharashtra and another. ... Respondents.

Mr.Sanjeev Mishra for the Petitioner.  
Mr.K.V.Saste, APP for the Respondent- State.

**CORAM :** NITIN JAMDAR AND  
SARANG V. KOTWAL, JJ.

**DATE :** 20 December 2021.

**P.C. :**

Heard the learned counsel for the parties. Taken up for disposal

2. The petition is filed for the following prayer:

*“(b) That this Hon’ble Court to issue a Writ of Certiorari/ Mandamus and/or any other appropriate writ, order and/or directing calling for the record and proceedings of the Petitioner case and after going into the legality and propriety thereof be pleased to quash and set aside FIR bearing No.821 of 2021 registered Under Sec. 376, 376(n), 504 and 506 of IPC with Kandivali Police Station, Dist. Mumbai and Petitioner be set at liberty.”*

The ground for quashing of the FIR is that Respondent No.2 has given her consent.

3. Since the FIR mentions section 376 and 376(n) of the Indian Penal Code, we have examined the record and the affidavit filed by Respondent No.2 carefully. The Respondent No.2 filed an FIR with the allegation that the Petitioner No.1 had physical relationship with Respondent No.2 on the promise of marriage and when the Petitioner No.1 and Respondent No.2 were engaged, the engagement was broken by the Petitioner No.1 and he refused to marry. The Petitioner is working in the Indian Army.

4. The learned counsel for the Petitioners and the learned counsel for Respondent No.2 state, which is also referred to in the affidavit, that Petitioner No.1 and Respondent No.2 got engaged on 5 May 2021 and got married on 14 November 2021 and they are residing together. The marriage certificate is also annexed to the petition. The affidavit and the stand taken by Respondent No.2 is that the physical relationship was with consent of Respondent No.2. The Petitioner and Respondent No.2 were engaged and thereafter now they have married. Therefore, not only Respondent No.2 has given consent for quashing but even the ingredients of sections 376 and 376(n) of IPC are not made out in the light of the stand taken by Respondent No.2.

5. In these circumstances, keeping the prosecution pending will be, in fact, against the interest of justice. The case, therefore, is made out for exercise of extra ordinary jurisdiction to quash the FIR.

6. Accordingly, writ petition is allowed in terms of prayer clause (b) as above.

(SARANG V. KOTWAL, J.)

(NITIN JAMDAR, J.)