

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO. 189 OF 2021

Akash S/o. Rajabal Yenurkar,
Aged 24 Years, Occu. - Education,
R/o. Rajoli, Taq. Mul,
Dist. Chandrapur, 441224,
Mob. 7378844482,
Maharashtra.

.....**APPLICANT**

... **VERSUS** ...

1. The State of Maharashtra,
Through PSO, Ballarsha,
Dist. Chandrapur, Maharashtra.
2. Ku. Sapna S/o. Madhu Bawane,
Aged 32 years, Occu. Nil,
R/o. Visapur, Tah. Ballarasha,
Dist. Chandrapur – 442701,
Maharashtra.

.....**NON-APPLICANTS**

Shri N. P Meshram, Advocate for Applicant.

Shri S. M. Ghodeswar, Additional Public Prosecutor for Non-applicant No.1.

**CORAM : V. M. DESHPANDE AND
AMIT B. BORKAR, JJ.**

DATE : 23.08.2021.

ORAL JUDGMENT : (PER AMIT B. BORKAR, J.)

1. Heard.
2. Rule. Rule is made returnable forthwith.
3. By this application under Section 482 of the Code of Criminal Procedure, the applicant is challenging registration of the First Information Report No.861/2020 dated 12.12.2020

registered with the non-applicant No.1 - Police Station for the offence punishable under Section 376 of the Indian Penal Code.

4. The First Information Report came to be registered against the applicant by the non-applicant No.2 on 12.12.2020 alleging that the applicant committed forcible sexual intercourse with the non-applicant No.2 on promise of marriage, but thereafter, the applicant refused to perform marriage with the non-applicant No.2.

5. This Court on 03.02.2021, issued notice to the non-applicant No.2. The office report shows that the non-applicant No.2 is served. On 02.07.2021 when the matter was called out, this Court adjourned the matter so as to give one more chance to the non-applicant No.2 to appear in the present matter. Today, when the matter is called out, the non-applicant No.2 has neither appeared personally nor through Advocate.

6. We have carefully considered the allegations in the First Information Report. On perusal of the First Information Report, it appears that the non-applicant No.2 is in relationship with the applicant from December 2018. From the First Information Report, it appears that the non-applicant No.2 is 8 years older than the applicant. The non-applicant No.2 has alleged that the applicant had forcible sexual intercourse with the non-applicant

No.2 on the promise of marriage on 24.11.2019 and thereafter, again had forcible sexual intercourse on 25.11.2019. The First Information Report came to be registered on 12.12.2020. The First Information Report specifically records that the non-applicant No.2 had developed a friendship with the applicant and the applicant had assured her that he will marry her. The First Information Report further records that the applicant and the non-applicant No.2 had developed physical relationship for more than a year. The First Information Report also discloses that initially the applicant was ready to perform marriage with her, but thereafter, he refused to marry with the non-applicant No.2. We are therefore, satisfied that the relationship between the applicant and the non-applicant No.2 was of consensual nature, spreading over a period of more than one year and subsequently, the applicant expressed his disinclination to marry with the non-applicant No.2.

7. The Hon'ble Apex Court in the case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra*** reported in ***(2019) 9 SCC 608***, in the similar situation had quashed the First Information Report against the applicant therein. The Hon'ble Apex Court in the said case has held that, where the promise to marry is false and intention of the maker at the time of making the promise itself was not to abide by it but to deceive the woman to

convince her to engage in sexual relations, there is “misconception of fact” that vitiates the woman’s consent, it is further held that mere breach of promise cannot be said to be false promise. The Hon’ble Apex Court observed that, to establish a false promise, the maker of the promise should have had no intention of upholding his word at the time of giving it. In the facts of the present case, we are satisfied that there is no material on record to show that at the time of inception of relationship, the applicant had no intention to perform marriage with the non-applicant No.2. We are therefore, satisfied that the continuation of the proceedings against the applicant would amount to abuse of process of Court.

8. We therefore, pass following order :

The First Information Report No.861/2020 dated 12.12.2020 registered against the applicant with the non-applicant No.1 - Police Station for the offence punishable under Section 376 of the Indian Penal Code, is quashed and set aside against the applicant.

9. Rule is made absolute in the above terms. Pending application(s), if any, stand(s) disposed of.

JUDGE

JUDGE