

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.760 OF 2020

Aashiq Dinesh Bafna

... Petitioner

V/s.

The State of Maharashtra

... Respondent

Mr. Karansingh Rajput with Mr. Dharmesh S. Joshi i/by
T.D. Joshi & Associates for the petitioner.

Ms. G.P. Mulekar, APP for the respondent/State.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 19, 2022

PC.:

1. The petitioner is challenging order of rejection of discharge application by the learned Sessions Judge. The learned Sessions Judge rejected the discharge application observing that there is *prima facie* material on record to frame charge against the accused.

2. Learned advocate for the petitioner invited my attention to the charge-sheet to urge that according to the case of the prosecution the relationship between the petitioner and the victim started on 9th February 2015 and continued till 24th May 2017. It is the case of the prosecution that there was sexual intercourse with the victim in false promise of marriage. The incidence of sexual intercourse as alleged in the prosecution case range from 6th

December 2015 till 22nd May 2017. The report was filed on 27th May 2017. The petitioner, therefore, filed an application for discharge before the learned Sessions Court which has been rejected by the impugned order.

3. In pursuance of the directions issued by this Court, victim is present in Court. She states before the Court that she is happily married and does not wish to continue with the prosecution.

4. Having considered submissions made on behalf of both sides, the following factual scenario appears from the case of the prosecution:

- i) the complainant and the accused was in relationship from 19th May 2015 till 22nd May 2017;
- ii) the complainant and the accused met regularly and had physical relationship for two (2) years;.
- iii) even after two incidents of physical relationship, according to the prosecution the petitioner was ready to marry the victim;
- iv) both stayed in the State of Chhattisgarh from 18th May 2017 till 22nd May 2017.

5. Taking into consideration aforesaid facts, in my opinion, the case of the prosecution on its face does not indicate that the promise made by the petitioner at inception was false or that the complainant was engaged in sexual relationship on the basis of such promise. In the facts of the case, I am satisfied that when the petitioner promised to marry complainant, it was done in good faith. The petitioner's failure in June 2017 to fulfill promise made

on 19th May 2017 cannot be construed to mean that the promise was false.

6. The case of the prosecution as stated in the charge-sheet is more or less similar to the facts in the case of **Sonu alias Subhash Kumar v. State of Uttar Pradesh** reported in 2021 SCC OnLine 181. The Apex Court was considering an application under section 482 of the Criminal Procedure Code, 1973. The Apex Court considering similar facts quashed the first information report lodged against the accused relying on the earlier judgment in the case of **Pramod Suryabhan Pawar v. State of Maharashtra & Anr.** reported in (2019) 9 SCC 608.

7. In the facts of the present case, in view of the case as noted above, in my opinion, there was no justifiable ground to frame charge against the petitioner for offence under sections 376-C and 506 of the Indian Penal Code.

8. In that view of the matter, I pass following order:

a) Application for discharge filed below Exhibit 11 in S.C. No. 618 of 2017 is allowed;

b) The petitioner, Aashiq Dinesh Bafna, stands discharge for offence under sections 376-C and 506 of the Indian Penal Code in the proceedings arising out of FIR No.123/2017 registered on 27th May 2017 with the Tardeo Police Station;

9. Rule is made absolute in above terms. No costs.

(AMIT BORKAR, J.)