



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

CRIMINAL APPLICATION (APL) NO. 1581 OF 2022

Fajal S/o Afsar Sheikh
Aged about 24 years, Occ. Labour,
R/o. At Post Varanwali,
Tah. Pusad, Dist. Yavatmal **APPLICANT**

// VERSUS //

- 1) The State of Maharashtra,
through Police Station Officer,
Ganeshpeth Police Station,
Nagpur Urban, Tah. and Dist.
Nagpur.
- 2) X Y Z (Victim in Crime
No.0151/2022 registered by
Police Station Officer, Ganeshpeth
Police Station, Nagpur Urban,
Tah. and Dist. Nagpur) **NON-APPLICANTS**

Mr. Abhishek Zade, Advocate for applicant.
Mr. A.B. Badar, Additional Public Prosecutor for non-
applicant No.1/State.
Mr. S.M. Wandre, Advocate for non-applicant No.2.

**CORAM : VINAY JOSHI AND
M.W. CHANDWANI, JJ.**

DATED : 08th NOVEMBER, 2023.

ORAL JUDGMENT : (Per Vinay Joshi, J.)

1. Heard. **Admit.** Heard finally by consent of the learned
counsel appearing for the parties.

2. By this application the applicant is seeking to quash the charge-sheet bearing No.83/2022, arising out of Crime No.151/2022, registered with Police Station Ganeshpeth, Nagpur City, for an offence punishable under Sections 376(2)(n) and 417 of the Indian Penal Code.

3. At the instance of report lodged by the informant, who is aged about 23 years, the aforesaid crime came to be registered. At the inception, the learned Counsel for the applicant has attracted our attention to the “Adharcard” of the informant to impress that on the date of filing of First Information Report (FIR), the informant was aged about 25 years and 10 months.

4. It is informant’s case that in the year 2019, she started to work at ‘Anand Bakery’ where the applicant was already employed. The casual acquaintance of both has turned into love relationship. They were frequently meeting with each other as well as talking on phone. Both of them assured each other to get married. The informant stated that from the Month of October-2021 onwards, for considerable period, she had sexual relations with applicant at different places. According to the informant, when she has asked the applicant for marriage, he refused and therefore the report.

5. Learned Counsel appearing for the applicant would submit that contents of the FIR even if taken at its face value, it does not make out a case of false promise constituting the offence of rape. It is argued that the case squarely falls in the arena of voluntary sexual relations in between two adults. Learned Counsel for the informant as well as learned Additional Public Prosecutor appearing for the non-applicant/State resisted the application by contenting that the informant has specifically stated about assurances given by the applicant for marriage. It is submitted that since consent was given by the informant on promise to marry, therefore, the consent vitiates, amounting to offence of rape.

6. Learned Counsel for the applicant has submitted that the facts are clear enough to convey that the consent was not given by the informant only on account of promise to marry, but relations were established due to love affair. Particularly, he has pointed out that reading of FIR as well as statement of the informant does not say that since the applicant assured for marriage, she has indulged into sexual activities. It is apparent that in the year 2019 both got acquainted with each other, developed love relationship and decided to marry but, the wish did not work out. In order to constitute an offence of rape, "consent" must be obtained under the misrepresentation or misconception of fact. To establish whether

the “consent” was vitiated by “misconception of fact” arising out of a promise to marry, the prosecution must establish that the promise was false and only because the accused assured for marriage, she has consented for sexual relations with the applicant. There is marked distinction that both decided to marry and accused under the promise of marriage had enjoyed sexual relations. The case squarely falls in the earlier category where both adults have indulged into sexual relations out of love and affection.

7. The learned Counsel for the applicant has relied on the decision of this Court in the case of ***Pawan S/o Bhimrao Jadhav Vs. State of Maharashtra and another*** in ***Criminal Application (APL) No. 1065/2019***, decided on ***05.04.2023*** wherein, this Court took a review of several Supreme Court’s decisions in the field and finally observed that unless there is intention to deceive since inception, and the victim has given consent solely on the basis of promise, the offence of rape would not constitute.

8. We have carefully examined the entire material and found that it was a consensual relationship between two adults. There is no element that by relying on the promise, the lady has succumbed to the wishes of the applicant. Though, the applicant has denied for marriage, however, that does not mean that since inception he had intention to deceive. In the circumstances, even if

the prosecution's case is accepted as it stand, it does not make out a *prima facie* case to constitute the offence of rape.

9. In view of that, the Criminal Application is allowed and disposed of. We hereby quashed and set aside the FIR relating to Crime No.151/2022, registered with Police Station Ganeshpeth, Nagpur City, for the offence punishable under Sections 376(2)(n) and 417 of the Indian Penal Code, 1860 and the related charge-sheet No.83/2022 pending on the file of the concerned Court.

10. In view of disposal of Criminal Application (APL) No. 1581 of 2023, pending application (APPP) No.548 of 2023 is disposed of.

(M.W. CHANDWANI, J.)

(VINAY JOSHI, J.)