

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

CRIMINAL WRIT PETITION NO. 4004 OF 2023

Parmanand Bhagu Mandal

.... Petitioner

v/s.

The State of Maharashtra and anr.

.... Respondents

Mr. Akhlak A. Khan a/w. Mr. Krishna K. Tiwari for the Petitioner.

Ms. M.M. Deshmukh, APP for the State.

Ms. Neral Derale for the Respondent No.2.

Mr. Sudhir Korgaonkar, PSI, Kasturba Marg Police Station, present.

Mr. Sachin Gavas, IO, present.

Respondent No.2 present in Court.

**CORAM: SMT. ANUJA PRABHUDESSAI AND
N.R. BORKAR, JJ.**

DATED : 04th JANUARY, 2024.

P. C. :-

. Learned counsel for the Petitioner states that the case is committed to the Sessions Court and is registered as Sessions Case No.689/2023. He seeks leave to amend the prayer clauses (b) and (c). Leave granted. Amendment to be carried out forthwith.

2. By this Petition filed under Article 226 of the Constitution of India, the Petitioner seeks to quash the FIR No.238/2023 registered with Kasturba Marg Police Station, Mumbai and consequent Sessions

Case No.689/2023 pending before the learned Sessions Judge, Sessions Court, Dindoshi for the offences punishable under sections 376(2)(n) and 506 of the Indian Penal Code.

3. The aforesaid crime was registered pursuant to the FIR lodged by the Respondent No.2. The facts narrated in the FIR prima facie reveal that the Respondent No.2 as well as the Petitioner were known to each other since last more than 02 years. They had indulged in sexual relationship on several occasions. The material on record reveals that the Petitioner and the Respondent No.2, both adults, had indulged in consensual sexual relationship. Hence, the offence of rape within the meaning of Section 375 of the Indian Penal Code is not made out.

4. The Respondent No.2 is present before the Court. She has filed her affidavit stating that she does not wish to pursue the matter and that she is already engaged and her marriage is scheduled in February, 2024. She has given no objection to quash the FIR. The contents of the affidavit were explained to her by the learned APP. She has identified her signature on the affidavit and has confirmed the contents of the affidavit and also reiterated before us that she does not wish to proceed with the matter.

5. Considering the above facts and circumstances, in our considered view, this is a fit case to exercise powers under Article 226 of the Constitution of India and to quash the FIR. Hence, the Petition is allowed in terms of prayer clause (b). FIR No.238/2023 registered with Kasturba Marg Police Station, Mumbai and consequent Sessions Case No.689/2023 pending before the learned Sessions Judge, Sessions Court, Dindoshi, stands quashed subject to payment of costs of Rs.20,000/- to be paid by the Petitioner to Maharashtra Central Police Welfare Fund, within a period of 07 days from the date of this order.

6. It is stated that the Petitioner is lodged in Thane Central Prison. Since the FIR No.238/2023 registered with Kasturba Marg Police Station against the Petitioner has been quashed, the Petitioner be released from jail in the event his custody is not required in any other case.

7. Stand over to **11/01/2024** for compliance.

(N.R. BORKAR, J.)

(SMT. ANUJA PRABHUDESSAI, J.)

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