

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

WRIT PETITION NO. 80 OF 2024

Salman Khan Mehmud Khan

..Petitioner

v/s.

The State of Maharashtra .

..Respondents

Mr. Sartaj for the Petitioner.

Mr. Abdullah Khan for the Respondent No.2.

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

**CORAM : ANUJA PRABHUDESSAI, &
N. R. BORKAR, JJ.**

DATED : 10th JANUARY, 2024.

P.C.

1. This is a petition under Article 226 of the Constitution of India, to quash Sessions Case No.11 of 2023 pending before Sessions Court, Dindoshi, Mumbai, arising from Crime No. 618 of 2022, registered with D.N.Nagar Police Station, for offences punishable under Section 376, 420 of the Indian Penal Code.

2. The aforesaid crime was registered pursuant to the FIR lodged by the Respondent No.2. The Respondent No.2 had alleged that the petitioner herein had established sexual relationship with her under the pretext of marriage. He subsequently refused to marry

her. Hence the complaint for rape and cheating.

3. Learned Counsel for the Petitioner and the Respondent no.2 submit that the parties have settled the dispute amicably. They have placed on record affidavit of the Respondent no.2 wherein she has stated that she has resolved the dispute amicably and that she has no objection to quash the FIR. The Respondent No.2 is present before the Court. She is identified by her Advocate. She has identified her signature and confirms the contents of the affidavit. She states that she does not wish to proceed against the petitioner.

4. We are conscious of the fact that the offence under Section 376 of IPC is an offence against the society and cannot be quashed with consent. Hence, we have gone through the FIR. A perusal of the FIR reveals that the petitioner and the respondent no.2, both adults, had indulged in consensual sexual relationship. The Respondent No.2 is a married woman with a child, and hence the consent was not vitiated by misconception of fact. We are of the considered view that the FIR as well as the other material on record does not disclose offence of rape within the meaning of Section 375 of IPC.

5. Considering the above facts, we are of the considered view that continuance of criminal prosecution will be abuse of process of law. Hence, this is a fit case to exercise powers under Article 226 of the Constitution of India to quash the FIR as well as the criminal proceedings arising therefrom.

6. Hence, the petition is allowed. FIR No.618 of 2022 registered with D.N.Nagar Police Station, Mumbai, as well as Sessions Case No.11 of 2023 pending on the file of Sessions Judge, Dindoshi Division, Mumbai, stand quashed, subject to costs of Rs.40,000/- (Rupees Forty Thousand Only) to be paid by the Respondent No.2 to the Advocates Association of Western India Generation Next, within two weeks.

The details of account are as under:

Name : AAWI Generation Next.

Account No. 000110110007807

Bank Name & Branch : Bank of India,

Mumbai Main Branch.

IFSC Code : BKID0000001.

7. It is stated that the petitioner is in custody. He is ordered to be released forthwith, in the event, his custody is not required in

any other crime.

- . Parties to act on an authenticated copy of this order.
- . To be listed for compliance on 24.01.2024.

(N.R.BORKAR, J.)

(ANUJA PRABHUDESSAI, J.)