



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.1372 OF 2024

Yadav Nagorao Navhare,
Age 54 yrs., Occ. Teacher,
R/o Manjram, Tq. Naigaon,
Dist. Nanded.
At present r/o Shakuntal Niwas,
Kailash Nagar, Nanded,
Tq. & Dist. Nanded.

... Applicant

... Versus ...

- 1 The State of Maharashtra
Through Police Inspector,
Police Station, Naigaon,
Tq. Naigaon, Dist. Nanded.
- 2 X.Y.Z.

... Respondents

...

Mr. S.B. Bhapkar, Advocate h/f Mr. K.B. Jadhav, Advocate for applicant

Mr. N.R. Dayama, APP for respondent No.1

Ms. Sumedha Thombre, Advocate (appointed through High Court Legal
Services Sub Committee, Aurangabad) for respondent No.2

...

CORAM : SMT. VIBHA KANKANWADI &
SUSHIL M. GHODESWAR, JJ.

RESERVED ON : 21st AUGUST, 2025

PRONOUNCED ON : 12th SEPTEMBER, 2025

ORDER : (PER : SMT. VIBHA KANKANWADI, J.)

1 Present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 initially for quashment of First Information Report vide Crime No.4/2024 dated 09.01.2024 registered with Police Station, Naigaon, Tq. Naigaon, Dist. Nanded, for the offence punishable under Section 376(2)(n), 506 of the Indian Penal Code, 1860 and later on by way of amendment for quashing Charge Sheet No.20/2024 i.e. the proceedings in Sessions Case No.58/2024 pending before learned Additional Sessions Judge, Biloli, Tq. Biloli, Dist. Nanded.

2 Heard learned Advocate Mr. S.B. Bhapkar holding for learned Advocate Mr. K.B. Jadhav for applicant, learned APP Mr. N.R. Dayama for respondent No.1 and learned Advocate appointed through High Court Legal Services Sub Committee, Aurangabad for respondent No.2.

3 Learned Advocate appearing for applicant has taken us through the entire charge sheet and submitted that from First Information Report itself it can be seen that the ingredients of offence are not attracted. The prosecutrix – respondent No.2 was aged 39 on the day of First Information Report and she had sons aged 18 and 14 respectively. She was married in 2004 and her husband had expired in 2011. When she was residing at

village Naigaon till 2017, she came to know the applicant, who is a Teacher by profession. Applicant is distantly related to respondent No.2. Certainly, she might be then knowing that the applicant, who is aged 54, was married and is having children. Still she says that in the year 2018 the applicant had sexual intercourse with her under the promise to marry. The marriage was not at all possible when the applicant was already married and had not obtained divorce from his wife. The prosecutrix states that several times when she was residing at Naigaon, the applicant had sexual intercourse in her house under the pretext of promise to marry, but at the same time she states that her children were not approving visit of applicant to their house. Then she states that thereafter her children and her mother started residing separately in the same village. Informant then states that when she asked about the marriage to applicant, he told that they would go to Nanded and he would perform marriage with her. It is then stated that applicant had taken a room on rent in December, 2022 at Nanded and he used to visit the said place occasionally. It is alleged that from December, 2022 to November, 2023 by giving promise to marry several times the applicant has committed sexual intercourse with her. But in October, 2023 he refused to marry. Then she states that still she was hopeful that the applicant would marry and, therefore, had not lodged any report. Ultimately, it is stated that report has been lodged on 09.01.2024. All these averments would show that the act

was consensual and informant had knowledge that the alleged promise will not be fulfilled at all, still she indulged in the act voluntarily. The statements of witnesses would show that the landlady and her son were told by the informant when they asked about the applicant's visit that they were going to perform the marriage. Cousin brother of the informant states that informant disclosed him that she has relations with the applicant, they stay together and are going to perform the marriage. Similar is the statement of other relatives. Under such circumstance, it cannot be stated that the sexual intercourse was without the consent of prosecutrix. It would be futile exercise to ask the applicant to face the trial.

4 Per contra, learned APP for respondent No.1 and learned Advocate appointed through Legal Aid to represent cause of respondent No.2 strongly opposed the application. They submitted that consent was not a free consent by prosecutrix, it was under the promise to marry. Learned APP submits that though statement of son of respondent No.2 has not been annexed to the copy of charge sheet, which has been provided by applicant; yet the statement of elder son and mother of prosecutrix has been recorded. They have also stated that the entry of applicant in the life of prosecutrix in the year 2018 was under the promise to marry. Though they have stated that they are not approving the visits of applicant to their house and they started

residing separately after the dispute between them and prosecutrix, the fact remains is that they are supporting First Information Report that the alleged consent for relationship was not a free consent.

5 When it comes to a case where allegations of rape are levelled upon the promise to marry, then it is the duty of this Court to consider the facts minutely. The prosecutrix is aged 39 years and as aforesaid, has two children aged 18 and 14 on the date of First Information Report. Her husband expired in 2011 and most important fact is that present applicant is distantly related to her. Exact relationship has not been given, but the fact remains is that she has the knowledge about where the applicant was residing and what was his occupation. Taking into consideration the age of applicant, certainly, she would have come to know that he is married and might be having children. There is total suppression of facts on this point by informant in First Information Report. Though he was having knowledge about death of husband of prosecutrix in 2011, it is stated by prosecutrix that alleged promise to marry was given for the first time in 2018 by applicant and thereafter the sexual intercourse between them started. It is further to be noted is that when children and mother of prosecutrix were taking objection for the visit of applicant to their house and of course for the relationship between them, it appears that the prosecutrix continued the said

relationship, as a result of which sons and mother of prosecutrix started residing separately in 2018 itself. It appears then from First Information Report that from 2018 to December, 2022 physical relation between prosecutrix and applicant had taken place at Naigaon and thereafter prosecutrix shifted to Nanded. Even at Nanded from December, 2022 to November, 2023 the relationship continued and prosecutrix states that applicant had sexual intercourse several times with her. Even to the landlady and her son the impression was given that they were going to perform marriage and for other relatives i.e. cousin brother, nephew it was stated by prosecutrix herself that she has relations with applicant, they stay together and they would perform marriage. Even to witness Shivanand Panchal, who was residing in the neighbourhood at Nanded, the prosecutrix has stated the same thing. That means, the prosecutrix had accepted and even told about her relationship i.e. beyond the marriage to these persons, who are not her relatives. At no point of time she had disclosed to them while giving the fact about the relationship that said relationship was due to promise to marry. Further, it can be seen from First Information Report that in October, 2023 the applicant refused to marry her; yet First Information Report has been lodged on 09.01.2024. The delay has not been then explained. It is tried to be stated that still she was hopeful that he would perform the marriage. From all these facts it is clear that the relationship was consensual. We rely

on the decisions in **Pramod Suryabhan Pawar vs. State of Maharashtra and another** [(2019) 9 SCC 608], **Shambhu Kharwar vs. State of Uttar Pradesh and another** [AIR 2022 SC 3901] and **Amol Bhagwan Nehul vs. The State of Maharashtra and another** [2025 AIR SC 2629] to buttress the legal position that when the relationship is consensual, it will not attract the ingredients of Section 375 of the Indian Penal Code. It would be an abuse of process of law if the applicant is asked to face the trial. Hence, following order.

ORDER

- i) Criminal Application stands allowed.
- ii) Charge Sheet No.20/2024 i.e. the proceedings in Sessions Case No.58/2024 pending before learned Additional Sessions Judge, Biloli, Tq. Biloli, Dist. Nanded arising out of First Information Report vide Crime No.4/2024 dated 09.01.2024 registered with Police Station, Naigaon, Tq. Naigaon, Dist. Nanded, for the offence punishable under Section 376(2)(n), 506 of the Indian Penal Code, 1860, stands quashed and set aside as against applicant viz. **Yadav Nagorao Navhare**.

(**SUSHIL M. GHODESWAR, J.)**

(**SMT. VIBHA KANKANWADI, J.)**

agd