



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO.1147 OF 2023

1. Shamkumar s/o Devanand Purbhe,
Age : 37 years, Occu.: Labour work,
R/o.: Masrul, Tal. & Dist.: Buldhana
2. Akshay s/o Devilal Mandve,
Age : 26 years, Occu.: Private Service,
R/o.: Warud, Post : Jamthi,
Tal. Buldhana, Dist.: Buldhana
3. Pankaj s/o Ramlal Dhamune,
Age : 26 years, Occu.: Agril.,
R/o.: Walsawangi, Tal. Bhokardan,
District : Jalna

.... PETITIONERS
(Original Accused)

VERSUS

1. The State of Maharashtra,
Through Police Station,
Sangamner City Police Station,
Sangamner, Tal. Sangamner,
District : Ahmednagar
2. X.Y.Z.

.... RESPONDENTS

....
Mr. K. N. Shermale, Advocate for the Petitioners
Ms. Uma S. Bhosale, APP for Respondent No.1-State
Advocate for Respondent No.2 : Party in person
....

**CORAM : NITIN B. SURYAWANSHI AND
SANDIPKUMAR C. MORE, JJ.**

RESERVED ON : 13/08/2025

PRONOUNCED ON : 25/08/2025

JUDGMENT : (Per : Sandipkumar C. More, J.) :

1. **Rule.** Rule made returnable forthwith. Heard finally with the consent of the parties.

2. This petition is filed under Articles 226 and 227 of the Constitution of India, read with Section 482 of the Code of Criminal Procedure, 1973. By way of this petition, the petitioners who are the original accused in Special Case No.2 of 2023, are seeking quashment of FIR No.414 of 2022, dated 10/06/2022, registered against them in Sangamner City Police Station for the offence under Section 376 (2)(n), 323, 504 of IPC and under Section 8 & 12 of the Protection of Children from Sexual Offences Act, 2012, which is lodged by present respondent No.2 – victim. The petitioners have also prayed for quashment of proceeding of Special Case No.2 of 2023, pending before the learned Additional Sessions Judge, Sangamner arising out of the aforesaid FIR.

3. On going through the FIR filed by present respondent No.2, it reveals that her marriage was solemnized on 14/05/2003 at Jalna, but unfortunately her husband died due to cardiac-arrest on 01/04/2021. She is having two daughters. However, prior to three years of the incident, she got acquainted with petitioner No.1 through mobile App-Facebook. Petitioner No.1 used to come to her

house at Jalna even during life time of her husband. Thus, petitioner No.1 is a friend of her husband.

4. After death of her husband, the petitioner No.1 established fiduciary relations with her and got transferred the amount, which she had received on account of death of her husband, to his account. Petitioner No.1, thereafter, avoided to repay the said amount and when she made a complaint in respect of the same, petitioner No.1 started threatening her. He then came to her house at Jalna at about 8.00 p.m. under the influence of liquor and assaulted her daughters for withdrawing of her complaint against him. It is also contended by respondent No.2 that at the relevant time, he committed forceful sexual intercourse with her. Thereafter, also, in the month of April, 2022 when she was residing at Sangamner, petitioner No.1 alongwith the other petitioners, again came to her house at about 8.00 p.m. and started outraging her modesty. When her elder daughter tried to intervene, petitioner Nos.2 & 3 caught her daughter and outraged her modesty by pulling her clothes. When petitioner Nos.2 & 3 tried to ravish her, respondent No.2 requested for not to spoil the life of her daughter. At that time also petitioner No.1 committed forceful sexual intercourse with her even in the presence of other petitioners and her elder daughter. Therefore, respondent No.2 lodged an FIR

against the petitioners under the direction received from President of Maharashtra State Commission for Women.

5. The learned counsel for the petitioners, submits that the FIR lodged by respondent No.2, is full of false statements and it has been registered only to harass and blackmail the petitioners and that too with *mala fide* intention. According to him, respondent No.2 has misused the provisions of law. He pointed out that after the death of her husband, respondent No.2 developed love relations with petitioner No.1 and she even asked him to divorce his first wife. Respondent No.2 had in fact provided an amount of Rs.25 lakh to petitioner No.1 enabling him to take divorce from his wife-Madhuri by paying one time alimony. He then pointed out that respondent No.2 had in fact performed marriage with petitioner No.1, but now she is making false accusations against petitioners. Learned counsel for the petitioners, submits that there are no ingredients on record to connect the present petitioners with the alleged crime. According to him, though the allegations in the FIR are mainly against petitioner No.1, but there is no role of petitioner Nos.2 & 3 in the alleged crime. As such, he prayed for quashing of the FIR alongwith the proceeding of Special Case No.2 of 2023 arising out of it. Learned counsel for the petitioners heavily relied on following judgments.

- A) *Prashant vs. State of NCT of Delhi, Criminal Appeal, arising out of Special Leave Petition (Criminal) No.2793 of 2024;***
- B) *Shivashankar @ Shiva vs. State of Karnataka and another, Criminal Appeal No.504 of 2018, arising out of SLP (Cri.) No.454 of 2017;***
- C) *Judgment of this court in Criminal Application No.1387 of 2020 (Shyjeesh K. Thomas vs. State of Maharashtra & another);***
- D) *Ms. X vs. Mr. A and others, in Criminal Appeal arising out of SLP (Criminal) No.3187 of 2023;***
- E) *Shambhu Kharwar vs. State of Uttar Pradesh and another, in Criminal Appeal No.1231 of 2022, arising out of SLP (Cri.) No.7426 of 2022;***
- F) *Biswajyoti Chatterjee vs. State of West Bengal and another, in Criminal Appeal arising out of SLP (Cri.) No.4261 of 2024 &***
- G) *Amol Bhagwan Nehul vs. The State of Maharashtra & another, in in criminal appeal arising out of SLP(Cri.) No.10044 of 2024.***

6. On the contrary, learned APP strongly opposes the submissions made on behalf of the petitioners and pointed out that there are direct allegations against all the petitioners in the FIR itself and the other material on record, which is a part of chargesheet also prima facie indicates that petitioner No.1 committed forceful sexual intercourse with respondent No.2 and

other petitioners tried to outrage the modesty of her daughter by trying to remove her clothes.

7. Respondent No.2, who appeared as a party in person, also opposed the submissions and through learned APP, she pointed out as to how petitioner No.1 took disadvantage of her helpless condition after the death of her husband and also extorted huge amount of Rs.30 lakh, which she had received on account of death of her husband. Thus, learned APP as well as respondent No.2 prayed for dismissal of the petition.

8. Heard rival submissions. Also perused the documents on record.

9. Admittedly, charge sheet has been filed in the instant case. It is significant to note that for exercising powers under Section 482 of Cr.P.C., the FIR as well as material in charge sheet can be looked into. In the instant matter, the allegations against petitioner No.1 of committing rape, are levelled. Further, there are direct allegations in the FIR itself as to how the other petitioners were trying to outrage the modesty of elder daughter of respondent No.2 – victim. On going from the material on record, it appears that petitioner Nos.1 & respondent No. 2 have made various allegations against each other in support of their respective contentions.

10. Learned counsel for the petitioners heavily relied on the judgments to falsify the allegations levelled against petitioner No.1 by respondent No.2.

11. In the Case of **Prashant vs. State of NCT of Delhi** (*supra*), it is observed as follows.

“19. In our view, taking the allegations in the FIR and the charge sheet as they stand, the crucial ingredients of the offence under Section 376 (2) (n) of IPC are absent. A review of the FIR and the complainant’s statement under Section 164 of Cr.P.C. discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the prosecution’s case is accepted at its face value, it cannot be concluded that the complainant engaged in a sexual relationship with the appellant solely on account of any assurance of marriage from the appellant.”

Further, in the same judgment, reference was made to the observations in the case of **Pramod Suryabhan Pawar vs. State of Maharashtra, (2019) SCC 608**, as follows.

“18. To summarise the legal position that emerges from the above cases, the ‘consent’ of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the ‘consent’ was vitiated by a ‘misconception of fact’ arising out of a promise to

marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act."

In the case of **Shambhu Kharawr vs. State of Uttar Pradesh and another** (*supra*), the Hon'ble Apex Court quashed the FIR and the proceeding of criminal case by observing that the act of forceful sexual intercourse as alleged by the prosecutrix, was in fact case of consensual relationship. Further, in the case of *Amol vs. State of Maharashtra* (*supra*), the Hon'ble Apex Court quashed the FIR and criminal proceeding by observing that no *prima facie* case under Section 376, 376(2)(n), 377, 504 & 506 of IPC, was made out.

12. In the light of the observations made by the Hon'ble Apex Court as mentioned above, we would like to quote that the inherent powers under Section 482 of Cr.P.C. are to be exercised sparingly and in the light of observation of the Hon'ble Apex Court in the case of State of **Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335**. As per those guidelines, the high court cannot go into the truthfulness of the allegations made in the FIR and if there are direct allegations made in the FIR then even the submissions in

respect of *mala fides*, cannot be looked into. The observations relied by the learned counsel for the petitioners in the aforesaid cases are made in the light of facts of those cases, but for quashing of FIR by invoking powers under Section 482 of Cr.P.C., the nature of allegations in each case are to be considered. The Hon'ble Apex Court in case of ***State Haryana vs. Bhajan Lal*** (*supra*), has observed that the FIR can be quashed only if the contents of FIR are taken as proved and even after that no offence as alleged, is made out.

13. In the instant matter, there are direct allegations by respondent No.2 against petitioner No.1 about commission of rape on her. Moreover, there are also direct allegations against respondent Nos.2 & 3 in the FIR itself for outraging the modesty of the elder daughter of respondent No.2- victim. Further, there is voluminous material on record in support of aforesaid allegations, which needs to be tested on the basis of evidence during the trial. It is already made clear by the Hon'ble Apex Court in the case of ***State Haryana vs. Bhajan Lal*** (*supra*), that at the time of exercising powers under Section 482 of Cr.P.C., the court cannot conduct a mini trial by appreciating the material on record as to how it is not sufficient to establish the ingredients of the offence levelled against the petitioners – accused.

14. Thus, considering the nature of serious allegations in the FIR against the petitioners, we are not inclined to quash FIR No.414 of 2022, dated 10/06/2022, registered against them in Sangamner City Police Station for the offence under Section 376 (2)(n), 323, 504 of IPC and under Section 8 & 12 of the Protection of Children from Sexual Offences Act, 2012 as well as Special Case No.2 of 2023, pending before the learned Additional Sessions Judge, Sangamner out of the aforesaid FIR. In the result, the writ petition stands dismissed. Rule is accordingly discharged.

(SANDIPKUMAR C. MORE, J.)

(NITIN B. SURYAWANSHI, J.)

VS Maind/-