

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.2981 OF 2025

Vishal Vijay Sawant

...Petitioner

Versus

The State of Maharashtra & Anr.

...Respondents

Mr. Vaibhav V. Ugle, for the Applicant.

Mr. Sameer M. Mangaonkar, APP for Respondent-State.

CORAM : ASHWIN D. BHOBE, J.

DATE : 27th MAY, 2025

P.C. :-

1. Heard Mr. Vaibhav V. Ugle, learned Advocate for the Applicant and Mr. Sameer Mangaonkar, learned APP for Respondent-State.

2. By the present Petition filed under Article 227 of the Constitution of India and Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "**BNSS**"), the Petitioner assails the order dated 21.04.2025 passed by the learned

Additional Sessions Judge, Vadgaon Maval, Pune, in in Special Case No.239 of 2022, by which the learned Sessions Judge has rejected the Application for discharge filed by the Petitioner. While rejecting the Application seeking discharge filed by the Petitioner, the learned Sessions Judge has imposed cost of Rs. 50,000/- on the Petitioner. Paragraph Nos.10, 11 and 12 of the impugned order dated 21.04.2025 are transcribed hereunder:

"10. Recently Hon'ble Supreme Court held that sexual intercourse under the false promise of marriage amount to rape. The material on record prima-facie shows that accused committed rape by giving false promise of marriage. There is sufficient material to proceed further. It is a well settled principle of law that a charge can be framed even on the basis of prima-facie material. The necessary all ingredients are made out. Hence, discharge application deserves to be rejected. Hence, Point No.1 is answered in negative. For vesting valuable time of the Court cost needs to be imposed on the accused. Offence is of year 2020. Charge-sheet was filed in

year 2021. Roznama shows that the accused and his advocate remained absent from long time after releasing on bail. On 30.01.2024 NBW of accused was cancelled. Thereafter, matter was posted for charge. No next date 04.04.2024 accused and his advocate remained absent. On 19.10.2024 again accused remained absent. Hence, NBW was issued against him. On 22.11.2024 he cancelled the NBW. On next date 28.01.2025 he preferred this application for discharge.

11. After 30.07.2024 the discharge application will be governed by new Code BNSS. In the said act a time limit of two months from the date of filing of the charge-sheet is prescribed for preferring discharge application. Discharge application was filed on 28.01.2025. Thus, on the day of filing of discharge application Exh. 8 on 28.01.2025 will be governed by provisions of BNSS i.e. barred by limitation as appeared in this Court on 30.01.2024 for getting NBW cancelled. Thus, the intention is clear to

protract the trial hence, costs of Rs.50,000/- is imposed on the accused.

12. Hence, this Court proceeds to pass the following order -

ORDER

1] Application Exh. 8 is hereby rejected.

*2] Cost of Rs. 50,000/- is imposed on accused. In case accused fails to deposit cost of Rs.50,000/- on or before next date his bail application will be cancelled.
Next date 28.04.2025.*

This order is explained to the accused in the open Court."

3. I do not find any infirmity in the reasons given by the learned Sessions Court in the impugned order dated 21.04.2025 passed in Special Case No.239 of 2022, while dismissing the Application for discharge filed by the Petitioner.

4. Mr. Vaibhav Ugle, learned Advocate for the Petitioner submits that the imposition of cost of Rs. 50,000/- in the impugned order, according to him is exemplary cost and in the

circumstances harsh. He submits that the accused in a criminal proceeding is entitled to maintain an Application seeking discharge. He, however, states that though the Petitioner was absent on the date fixed for hearing resulting in issuing of NBW, he states that the Petitioner does not intend to delay the disposal of the proceeding. On instructions from the Petitioner, he submits that the Petitioner will be regular in appearing before the Trial Court, subject to exemption being granted.

5. Learned APP submits that the impugned order gives reasons for imposition of cost of Rs. 50,000/-. The learned Sessions Court upon finding of the Petitioner absence before the Court and filing of the discharge Application being an attempt to delay the proceeding, imposed the said cost.

6. As observed hereinabove, no fault is found in the impugned order to the extent the same rejects the Application for discharge filed by the Petitioner. However, considering the facts and circumstances of the case and having being persuaded by Mr. Ugle, learned Advocate for the Petitioner, I am inclined to modify the quantum of cost imposed in the

impugned order dated 21.04.2025. The cost of Rs. 50,000/- imposed by the learned Additional Sessions Judge in the order dated 21.04.2025 passed in Special Case No.239 of 2022 is modified and made to Rs. 10,000/-.

7. Mr. Ugle states that though the period to deposit the cost has expired on 28.04.2025, learned Sessions Court has till date not cancelled the bail granted to the Petitioner. In view of the same, the Petitioner is granted time till 28.05.2025 to deposit the cost of Rs. 10,000/- before the learned Sessions Court in Special Case No.239 of 2022. Mr. Ugle assures the Court that the amount would be deposited by the 28.05.2025. It is made clear that no further extension would be granted for depositing the said amount.

8. It is clarified that this Court has not interfered with the order dated 21.04.2025 passed in Special Case No.239 of 2022 and has merely modified the quantum of cost from Rs. 50,000/- to Rs. 10,000/-.

9. In the event the Petitioner fails to deposit the cost of Rs.10,000/- by 28.05.2025, the order dated 21.04.2025

passed by the learned Additional Sessions Judge, Vadgaon Maval, Pune in Special Case No.239 of 2022 shall stand restored, consequently, the bail granted to the Petitioner shall stand cancelled.

10. The **Writ Petition is disposed off** in the above said terms.

[**ASHWIN D. BHOBE, J.**]