

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

CRIMINAL WRIT PETITION NO. 3701 OF 2025

XYZ

.. Petitioner

Vs.

The State of Maharashtra & Ors.

.. Respondents

...

Mr. Rahul Arote, Advocate for the Petitioner.

Mrs. M. M. Deshmukh, I/c Public Prosecutor for Respondents-State.

Petitioner and her mother Asha Jethwani are present.

PI Mahendra Waghmare, BKC Police Station and PSI Suraj Jarg, BKC Police State are present.

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**CORAM : SHREE CHANDRASHEKHAR, CJ &
GAUTAM A. ANKHAD, J.**

RESERVED ON : 12th DECEMBER 2025

PRONOUNCED ON : 24th DECEMBER 2025

PER, SHREE CHANDRASHEKHAR, CJ.:

The petitioner is the complainant in First Information Report No. 764 of 2023 which was registered under sections 354, 376 and 506 of the Indian Penal Code. Alleging that she was a victim of sex-related crime, she has filed this writ petition under Articles 226 and 227 of the Constitution of India to challenge the order dated 24th April 2024 passed by the Metropolitan Magistrate, Bandra in C.R. No. 764 of 2023. She seeks setting aside of this order by which the Metropolitan Magistrate accepted the B-Summary report vide C.C. No.1/B/Summary 2024 forwarded by the Inspector of Police (Crime) of the B.K.C. Police Station.

2. Consequent upon setting aside of the order dated 24th April 2024, the petitioner seeks reopening of the investigation in the First Information Report registered against the accused person, namely,

Sajjan Jindal at the B.K.C. Police Station. There is a connected prayer in relation thereto that the investigation of First Information Report No. 764 of 2023 should be conducted by the Central Bureau of Investigation or a Special Investigating Team under the monitoring of this Court with a further direction that the investigation in the case be completed and charge-sheet be filed within three months. There are other prayers made by the petitioner in this writ petition which shall be dealt with at the appropriate places.

3. On the basis of the *farad-bayan* of the petitioner, FIR No.764 of 2023 was lodged at 14:50 hrs. on 13th December 2023 wherein she stated that she had a formal chat with the accused person on 8th October 2021 at an international stadium in Dubai where she had gone with her brother to watch IPL match. The accused person exchanged his mobile number with her brother who is engaged in the property business consultancy and that is how she got acquainted with the accused person. She came down to Mumbai on 13th December 2021 and sent a message to the accused person for appointment with him. During her visit to Jaipur on 18th and 19th December 2021 where she had gone to attend a wedding ceremony, she had a conversation with the accused person who became friendly with her. Thereafter, she had regular chat with the accused person who would, more particularly, from 23rd December 2021 started addressing her as “babe, baby” etc. in his messages. The accused person was not ready to meet her in a restaurant, meeting room etc. for the security reasons and his public image and insisted to meet her in a hotel. He assured her that she would be safe with him wherever they meet together. She booked a suite at hotel Taj Lands End on 24th December 2021 in her name and checked-in the room at around 05:30 p.m. The accused person came to meet her around 05:50 p.m. and they had friendly talks and the accused person shared his private information with her. They had a conversation with respect to work

and the accused person asked her to tell her brother to remain in touch with him. Before leaving, he said “you are beautiful” and casually hugged her and tried to kiss her but she opposed his move and then he left without kissing her. According to the petitioner, the accused person would tell her that he was interested in her and started sending her different emojis of kisses etc. He insisted to send him her hot photos but she avoided his messages and did not respond to his messages. On 26th December 2021, the accused person came to her house and she accompanied him for wandering along Juhu Tara road. At that time, he was continuously gazing at her, took her hand in his hand and said that “I will set you all bungalow, car, business” and said that he very much like her. On her query, whether there would be any lawful relationship with her, the accused person expressed his constraints that he has children and grandchildren and the social restrictions do not permit any legal relationship in India but they can live as husband and wife outside India.

4. The petitioner narrated her talks with the accused person before the police and stated that she thought that the accused person was very much possessive about her. He would make video calls through FaceTime and was trying to attract her towards him. They had talks regarding marriage on 27th December 2021 in his office at Mumbai. On that day, the accused person pulled her and had a deep lip kiss without her consent. She says that the incident was so sudden that she could not think what to do and she left saying nothing to the accused person. She again went to meet the accused person on 5th January 2022 at the office of BKC at Mumbai. The accused person narrated family matters to her and tried to make her emotional and said that he was serious about taking her as his wife. He embraced her and took a deep kiss but she restrained him from making physical relation and left the place. She again went to see the accused person at BKC, Bandra on 24th January 2022 around 07:00

p.m. He went to the upper floor in the office and took her in the bathroom. The petitioner gave a quite detail of the incident that happened on 24th January 2022 when he had oral sex with her. After sometime, she left the place and the accused person made a phone call asking her forgiveness for the incident. He started distancing himself from her and the frequency of his calls and messages became less. She tried to clear the misunderstanding between them but, the accused started avoiding her and threatened her not to make calls and messages to him. On 28th June 2022, she called the accused person through WhatsApp and accused him that he had exploited her physically, mentally, emotionally and sexually. Since then, the accused person did not answer her calls or messages and blocked her number. She narrated the whole story to her family members who persuaded her and made her understand that the complaint against the accused person should be lodged. After she lodged a complaint at the BKC Police Station on 16th February 2023, the people around the accused person approached her through different mobile numbers and offered money for withdrawing the said complaint.

5. The petitioner states that the accused person is a powerful man with political support and one such person was the then Chief Minister of Andhra Pradesh who himself was facing more than 30 criminal cases of grave nature. She further states that the accused person has several industrial projects in the State of Andhra Pradesh and one of such projects is the Kadapa Steel Plant. According to the petitioner, that is one of the reasons for a close connection between the accused person and the then Chief Minister of Andhra Pradesh. The petitioner alleges that the police failed to protect her interest and did not prosecute the offender after registration of First Information Report No. 764 of 2023 at the B.K.C. Police Station under sections 354, 376 and 506 of the Indian Penal Code. After the said FIR was lodged pursuant to a direction issued by this Court on 12th December

2023 in Writ Petition No. 22760 of 2023, a false case was lodged against her and her family members on 2nd February 2024 at Ibrahimpatnam Police Station vide C.R. No. 90 of 2024 under sections 384, 385, 386, 388, 420, 467, 488 and 471 read with section 120-B of the Indian Penal Code. The informant in that case was a member of the political dispensation at that time and he had a criminal background. She alleges conspiracy between the accused person, politician and the senior-most police officers in the State of Andhra Pradesh who constituted a Special Investigating Team to investigate C.R. No. 90 of 2024. The members of the SIT had booked their air tickets for Mumbai to arrest her and her parents one day prior to the registration of C.R. No.90 of 2024. The petitioner makes allegations against the Magistrate in the Ibrahimpatnam Court of being politically motivated inasmuch as the place of the alleged crime is in Krishna District but the FIR was registered at Ibrahimpatnam. She further states that the then Chief Minister of the Andhra Pradesh had issued oral directions to the Director General of Intelligence, the Commissioner of Police and the Deputy Commissioner of Police even before the FIR was lodged and on 3rd February 2024 she along with her parents was illegally arrested at Mumbai with the help of local police station.

6. The order dated 12th December 2023 passed in WP No.22760 of 2023 takes a note of the statement made by the learned APP that consequential action shall be taken by the police after she gives her statement. Her statement was recorded on 13th December 2023 and a First Information Report was lodged, the contents of which are admitted by her. She does not assert that she did not narrate full story in her *faradbayan* for any reason whatsoever. A First Information Report need not contain all details of the occurrence but the omission of a vital information as regards commission of rape cannot be ignored by the Court. The Investigating Officer submitted a

supplementary report in the trial Court giving details of the correspondence made to the Dy. Commissioner of Police, SB-II C.I.D./AFRRO. CSMIT, Sahar, Mumbai seeking details of the departure of the accused person out of the country on 8th October 2021. Through the communication dated 11th March 2024, the Investigating Officer was intimated that the accused person had not gone out of India on 8th October 2021, which is the date on which the complainant allegedly met the accused person in the VIP Box during IPL match at Dubai. The Investigating Officer referred to a communication through Outward No. 1830 of 2024 dated 20th March 2024 and informed the Court that the petitioner had lodged a complaint against Manav Dani who had declined to marry her. The Enquiry Officer seized with that complaint called her multiple times for recording her statement but she did not cooperate and declined to give her statement by coming to the police station. Having collected such materials in course of investigation, the Investigating Officer filed the B-Summary report in the Court.

7. The prosecutrix filed her affidavit in the proceeding of C.C. No.1/B/Summary-2024 stating that she was under severe mental trauma on account of lodging of C.R. No.90 of 2024 and her arrest and the arrest of her parents in connection thereto. The condition of her parents deteriorated during the jail custody. She was scared and decided to give full attention to her aged parents. She suffered mental trauma and a long incarceration in jail caused irreparable harm and injury to her name and reputation in the society. She was severely affected psychologically and her health deteriorated. According to her, she was not in a sound frame of mind to contest the case and made a request to the Magistrate to take on record her inability to pursue C.R. No.764 of 2023. Her affidavit in the B-Summary report is reproduced as under :-

"1. I, The Respondent/First Informant, abovenamed and undersigned, do hereby submit as under:

2. That I am the First Informant in the above CR No. 764/2023 registered with the BKC Police Station. I say that I have read the aforesaid Report dated 13/12/2023 and also the further second report dated 3/4/2024, filed before this Hon'ble Court by the office of BKC Police Station, after completion of investigations in the above CR No. 794 of 2023, and having understood the contents thereof, I wish to submit as under:

3. That on 3/2/2024 the officers of Ibrahimpatnam Police Station, at Vijaywada, State of Andhra Pradesh accosted me and both my parents in Mumbai, and took us to Vijaywada on the basis of a false case registered against me and my family vide CR No. 90/2024 Despite pleading innocence, I and my parents were falsely implicated and arrested in the said case and produced before the Court of the learned Magistrate, which remanded me and both my parents to custody; After detention for 42 days in custody I and my parents were enlarged on bail with conditions. After availing of the bail, I and my parents after taking permission from the court have travelled to Mumbai.

4. I say that because of my incarceration in custody with my parents at Vijaywada, I could not remain present before this Hon'ble Court on the earlier two dates, to respond to the above notice, although on my instructions my Advocate appeared and sought time from the court for my appearance upon return from Vijaywada; I say that now, after having returned to Mumbai, I wish to place on record the following;

5. I say that the long incarceration of me and my parents in custody at Vijaywada, A. P. has resulted in causing a severe mental trauma on me and my aged parents, both of whom are senior citizens aged 72 years and 67 years respectively; Needless to say that the health condition of my parents during detention in custody deteriorated without any proper medical assistance. I say that the severe repetitive & continuous bouts of high blood pressure caused my mother's health to be deteriorated over a period of time. Her eyes and feet used to swell up and in the absence of proper medication during detention, the health of my mother has now become a cause for concern requiring my continuous attention;

6. I say that likewise my father aged 72 years and being a patient of enlarged prostate, had to undergo severe bouts of abdominal pain, due to stoppage of urine. Lack of proper medication has led to deterioration in the health of my father too, which also now requires my full time attention;

7. I say that at present my full attention and concentration is directed towards providing timely medical attention and medical treatment to both my parents, which Involves regular visits to their doctors and conducting of regular tests and medical examinations;

8. I say that having been scarred with a false arrest and being required to now concentrate on providing full time attention to my aged parents, I am personally undergoing a tremendous impact due to the mental trauma of the long incarceration which has resulted in an irreparable harm and injury to me psychologically as well as to my name, image and reputation in society; This is having a severe toll on my health too.

9. Under these circumstances, I have decided that I am not, in a

mental frame of mind, to contest this case and carry it any further, as the health of my parents, their welfare and betterment in health, is of prime importance to me and my family;

10. *Under these circumstances, I would request your goodself to take on record my inability to pursue the above case under CR No. 764 of 2023 any further, and, having decided as above, to concentrate on the health of my old and infirm parents, as well as to pursue a vocation conducive to my education and medical profession, I pray that Your Honor be pleased to pass appropriate orders for Closure of the above case, without any cause of any prejudice to me, hereafter.*

11. *AND FOR THIS ACT OF KINDNESS I SHALL AS IN DUTY BOUND EVER PRAY:”*

8. The Metropolitan Magistrate referred to the B-Summary report. He took note of her affidavit, findings by the Investigating Officer that the accused person was not present at the places as mentioned in the FIR on the relevant dates and he did not visit Hotel Taj Lands End at Bandra on 24th December 2021 and heard the arguments of both the sides. The Metropolitan Magistrate passed the following order :-

“ORDER

1. *Investigating Officer Shri. Rajesh Gavali Police inspector (Crime) of B.K.C. Police Station has filed B-Summary report stating that during investigation he found that the informant has lodged delayed FIR and despite of opportunities she did not appear before the Magistrate for recording her statement U/sec. 164 of Code of Criminal Procedure. During the investigation he further found that on 24.12.2021 accused did not visit to Hotel Taj Lands And Bandra. From the statement of witnesses and the correspondence made with the said Hotel he found that on that day accused did not visit to the said Hotel. According to investigating officer in order to implicate the accused in false offence the informant has lodged false FIR and prayed for granting B-Summary.*

2. *The notice to informant has been issued. On 27.02.2024 Advocate for accused filed the application for adjournment. Meanwhile on 03.04.2024 the investigating Officer filed on record, supplementary evidence regarding details of traveling abroad of the accused. Again order regarding issuance of notice to informant came to be passed. On that day advocate for informant has filed on record adjournment application on the ground that the informant due to the conditions imposed in bail order in respect of C.R. No. 90/2024 registered with Vijay Vada Police Station, she could not attend this court for filing say to the B-Summary report. Accordingly the adjournment came to be granted and matter fixed on 24.04.2024.*

3. *Today the informant alongwith her advocate Shri. Rizwan*

Marchent appeared before the court and filed her say to B-Summary report stating that she and her parents undergoing tremendous impact due to the mental trauma as she and her parents were detained in Judicial Custody in relation to C.R. No. 90/2024 which is registered with police station Vijay Vada. Therefore she is not able to pursue the present case and prayed that appropriate order be passed upon closure report of the present case.

4. *I have heard arguments of Ld. APP Shri. Joshi for the state and Adv. Rizwan Marchent for the informant. Perused the B-Summary report, statements of witnesses and documentary evidence place on record. The offence C.R. No. 764/2023 U/sec. 376, 354 and 506 of Indian Penal Code came to be registered against accused in Police Station B.K.C. on the report filed by the informant*

5. *The investigation of the crime has been carried out by Shri. Rajesh Gavali, Police Inspector (Crime) of B.K.C. Police Station. During the investigation, investigating officer found that on the relevant dates mentioned in FI.R. accused was not present at the respective places, and the informant has lodged false offence against accused and sought permission to grant B-Summary.*

6. *The informant has also no objection to grant B-Summary She has filed on record her say dtd. 24.04.2024 where in she contented that due to ill health of her parents and as she suffered mental trauma due to detention in judicial custody, she is unable to pursue the present case. Thus in short informant has no objection to grant B-Summary as prayed. Hence considering all about aspects B-Summary granted.”*

9. In the “written submissions” running into 12 pages, the petitioner has reproduced the incidents which are narrated by her in the writ petition. She has attempted to prepare a concise timeline starting from the filing of quash petition in the High Court of Andhra Pradesh on 28th March 2024. She states that her statement was video recorded on 30th August 2024 in the office of the Commissioner of Police, Vijaywada. Her statement was also recorded before the Junior Civil Judge, Vijaywada under section 164 of the CrPC on 6th October 2024 in connection to C.R. No.469 of 2024. She further states that her mother approached the office of Prime Minister of India, she met the Home Minister of Andhra Pradesh, addressed a letter to the Chief Justice of India and her complaint has been forwarded to the Bar Council of Maharashtra and Goa for action against Rizwan Merchant, her advocate. She has referred to the following 19 judgments rendered

by the Hon'ble Supreme Court to support her prayers made in this writ petition :-

- (i) *"State of Madhya Pradesh v. Madanlal"* (2015) 7 SCC 681
- (ii) *"Shimbhu & Anr. v. State of Haryana"* (2014) 13 SCC 318
- (iii) *"Gian Singh v. State of Punjab & Anr."* (2012) 10 SCC 303
- (iv) *"Selvi & Ors. v. State of Karnataka"* (2010) 7 SCC 263
- (v) *"Nandini Satpathy v. P. L. Dani & Anr."* (1978) 2 SCC 424
- (vi) *"State of Punjab v. Davinder Pal Singh Bhullar & Ors."*
(2011) 14 SCC 770
- (vii) *"Arnesh Kumar v. State of Bihar & Anr."* (2014) 8 SCC 273
- (viii) *"Joginder Kumar v. State of U.P & Ors."* (1994) 4 SCC 260
- (ix) *"Lalita Kumari v. Government of Uttar Pradesh & Ors."*
(2014) 2 SCC 1
- (x) *"Siddhartha Vashisht v. State (NCT of Delhi)"* (2010) 6 SCC 1
- (xi) *"Babubhai v. State of Gujarat & Ors."* (2010) 12 SCC 254
- (xii) *"Zahira Habibulla H. Sheikh & Anr. v. State of Gujarat & Ors."*
(2004) 4 SCC 158
- (xiii) *"Union Public Service Commission v. S. Papaiah & Ors."*
(1997) 7 SCC 614
- (xiv) *"State of Karnataka v. Shivanna"* (2014) 8 SCC 913
- (xv) *"Bhagwant Singh v. Commissioner of Police & Anr."*
(1985) 2 SCC 537
- (xvi) *"Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Anr."* (1998) 8 SCC 1
- (xvii) *"Vinay Tyagi v. Irshad Ali alias Deepak & Ors."*
(2013) 5 SCC 762
- (xviii) *"Pooja Pal v. Union of India & Ors."* (2016) 3 SCC 135
- (xix) *"Anant Thanur Karmuse v. State of Maharashtra & Ors."*
(2023) 5 SCC 802

10. Having considered the submissions and after perusing the documents on record, we have formed an opinion that there is no merit in this writ petition and the judgments relied upon by her are of no avail to her. The story of registration of the crime at Ibrahimpatnam Police Station so as to obstruct the recording of her statement under section 164 of the Code of Criminal Procedure in the FIR No.764 of 2023 does not sustain in view of the remand report moved before III Addl. Chief Judicial Magistrate Court, Vijayawada

vide 'Exhibit-J' of the paper-book. It is stated that Kukkala Vidhya Sagar and the *de-facto* complainant (petitioner herein) developed a friendly relationship during her modeling career in Mumbai and Hyderabad. Kukkala Vidhya Sagar proposed marriage to her and even provided his horoscope for compatibility. He told her that he has filed a divorce petition for the dissolution of his subsisting marriage but the petitioner rejected his proposal on the ground that he had extramarital affair with other women. Thus having a grudge against her, Kukkala Vidhya Sagar tried to outrage her modesty by sending her nude pictures and threatened to publish those images on social media. In the remand report, it is further recorded that Kukkala Vidhya Sagar who is a leader of a political party in Andhra Pradesh harbored ill will against the petitioner. He hatched a conspiracy to file a false criminal case against her vide C.R. No.90 of 2024. The police officers in collusion with Kukkala Vidhya Sagar and other officials engineered the arrest of the *de-facto* complainant and her family members on 3rd February 2024 at Mumbai. In that case, the petitioner stated in her statement under section 164 of the CrPC that Kukkala Vidhya Sagar had developed resentment after she rejected his marriage proposal and falsely implicated her by misusing his influence over the State police officials. She came to know through media reports about the conspiracy hatched on 31st January 2024 by the then DG Intelligence who instructed the Commissioner of Police, Vijaywada City to issue directions to the DCP, Vijaywada to lodge a criminal case against her and her family members.

11. For the sake of fullness, we would indicate that the allegation by the petitioner that her iPhones and electronic devices were seized by Andhra Pradesh police in furtherance of a conspiracy with Sajjan Jindal to prevent her from producing any evidence against him, *prima-facie* seems to be not correct. In her application under section 457 of the Code of Criminal Procedure, the petitioner and her parents

put up a sole ground for release of four iPhones, one iPad and other cell phones and electronic devices of her parents that the seized cell phones, laptops and other devices contain their personal information and data such as photographs, contacts and bank details, etc. In the said application filed vide C.F. No.1031 of 2024 in C. R. No.90 of 2024 in the Court of IV Addl. Metropolitan Magistrate at Vijaywada, the petitioner and her parents stated as under :-

“1. It is humbly submitted that the Respondent Police registered a case against the Petitioners/Accused No. 1 to 3 in Crime No.90/2024 punishable U/s. 384, 385, 386, 388, 420, 467, 468, 471 r/w 120(B) IPC before Ibrahimpatnam P.S., N.T.R. District.

2. It is humbly submitted that during the course of investigation, the Respondent Police arrested the Accused No.1 to 3 and seized 4 I Phones, 1 Apple I Pad from Accused No.1 and 1 I Phone from Accused No.2 and 2 I Phones, 1 HP Company Laptop, 1 Sony Company Laptop from the Accused No.3 in Mumbai, Maharashtra State.

3. It is humbly submitted that the Petitioners/Accused No.1 to 3 were granted regular bail vide Cri.M.P. No. 353/2024 in Cr. No. 90/2024 dated 12.03.2024. But the Respondent Police has not yet released the seized phones and laptops to the Accused. The essential personal information and data of all the Accused are present in their respective phones regarding their photographs, contact and bank details etc.

4. It is further submitted that the seizure of Cell phones and Laptops by the Respondent Police is nothing but infringement of fundamental rights of the Petitioners guaranteed under the Constitution of India as the cell phones are nowadays essential commodities. Any person will preserve their personal data like contacts, bank details and other documents in the cellphones and laptops. As such, all the Petitioners preserved their data in their cell phones and laptops which were seized illegally by the Police and they ought to be returned to the Petitioners.

5. It is further submitted that if at all the data is required for analyzation by the Investigation agency, the data can be transferred by many mode from the cell phones and laptops. The original cell phones and laptops which are essential for day to day activities ought to be returned to the Petitioners/Accused No. 1 to 3.

6. It is further submitted that the Petitioners/Accused No. 1 to 3 were falsely implicated in the case and the entire police case is all false and concocted. The innocence of the Petitioners/Accused No.1 to 3 may be proved at the time of trial.

7. It is therefore prayed that the Hon'ble Court may be pleased to order for the release of the seized properties of the Petitioners/Accused No.

1 to 3 i.e. 4 I Phones, 1 Apple I Pad of Accused No.1 and 1 I Phone of Accused No.2 and 2 I Phones, 1 HP Company Laptop, 1 Sony Company Laptop of Accused No.3 and pass necessary order in the interest of justice. Otherwise, the Petitioners has to face huge loss and hardship.”

12. In this writ petition, the petitioner states that the accused person promised to marry her but a promise to marry at a future uncertain date may not amount to deceit or a misconception of fact. She is a multi-talented young woman aged about 32 years. She was a gold medalist and earned national scholarship while pursuing her course at Smt. NHL Municipal Medical College, Ahmedabad. Her multiple research works were published in American Medical Journals. She professes her passion for medical profession and states that her services were recognized when she worked in the Intensive Care Unit of Cooper Hospital, Mumbai for few years. She was invited for an interview for the Post-Graduate Programme in Management from ISB Hyderabad with full scholarship. She was an outstanding student since her school days and perfected the classical dance “Bharat Natyam” for which she has been awarded a degree of Visharad. She is also a sportsperson who represented the State of Gujarat in Chess Championship. She gives the description of her family and claims that her mother was a gold medalist in Masters of Arts, she held a LLB Degree and served with Reserve Bank of India as a Manager. Her father was a Chief Engineer in Merchant Navy and her brother who holds a Degree of Dental Surgeon with a golden visa residency permit is well settled in Dubai. When the petitioner consented for a relationship of any kind with the accused person, she did so having fully understood the marital status and compulsions of the accused person. Such promises lose all significance when two highly educated adult persons are overcome with emotions. The petitioner accepted the offer of the accused person to meet him at various places, wandered with him around Bandra Kurla road and booked a hotel room at his instance where she met him on 22nd

January 2024. The petitioner does not allege that the behavior of the accused person was deceitful. She doesn't allege that the accused person on some false pretext took her to the washroom. She doesn't state that the accused person influenced her mind, induced her through money power or gave expensive gifts, watches or jewellery. All that the petitioner says is that the accused person told her a sob story of his marital life and promised that they would live as husband and wife in some other country. But then the petitioner herself says that she was not agreeable to such a proposal. In these circumstances, the petitioner must be held to have made a conscious and informed choice. This is corroborated by a contemporaneous fact that she did not take any positive action in protest. Some of the WhatsApp chats produced by her on record may give an impression that she was passionate about the accused person.

13. The question whether a woman of mature age consented to the physical relationship under a misconception of fact came for consideration before the Hon'ble Supreme Court several times. In "*Uday*"¹, the Hon'ble Supreme Court held in paragraph nos.21 and 22 as under :-

"21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no straitjacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the courts provide at best guidance to the judicial mind while considering a question of consent, but the court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact.

1. *Uday v. State of Karnataka (2003) 4 SCC 46*

It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

22. *The approach to the subject of consent as indicated by the Punjab High Court in Rao Harnarain Singh [AIR 1958 Punj 123 : 1958 Cri LJ 563 : 59 Punj LR 519] and by the Kerala High Court in Vijayan Pillai [(1989) 2 Ker LJ 234] has found approval by this Court in State of H.P. v. Mango Ram [(2000) 7 SCC 224 : 2000 SCC (Cri) 1331]. Balakrishnan, J. speaking for the Court observed: (SCC pp. 230-31, para 13)*

“The evidence as a whole indicates that there was resistance by the prosecutrix and there was no voluntary participation by her for the sexual act. Submission of the body under the fear of terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances.”

14. A similar line of reasoning has been adopted by the Hon’ble Supreme Court in “*K.P. Thimmappa Gowda*”²; “*Dhruvaram Muralidhar Sonar*”³; “*Pramod Suryabhan Pawar*”⁴ and “*Maheshwar Tigga*”⁵.

15. The petitioner seems to have every detail about the accused person. She gives details of the criminal antecedents of Kukkala Vidhya Sagar and produced voluminous records. But she does not even indicate any business transaction between the accused person and her brother in the past. The petitioner tried to give a reason for not making herself available for the recording of her statement under section 164 of CrPC. She was issued notices on 11th January 2024 and 19th January 2024 but, according to her, her advocate advised her not to go the Court till she receives a summons for recording her statement under section 164 of CrPC. She makes serious allegations

2. *K.P. Thimmappa Gowda v. State of Karnataka* (2011) 14 SCC 475

3. *Dhruvaram Muralidhar Sonar v. State of Maharashtra* AIR (2019) SC 327

4. *Pramod Suryabhan Pawar v. State of Maharashtra* (2019) 9 SCC 608

5. *Maheshwar Tigga v. State of Jharkhand* (2020) 10 SCC 108

of threat, coercion and conspiracy by her advocate and his junior counsel. She has made serious allegations against several persons and written letters to the Prime Minister, Chief Justice of India, etc. She made allegations of charging exorbitant fees by her counsel and his associate counsel who used to visit her at Vijaywada. She says that her counsel threatened her with dire consequences and forced her to sign her NOC but she did not lodge a formal complaint against him in the Court. The mobile phone and electronic devices of the petitioner which contained messages, chats, photographs, images, etc. are not with her but she has produced printouts of her chats and photographs with the accused person and does not disclose the secondary source. She states that she has all information stored in a pendrive but does not say why and when she collected and stored her private chats, conversation with others and photographs in a pendrive or elsewhere.

16. The petitioner and the accused person both belong to different caste, community and religion. As the narration of the events discloses, the petitioner continued her friendship with the accused person on her own. She is a resident of Bandra and booked a hotel at Juhu in Mumbai in her own name. She permitted the accused person to meet her in a hotel room and had pleasant talks with him. If something happened which was not liking of the petitioner on 24th December 2021, there is no plausible reason why she entertained the accused person in her home on 26th December 2021 and went with him wandering along Juhu Tara road in his car. She continued her friendly relationship with the accused person for more than a month and met him in his office on 27th December 2021, 5th January 2022 and 24th January 2022. She on her own says that she wanted chat to clear the misunderstanding between both of them and called him several times. She kept quite and remained silent for more than thirteen months before she made a complaint at the BKC Police

Station on 16th February 2023. The WhatsApp chats and the photographs produced on record by the petitioner clearly indicate that she was in a happy relationship with the accused person for quite sometime. The volume of such chats and the contents therein and the photographs on record reflect their intimacy.

17. Section 172 of the Code of Criminal Procedure provides that every police officer making an investigation under Chapter XII shall enter the proceedings of the investigation in a diary which shall include among other things, a statement of the circumstances ascertained by the Officer In-Charge through his investigation and the statement of witnesses under section 161 recorded during the course of investigation. There is no fetter on the powers of the Magistrate to direct the police to carry further investigation in respect of an offence after a report under sub-section (2) has been forwarded to him. Sub-section (8) to section 173 provides that the Magistrate is not precluded from issuing a direction for further investigation. The powers under sub-section (8) are exercised to ascertain the complete fact and circumstances in the case and for good reasons. The Magistrate who deals with the police report cannot compel the police to change his opinion. A finding of fact recorded in the police report could not have been doubted by the Magistrate when the prosecutrix herself made a statement that she did not want to contest the matter. This is for the police to form an opinion on the basis of the materials collected during the investigation whether a case is made out to forward the accused person before the Magistrate for trial and this decision can be taken by the police and by no other Authority.

18. For the aforesaid reasons, Criminal Writ Petition No.3701 of 2025 is dismissed.

[GAUTAM A. ANKHAD, J.]

[CHIEF JUSTICE]