

Ashish

ASHISH
SAHEBRAO
MHASKE

Digitally signed
by ASHISH
SAHEBRAO
MHASKE
Date: 2025.10.14
18:23:03 +0530

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

CRIMINAL REVISION APPLICATION NO. 11 OF 2025

Irfan Gulamnabi Qureshi	... Applicant
V/s.	
The State of Maharashtra	... Respondent

Ms. Misbah Solkar and Ms. Sejal Jain i/b Mr. Amin Solkar and Mohd. Taha, for the applicant.

Ms. Vilasini Balasubramanian, for respondent no.2 (appointed as legal aid)

Mrs. Rajashree Newton, APP for respondent – State.

Ms. Usha Khose, PSI, (Pairavi Officer), MHB Colony Police Station, Mumbai.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 14, 2025

P.C.:

1. By this revision application, the applicant challenges the order dated 27 November 2024 passed by the learned Additional Sessions Judge, Borivali, Dindoshi, below Exhibit-2 in Sessions Case No. 333 of 2022. By the said order, the learned Judge rejected the applicant's application filed under Section 227 of the Code of Criminal Procedure, 1973, seeking discharge.

2. The prosecution case, in brief, is as follows. Respondent No. 2 came into contact with the applicant in November 2017 while working as a salesgirl at the Nike Shoes Store at Dahisar. The applicant was then employed as an Assistant Manager at the same

store. It is alleged that as they worked together, friendly relations developed between them. The applicant allegedly started pursuing respondent No. 2 and, in February 2018, proposed marriage to her. Respondent No. 2 informed him that she had earlier been married and that divorce proceedings were pending before the Family Court since 2014.

3. In July 2018, on the pretext of having dinner, the applicant allegedly accompanied respondent No. 2 to her house and sexually assaulted her. Thereafter, he allegedly continued physical relations with her on the promise of marriage. Later, respondent No. 2 came to know that the applicant was already married. When confronted, the applicant allegedly stated that his wife was seeking divorce.

4. It is further alleged that in December 2018, the applicant had a dispute with his maternal uncle and had to leave his home. Having no place to stay, he requested permission to reside at respondent No. 2's home. Her mother consented, and the applicant began living there from December 2018 till 17 August 2020. During this period, they allegedly continued to live together as husband and wife and had physical relations. On 17 August 2020, the applicant went to his native place in Rajasthan, stating that his father was unwell. Thereafter, he allegedly stopped contacting respondent No. 2 and refused to maintain any further relationship. Based on her complaint, an FIR was registered on 17 July 2021 with MHB Colony Police Station, bearing C.R. No. 593 of 2021, for offences punishable under Sections 376, 376(2)(n), 354, and 354D of the Indian Penal Code.

5. Learned Advocate for the applicant submitted that there is no material on record to show that the applicant had no intention to marry the complainant from the beginning of the relationship. The material, at the most, indicates a failure to fulfill a promise made in good faith. For the offence under Section 376(2)(n) to be attracted, it must be shown that the promise of marriage was false from inception and made with no intention to perform it. In support of this submission, reliance is placed on the judgment of the Supreme Court in *Pramod Suryabhan Pawar v. State of Maharashtra*, (2019) 9 SCC 608.

6. On the other hand, the learned APP and the learned Advocate representing respondent No. 2 opposed the revision application. They submitted that the applicant was already married at the time he promised marriage to respondent No. 2. This fact was deliberately concealed from her. His subsisting marriage clearly shows that he never intended to marry respondent No. 2 and that the promise was false from the very beginning. Hence, all ingredients of Section 376(2)(n) are satisfied. They therefore contended that the learned Sessions Judge rightly rejected the applicant's discharge

7. Having considered the rival submissions and perused the record, the following reasons arise for allowing the present revision application.

8. The charge against the applicant is primarily under Section 376(2)(n) of the Indian Penal Code. The essential requirement to attract this provision is that the promise of marriage must have

been false from the very inception, and that the consent for physical relations was obtained on such false promise. Mere failure to fulfill a promise subsequently does not constitute the offence of rape.

9. The material on record, even if taken at its face value, indicates that respondent No. 2 was aware of the applicant's marital status and her own divorce proceedings before any physical relationship developed. The version in the FIR itself shows that respondent No. 2 informed the applicant about her pending divorce in February 2018, and that the alleged sexual relationship commenced thereafter in July 2018. The fact that the relationship continued from December 2018 till August 2020, when they resided together as husband and wife, also shows that it was a consensual relationship between two adults.

10. There is no material to indicate that the applicant made a false promise of marriage at the inception with a dishonest intent. The allegations, taken in entirety, suggest that the relationship was voluntary and continued for a long duration. A long-standing consensual relationship, which later ends in dispute or separation, cannot by itself be treated as rape.

11. The Supreme Court in *Pramod Suryabhan Pawar (supra)* has held that to constitute rape on the ground of false promise of marriage, the promise must be shown to be false at the inception and the prosecutrix's consent must have been obtained only because of such false promise. If the relationship is consensual and based on mutual affection or misunderstanding about future

marriage, the ingredients of Section 376 are not attracted.

12. The prosecution has not brought on record any material to show that at the time of the alleged promise, the applicant had no intention to marry respondent No. 2. The allegation that the applicant later refused to continue the relationship does not by itself convert a consensual relationship into an offence under Section 376(2)(n).

13. The element of deception at the inception of the relationship is absent in the present case. The fact that respondent No. 2 permitted the applicant to reside in her home with the consent of her mother for more than one and a half years clearly indicates that the relationship was voluntary and not induced by any fraudulent representation.

14. The Sessions Court appears to have overlooked the distinction between a false promise made in bad faith and a mere breach of promise arising from subsequent circumstances. The record does not disclose any material that can lead to a conclusion that the applicant had, from the beginning, a dishonest intention to deceive the complainant.

15. In absence of the basic ingredients constituting the offence under Section 376(2)(n), continuation of the criminal proceedings would amount to abuse of process of law. The applicant is therefore entitled to discharge under Section 227 of the Code of Criminal Procedure.

16. Accordingly, the revision application deserves to be allowed.

The impugned order dated 27 November 2024 passed by the learned Additional Sessions Judge, Borivali, Dindoshi, in Sessions Case No. 333 of 2022, below Exhibit-2, is quashed and set aside. The application under Section 227 of the Code of Criminal Procedure filed by the applicant stands allowed. The applicant is discharged from Sessions Case No. 333 of 2022.

17. The Revision stands disposed of.

(AMIT BORKAR, J.)