

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

CRIMINAL APPLICATION NO.736 OF 2025

SATISH
RAMCHANDRA
SANGAR

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Date: 2025.09.08
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1. **Joel Bernard @ Joel Roland Sequeira** }
Adult, Indian Inhabitant, Age : 34 Years, }
Occupation : Unemployed, Residing at:- }
A/102, Kalpana Apartment, Sherly Rajan }
Road, Near Springfield High School, }
Bandra (West), Mumbai : 400 050. }
2. **Serena Christine @ Serena Ronald Sequeira** }
Adult, Indian Inhabitant, Age : 38 Years, }
Occupation : Unemployed, Residing at:- }
A/102, Kalpana Apartment, Sherly Rajan }
Road, Near Springfield High School, }
Bandra (West), Mumbai : 400 050. } **...Applicants**

Versus

The State of Maharashtra }
(At the instance of Senior Police Inspector, }
Bandra Police Station, Bandra (West), }
Mumbai : 400 050. } **...Respondent**

Mr.Sunny Waskar a/w Ms.Harshada Morey:-	Advocates for Applicants.
Mr.H.J.Dedhia:-	APP for Respondent-State.
Mr.Parvez Memon a/w Ms.Valentina Sampson i/b. MZM Legal LLP:-	Advocates for First-Informant.

CORAM : S. M. MODAK, J.
DATE : 22nd AUGUST 2025

ORAL ORDER :-

1. Heard learned Advocate for the Applicants/Accused Nos.1 and 2 and the learned Advocate for the First-Informant.
2. Even though she is not joined as party Respondent, she has appeared through her learned Advocate. By consent, I allow him to address the Court. Let him file Vakalatnama in the Office.
3. Both these Applicants are charge sheeted by the Bandra Police Station–Mumbai in an offence bearing C.R. No.560 of 2024 (Page No.76). The FIR came to be registered on the complaint of the victim on 12th April 2024. The offences are under Sections 376, 376(2)(n), 377, 506 read with 34 of the Indian Penal Code, 1860 (henceforth referred to “**IPC**” for short) [Act No.45 of 1860].
4. The victim/First-Informant got acquainted with both the Applicants on the football ground at Bandra. The First-Informant runs a football team whereas both these Applicants have erected a cake stall on that football ground. The First-Informant started visiting the house of the Applicants on the request of the Applicant–Serena. She started residing in her house as a tenant. She was paying an amount of Rs.50,000/- (Rupees Fifty Thousand) to the Applicant–Serena. As all of them were residing in one flat, they got accustomed to each other. It is the allegation of the First-Informant that the Applicant–Serena

always insisted on the First-Informant to consume wine. On certain occasions, she realized there are blue-marks on her body. It is her case that during her stay in the said flat, on the instructions of the Applicant–Serena, she has slept in the room of the Applicant–Joel. On a particular day, both were viewing a web-series. The Applicant–Joel started behaving with the First-Informant in the said manner which is shown in that web-series.

5. It is her further allegation that from 3rd February 2024, the Applicant–Joel had a sexual intercourse with her without her consent. It is also her allegation that the Applicant–Serena used to give her tablets and on the next day, she realized that she was without the inner clothes and certain blue-marks were noticed on her body. It is also her allegation that the Applicant–Serena used to threaten her of publishing her nude-photographs with the Applicant–Joel. It is also her allegation that the Applicant–Joel used to have unnatural intercourse with her. On this background, she lodged the complaint and the offence came to be registered for the offences under Sections 376, 376(2)(n), 377, 328, 354, 342, 109, 506 read with 34 of IPC.

6. The investigation is complete. The charge-sheet is filed. After the charge-sheet, both of them applied for their discharge. The trial Court

rejected it as per the order dated 2nd April 2025. Both the sides have invited my attention to the observations in the said order. As it is rejected, the present Application is filed on behalf of both the Applicants.

Submissions

7. During arguments, learned Advocate for the Applicants have stressed upon the following aspects:-

(a) He invited my attention to a copy of non-cognizable report filed by the First-Informant with Bandra Police Station on 20th February 2024. That is earlier to lodging of FIR on 12th April 2024 and after leaving the house of both the Applicants. In that complaint, the First-Informant has made following allegations:-

- (i) The First-Informant has purchased a house at Andhari (East) and it was under construction and that is why she started residing with the Applicant-Joel. She has said about love relationship with the Applicant-Joel. However, it was disliked by the co-applicant Serena. That is why there was difference of opinion in between both these Applicants and the Applicant-Serena was insisting the First-Informant to leave the house.
- (ii) One incident of giving of abuses took place and that is why an offence under **Sections 504, 506 of IPC** was registered. The submission is in this non-cognizable

complaint, the First-Informant has referred about the love-relationship in between the Applicant-Joel and the First-Informant and the relationship can be said to be consensual relationship.

- (iii) **Second circumstance** which is quoted on behalf of the Applicants is sending of e-mail which is on Page No.408. It was sent by the First-Informant to the Applicant-Joel (through the company concerning to the First-Informant. However, it is disputed during arguments on behalf of the First-Informant). There is a reference about expressing apology by the Applicant-Joel, and he has shown readiness to rectify the damage caused to the reputation. He has agreed to fulfill the same by 4th March 2024.
- (iv) **One more circumstance** is relied upon. This is in respect of purchase of contraceptive material. It bears the date of 5th February 2024. The bill stands in the name of the First-Informant.
- (v) **One more circumstance** is relied upon. It is on Page No.193. This is in respect of the payment made by the First-Informant for purchase of grocery items from 9th January 2024 to 15th February 2024.

On the basis of above circumstances, plea of consensual relationship is taken.

8. Learned Advocate for the Applicants also tried to point out certain defects in the investigation-papers. He invited my attention to

the following documents:-

(a) Page No.120:-

This is history quoted by the First-Informant to the Medical Officer. There is a reference of re-examination done on 13th April 2024. The submission is it indicates that the victim was examined earlier to 13th April 2024 and the papers of her examination are not forthcoming.

(b) My attention is also invited to the remark in the remand report dated 14th April 2024 addressed to the jurisdictional Magistrate. The Police have mentioned about inability of the victim to come for medical examination in view of some urgent work.

(c) My attention is also invited to the case papers on Page No.119:-

It bears the date of 15th April 2024. The submission is lacunae in all these papers create a doubt and there is every reason to believe that these papers are prepared subsequently.

(d) My attention is also invited to the supplementary statement of the First-Informant recorded on 22nd April 2024 wherein she has improved the facts stated in the FIR.

9. By way of reply, the learned Advocate for the First-Informant made the following submissions:-

(a) There is a limited scope for dissecting the materials and mini-trial cannot be conducted. He relied upon the

observations made by a Division Bench of this Court in case of *Pramod Dhanji Purabiya V/s. State of Maharashtra Through Bhoiwada Police Station and Another*¹. My attention is invited to the various judgments by the Hon'ble Supreme Court referred in the said judgment. His submission is the word '*consent*' is used in Section 376 and it is interpreted in case of *Shambhu Kharwar V/s. State of Uttar Pradesh*². There are observations about the scope of interference by this Court while exercising the jurisdiction under Section 482 of the Code of Criminal Procedure, 1973 ("**Cr.P.C.**") [Act No.2 of 1974].

"A probable defence of the accused cannot be considered and Court cannot go into the factual arena."

- (b) The statement of **one independent witness by name Kunal Achpelia**. It is on Page No.98. He runs a construction business and from his Office, the bedroom of the Applicant-Joel can be seen. He has witnessed the incident that took place on 10th February 2024 at about 7.00 p.m. He has also witnessed the incident of 11th February 2024. I am not reiterating all the details stated by the witness. Suffice to say that he has made a reference of the Applicant-Joel and the Applicant-Serena.
- (c) He invited my attention to the observations made by the trial Court in the impugned order.

10. Learned APP tried to explain certain inconsistencies in the

¹ 2024 SCC OnLine Bom 2455

² 2022 SCC OnLine SC 1032.

medical case-papers. He invited my attention to the letter written by the First-Informant to the Police dated 13th April 2024 (Page No.115) wherein she has requested for re-conducting the medical examination.

11. It is true, while hearing the discharge Application:-

- *The Court has only to look at the materials which are part of the charge-sheet.*
- *The Court has to see whether there are materials to suggest that the ingredients of the offences are prima facie satisfied.*
- *The Court has to see whether there is a grave suspicion. A detailed dissection of the materials is not contemplated.*
- *Even where one material corroborates with the another material cannot be looked into while hearing the discharge Application.*

12. While hearing this Application, we have got two sets of materials. One which is **part of the charge-sheet** and second, **the copy of NC, copy of e-mail** (it is under dispute) and **certain invoices and bills**. On the basis of above materials, this Court has to see whether there was consensual relationship. This has to be at pretrial stage.

13. The First-Informant herself has stated in the FIR that she was residing along with both the Applicants in the same flat. The duration of the stay is from 9th January 2024 to 12th February 2024. She has

quoted few of the instances. She has alleged about giving of wine by the Applicant–Serena. She wants to suggest that under the influence of wine, the Applicant–Joel had relationship with her and she realized this fact on the next date. No doubt, it is true, in NCR, she has referred about her relationship with the Applicant–Joel. This has referred about the incident of 18th February 2024 after she left that house and it was informed to Police on 20th February 2024. No doubt, there are certain vouchers indicating that the First-Informant has paid for certain grocery articles and certain contraceptive material. **This Court feels that this is not a case wherein both the Applicants can be discharged.** It is particularly for the reason that the First-Informant has alleged that she was given wine for consumption and what she noticed on the next date that there are signs of blue-marks on her body and on some occasions, her inner clothes were also removed. Even few of the instances are witnessed by an independent person. There may be certain lacunae in the medical case-papers.

14. As said above, a detailed scrutiny of the material is not permissible. Even though there may be lacunae in the medical case-papers, it is difficult for this Court to make any comment unless the concerned Medical Officer is examined. The trial Court is a proper

Forum. The prosecution will get an opportunity to explain the lacunae and the defense can also cross-examine the witnesses. Without hearing the Medical Officer, it is not proper for this Court to make any comment about that lacuna. If this piece of evidence is discarded, it will amount to discarding it without examining the witness. Whatever materials relied upon by the Applicants can be put by them during cross-examination only. Hence this Court feels that the order cannot be interfered with. So I am inclined to dismiss the Application. **Hence it is dismissed.**

15. I have not considered the effect of Section 114-A of Indian Evidence Act, 1872 [Act No.1 of 1872] at this stage as submitted by Mr.Pervez Memon because I have given more weightage to the materials cited before me. For same reason, I have not made any comment on the applicability of principle of estoppel as prescribed under Section 115 of the said Act as contended by Mr.Waskar. Ultimately, the Court has to see whether there is grave suspicion and if yes it is a case for framing of charge.

16. Now the case is fixed for framing of charge on 8th September 2025. Learned Advocate for the First-Informant wants a direction to expedite the trial. The First-Informant is certainly interested to go on

with the trial. At the same time, the Applicants need to be given an opportunity to challenge this order. **So let the trial Court not to frame a charge for 4 weeks from the date of uploading the order.**

17. With these observations, **the Criminal Application is disposed of.**

[S. M. MODAK, J.]