

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
BAIL APPLICATION NO.4034 OF 2025
WITH
INTERIM APPLICATION NO.4085 OF 2025**

Umesh Chandrakant Janwalkar

...Applicant

Versus

State of Maharashtra & Anr.

...Respondents

Mr. Subhash Jha with *Siddharth Jha, Chetan Gogawale, Sumeet Upadhyay, i/b Law Global Advocates, for the Applicant.*

Ms. Anamika Malhotra, *APP for the Respondent-State.*

Ms. Ashwinii Acharii, *for the Respondent No.2.*

Ms. Jagtap, *WAPI attached to Manpada Police Station, Thane City, present.*

CORAM DR. NEELA GOKHALE, J.

DATED: 22nd DECEMBER 2025

PC:-

1. By this Application, the Applicant seeks his enlargement on bail in connection with C.R.No. 923 of 2025 dated 3rd August 2025 registered with the Manpada Police Station, Thane City for the offences punishable under Sections 64(2)

(m), 69, 115(2), 352 and 351(2) of the Bharatiya Nyaya Sanhita, 2023 ('BNS').

2. The facts of the case, in brief, are that:-

2.1 In April 2025, the Applicant and the First Informant got acquainted with each other through a social media app, namely, '*Tinder*'. On 19th April 2025, they met in one hotel namely, '*Quba*' at Kalyan. Thereafter, they started interacting with each other. It is the case of the First Informant that the Applicant misrepresented to her that he wanted to marry her. He had, however, told her that he was already married and there were divorce proceedings pending between himself and his wife. The Applicant told the First Informant that he will marry her once, he obtains divorce. The First Informant further alleged that on 9th June 2025, they celebrated her birthday and thereafter went to her house. On that night, they had physical relations with each other. Again, the Applicant told her that he will marry her, once, he gets a divorce. Similarly, the Applicant and the First Informant continued to

have intimate relationships with each other. On 29th June 2025, the Applicant came to the building where the First Informant resides and told her that he does not want to marry her and she can do what she likes. He also allegedly abused her. When she went to Applicant's house to talk to him, she realized that the Applicant had a 6 years old daughter, which he had not disclosed to her. Hence, she realized that she was cheated and then, she made complaint, consequent to which FIR was registered.

3. The Applicant made an application seeking bail before the Additional Sessions Judge, Kalyan. However, by order dated 25th August 2025, his bail application was rejected. Hence, the Applicant is before this Court, seeking the reliefs as prayed.

4. Mr. Subhash Zha, learned counsel appears for the Applicant. There is a checkered history in so far as the legal representation to the First Informant is concerned. Initially, Legal Aid Services Committee of this Court had appointed Dr.

Uday Warunjikar to represent her. However, on allegations made by the First Informant against Dr. Warunjikar, he withdrew his willingness to espouse her cause before the Court. Thereafter, another Senior Counsel was appointed by the Legal Aid Services Committee of this Court to represent the Respondent No.2. However, the First Informant expressed her desire to discontinue his services and he too recused. Therefore, this Court appointed Ms. Ashwinii Acharii, learned Advocate, to represent the Respondent No.2-First Informant.

5. Ms. Acharii tendered certain documents. The said documents are not part of the charge sheet, however she says that it is at the insistence of the Complainant that she so tenders. The Complainant had also placed the same before the trial court, according to her. Mr. Jha has also placed on record certain WhatsApp chats, which are also not part of the charge sheet, as yet.

6. Mr. Jha submitted that the relationship between the Applicant and the Complainant was purely consensual, and

there is no question of an offence either under Section 64, 69 or 115 of the BNS. A perusal of the FIR and the charge-sheet would establish that there is no material on record, to establish that the Complainant had entered into a relationship with the Applicant, under coercion or undue influence, or under the mistaken belief or a false assurance of marriage.

7. It is also argued that the Complainant was very well aware of the consequences, of her actions, and had reasonably considered them before entering in a relationship with the Applicant. As a matter of fact, it is the own case of the Complainant, that she was in a relationship with the Applicant, while she was aware of the marital status of the Applicant. Thus, the element of inducement for marriage by the Applicant is manifestly absent and the criminal proceedings registered against him tantamount to a gross abuse of the process of law.

8. On the other hand, it is argued by the prosecutrix, that she had entered into a physical relationship with the

Applicant solely for the reason that he had promised to marry her & take care of her, and had it not been for the promise of marriage made by him, she would have never entered into a physical relationship with him. It is submitted that the conduct of the Appellant amounts to a dishonest inducement, and the physical relationship on a false pretext amounts to rape.

9. At the outset, I refer to the ratio in the case of ***Naim Ahmed v. State (NCT) of Delhi***¹ whereby the Supreme Court had decided a similar matter, wherein allegedly, the prosecutrix had also given her consent for a sexual relationship with the accused/appellant, upon an assurance to marry. In the conspectus of such facts and circumstances, the Supreme Court had observed as under:

“21. The bone of contention raised on behalf of the respondents is that the prosecutrix had given her consent for sexual relationship under the misconception of fact, as the accused had given a false promise to marry her and subsequently he did not marry, and therefore such

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consent was no consent in the eye of the law and the case fell under Clause Secondly of Section 375IPC. In this regard, it is pertinent to note that there is a difference between giving a false promise and committing breach of promise by the accused. In case of false promise, the accused right from the beginning would not have any intention to marry the prosecutrix and would have cheated or deceived the prosecutrix by giving a false promise to marry her only with a view to satisfy his lust, whereas in case of breach of promise, one cannot deny a possibility that the accused might have given a promise with all seriousness to marry her, and subsequently might have encountered certain circumstances unforeseen by him or the circumstances beyond his control, which prevented him to fulfil his promise. So, it would be a folly to treat each breach of promise to marry as a false promise and to prosecute a person for the offence under Section 376. As stated earlier, each case would depend upon its proved facts before the court.”

10. The decision in ***Naim Ahmed (Supra)*** is squarely applicable to the conspectus of present case. It has been time and again settled by the Supreme Court, that the mere fact that physical relations were established pursuant to a promise to marry will not amount to a rape in every case. An offence under Section 69 of the BNS could only be made out, if

promise of marriage was made by the accused solely with a view to obtain consent for sexual relations without having any intent of fulfilling said promise from the very beginning, and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations.

11. I have perused the material on record. From the material on record, it appears that there was a relationship between the parties. It is clear that the Applicant is married but estranged from his wife. Admittedly, there are divorce proceedings pending between the Applicant and his wife. As on date, there is no divorce decree dissolving the marriage of the Applicant with his wife. The legal marital status of the Applicant at the time when the Applicant and Complainant had intimate relationship was also the same. She was well aware of the fact that the Applicant is married and at that point of time, unable to marry her. The consent of the First Informant as defined under Section 28 of the BNS thus, can not be said to have been obtained under the misconception of

facts. There is also no material to substantiate inducement or misrepresentation on the part of the Applicant to secure consent for sexual relations without having any intention of fulfilling the said promise. It is not the case that the Applicant has obtained a divorce decree from the competent Court and yet refused to marry the Complainant. It may be that during their association, there was a fall out in their relationship and hence, he does not want to continue the relationship with the Complainant at this point of time. In this context, it cannot be said that he never intended to marry the Applicant at the first instance. Thus, this cannot be a case where a false promise to marry was made only with an intention to have sexual relations with the Complainant. In this view of the matter and on the basis of material available on record, I am of the view that *prima facie*, the offence as alleged is not made out.

12. In these circumstances, I am inclined to enlarge the Applicant on bail. It is accordingly ordered as under:-

ORDER

i) The Applicant be enlarged on bail, on executing PR Bond in the sum of Rs.50,000/- with one or two local sureties in the like amount;

ii) The Applicant is permitted to furnish provisional cash bail of Rs.50,000/- for his release immediately and file undertaking that he will provide one or two sureties in the like amount of Rs.50,000/- within a period of four weeks after his release, which shall be accepted by the Trial Court. The Applicant shall provide the sureties as directed;

iii) The Applicant shall not enter the jurisdiction of the Manpada Police Station, Thane City, till such time that the statement of the First Informant is recorded before the Trial Court;

iv) The Applicant shall attend the Trial Court concerned on each and every date unless exempted by the orders of the Trial Court concerned;

v) The Applicant shall also attend the Police Station concerned once in a month on first Monday between 11:00 a.m. to 02:00 p.m. till the charges are framed;

vi) If the Applicant has not deposited his passport, if any, the Applicant shall deposit the same with the Police Station concerned;

vii) The Applicant shall not leave India, without the permission of the Trial Court;

viii) The Applicant shall not tamper or attempt to influence or contact the complainant, witnesses or any person concerned with the case;

ix) The Applicant shall inform his latest place of residence and contact number immediately after being released and / or change of residence or mobile details, if any, from time to time to the Court seized of the matter and to the Investigating Officer of the Police Station concerned;

x) The Applicant to co-operate with the conduct of the trial;

xi) Any infraction of the aforesaid conditions shall entail cancellation of bail.

13. Application is allowed in the above terms and is accordingly disposed of with Interim Application, if any, filed therein.

14. It is made clear that the observations made herein are *prima facie* and are confined to this Application and the learned Trial Judge to decide the case on its own merits, uninfluenced by the observations made herein.

15. Before I part, the assistance given by Ms. Acharii is appreciated and commended. Without her assistance, it would not have been possible to deal with the matter especially since the First Informant had already refused legal assistance from senior lawyers.

16. All parties to act on an authenticated copy of this order.

(DR. NEELA GOKHALE, J)

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