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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.1596 OF 2022

Naushad s/o Nur Mansuri,
Aged about 27 Years,
Occupation : Conductor,
R/o. In front of Rabbani School,
Naya Bazar Kamptee, District Nagpur. **APPLICANT**

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Sadar Nagpur.
2. X Y Z,
Crime No. 116/21
Police Station Officer, Sadar,
Nagpur. **NON-APPLICANTS**

Mr. Sk. Sabahat Ullah, Advocate for the applicant.
Mr. N. B. Jawade, APP for non-applicant No.1/State.
Mr. A. M. Balpande, Advocate for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
DATED : 25/11/2025

ORAL JUDGMENT : [Per : URMILA JOSHI-PHALKE, J.]

1. **Admit.**
2. Heard finally with the consent of the learned Counsel for the parties.
3. The applicant has approached this Court by filing present application under Section 482 of the Code of Criminal Procedure seeking to quash the First Information Report dated 20.03.2021

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registered as Crime No.116/2021 under Sections 376, 376(2)(n), 323, 504 of the Indian Penal Code (for short 'IPC') and consequent proceeding arising out of the same bearing Sessions Trial No.668/2021 pending before the District and Sessions Judge, Nagpur.

4. As per the contents of the FIR lodged by the informant, in the year 2018 she got acquaintance with the present applicant and since they started communicating with each other. It is further alleged that on 27.03.2020, when the applicant and informant were roaming together along with their common friend, the applicant has proposed to her and assured her for marriage and on the basis of said assurance, subjected her for sexual assault. Though the informant was insisting him to perform the marriage, but the applicant has not shown any interest to perform the marriage. She suspected that she was carrying the pregnancy, therefore, she examined herself and it was found that she is carrying the pregnancy. Thereafter, also she insisted the present applicant for marriage, but he has denied for the same and therefore, the FIR came to be lodged against the present applicant.

5. Heard learned counsel for the applicant, who submitted that as far as the contents of the FIR are concerned, which shows that it was a consensual relationship between the

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applicant and the informant/victim and merely because the marriage was not performed, the FIR came to be lodged. He submitted that with baseless allegation it is alleged that she was subjected for the forceful sexual assault. The physical relationship between the two adults is there with the consent of each other and therefore, no *prima facie* case is made out.

6. Per contra, learned APP strongly opposed for the said and submitted that the applicant's action was to satisfy the lust rather than any intention to marry or maintain a legitimate relationship with the informant/victim.

7. The learned counsel for the non-applicant No.2 also supports the said contentions advanced by the learned APP and states that the conduct of the applicant clearly shows that since inception, there was an intention to cheat and therefore, he subjected her for sexual assault on the promise of marriage, and subsequently not performed the marriage and therefore, the *prima facie* case is made out.

8. On hearing both sides and on perusal of the investigation papers, it reveals that the statement of the informant/victim discloses that she got acquaintance with the present applicant and out of that acquaintance, they were meeting each other, communicating each other and physical relationship was

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developed between them out of a love relationship and subsequently, the marriage was not performed between them and therefore, the FIR came to be lodged.

9. In a recent judgment in the case of **Samadhan s/o Sitaram Manmothe Vs. State of Maharashtra and another in Criminal Appeal No. 5001/2025**, wherein the Hon'ble Apex Court has occasioned to consider the provisions of Sections 376, 376(2)(n) and 507 of IPC and it is held that an offence of rape, if established in terms of Section 375 of the IPC, is punishable under Section 376 of the IPC. The provision under Section 376 (2) (n) of the IPC provides for enhanced punishment in cases where rape is committed repeatedly on the same woman. It mandates rigorous imprisonment for a term of not less than ten years which may extend to life imprisonment for the remainder of the person's natural life. The object of this provision is to address aggravated instances of sexual assault where the offence is not a single incident but has occurred repeatedly on the same victim. The expression "repeatedly" employed in the provision is of significance.

10. The Hon'ble Apex Court by considering the various decisions i.e. **Mahesh Damu Khare Vs. State of Maharashtra, (2024) 11 SCC 398, Prashant Vs. State of NCT of Delhi, (2025) 5 SCC 764 and Rajnish Singh Vs. State of Uttar**

Pradesh, (2025) 4 SCC 197 and observed that physical intimacy that occurred during the course of a functioning relationship cannot be retrospectively branded as instances of offence of rape merely because the relationship failed to culminate in marriage.

11. It is further observed that the Apex Court on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are given the colour of criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every sour relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern and calls for condemnation.

12. In the back drop of these observations of the Hon'ble Apex Court, if the facts of the present case are taken into consideration, admittedly, the allegation in the FIR shows that out of acquaintance the applicant has proposed for marriage and on the promise of marriage, he has subjected her for the sexual assault which appears to be consensual relationship or physical

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relationship between the two adults i.e. the consensual relationship. It is therefore, clear that the applicant cannot be made to suffer the criminal prosecution. In view of that, we proceed to pass following order:

ORDER

(i) The application is **allowed**.

(ii) The First Information Report in connection with Crime No.116/2021 dated 20.03.2021 registered with Police Station Sadar, Nagpur for the offence punishable under Sections 376, 376(2)(n), 323, 504 of the Indian Penal Code and consequent proceeding arising out of the same bearing Sessions Trial No.668/2021 pending before the District and Sessions Judge, Nagpur, is hereby quashed and set aside to the extent of the present applicant.

The application is disposed of.

(NANDESH S. DESHPANDE, J) (URMILA JOSHI-PHALKE, J)