



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO. 908/2024

1. Suresh Namdev Umale,  
Aged about 44 years, Occ- Labour,  
R/o. Deoulgaon, Sakarsha  
Tq. Mehkar District Buldana

... APPLICANT

...VERSUS...

1. State Of Maharashtra,  
Through Police Officer Janefal,  
Buldana.
2. XYZ  
Crime No. 208/2021  
Police Station – Janefal, Buldana

...NON-APPLICANTS

-----  
Mr. Sangram V. Sirpurkar, Advocate for applicant  
Ms. Sneha S. Dhote, APP for non-applicant/State  
Ms. Neerja G. Choubey, Advocate for non-applicant no.2.  
-----

CORAM : URMILA JOSHI-PHALKE AND  
NANDESH S. DESHPANDE, JJ.

RESERVED ON : 10<sup>th</sup> DECEMBER, 2025.  
PRONOUNCED ON : 23<sup>rd</sup> DECEMBER, 2025.

**JUDGMENT (PER : NANDESH S. DESHPANDE, J.)**

Heard. **Admit.** Heard finally with the consent of learned Counsel for the parties.

2. The Applicant has approached this Hon'ble Court by filing the present application under Section 528 of the Bhartiya Nagarik Suraksha Sanhita, 2023, seeking quashing of the First Information Report dated 08.06.2021, registered as Crime no. 208 of 2021 at Police Station Janefal, District Buldana, as also chargesheet bearing no. 64/2021 dated 14.09.2023 for offense punishable under Section 376, 376(2)(n), 313, 354 (a) and 506 of Indian Penal Code, 1860, pending before the learned Judicial Magistrate First Class.

3. As per the case of non-applicant no.2 and reflected in First Information Report, it is the case of non-applicant no. 2, that she is a married woman presently residing separately from her husband along with her son at her maternal home. While residing at her paternal home, she developed a love relationship with the present applicant. It is alleged that the applicant, on the pretext of a false

promise to marry non-applicant No. 2, engaged in physical relations with her. She further alleges that the applicant repeatedly came to her house in her parents' field and forcibly engaged in physical relations with her against her consent on multiple occasions. As a result of such alleged conduct, non-applicant No. 2 became pregnant and carried the pregnancy for two and a half months.

4. On 29.05.2021, the applicant told non-applicant No. 2 that he do not want her to carry the child and pressurized her to undergo an abortion. Despite her repeated refusal, the applicant threatened to kill non-applicant No. 2 and her son and took non-applicant No. 2 to Ekvira Hospital in Akola at, where the pregnancy was terminated. Aggrieved by aforesaid conduct of applicant, non-applicant no.2 lodged the Report which is challenged in the present application.

5. We have heard Mr. Sangrm Sirpurkar, Advocate for applicant, Mrs. Sneha Dhote, Additional Public Prosecutor for State and Ms. Neerja Choubey, Advocate for non-applicant no. 2.

6. The Learned Counsel for the Applicant submits that the applicant has been unnecessarily prosecuted when in fact no offence under Sections 376, 376(2)(n), 313, 354-A and 506 of the Indian Penal Code can be said to have been made out against the applicant.

7. It is further submitted that the relationship between non-applicant No. 2 and the applicant was consensual. Both non-applicant No. 2 and the applicant were already married to their respective spouse's way before their love relationship even began. Therefore, there could not be any false promise to marry and thus, there could not be any offence under Section 376 of the Indian Penal Code solely on the false promise to marry.

8. The Learned Counsel for the Applicant submits that there is no medical evidence against the applicant and non-applicant No. 2 with her own consent has aborted her pregnancy. Non-applicant No. 2 accompanied the applicant to Ekvira Hospital, Akola and underwent the abortion procedure voluntarily. Therefore, it cannot be said that the applicant forced her to abort the alleged pregnancy.

9. The learned counsel for the applicant has placed reliance upon judgment of i) *Pramod Suryabhan Pawar Vs. State of Maharashtra And Another* reported in (2019) 9 SCC 608, ii) *Sonu Alias Subhash Kumar Vs. State Of Uttar Pradesh And Another* reported in (2021) 18 SCC 517, iii) *XXXX Vs. State of Madhya Pradesh & Another* Criminal Appeal No. 3431 of 2023, iv) *Naim Ahamed V. State (NCT of Delhi)* in Criminal Appeal No. 257/2023, v) *Smit s/o Govardhan Teltumbade Vs. State of Maharashtra* in Criminal Application (APL) No. 169 of 2023.

10. As stated supra the offences punishable are regarding rape, repeated rape, miscarriage and criminal intimidation. As is further evident from the oral report leading to lodging of the First Information Report in question, the non-applicant no. 2 fell in love with the applicant and therefore by out of her own volition, initiated and continued the physical relationship between them. As observed by the learned Single Judge, of this Hon'ble Court while granting bail, even according to the prosecutrix and as can be seen from the statement under Section 164 of the Criminal Procedure Code, 1973, she was aware that the applicant was a married man with 3 children.

The prosecutrix as herself is married women although she is an estranged wife and it not even her case that the marriage is dissolved. Thus on the basis of this observation, the Single Judge granted bail to the applicant.

11. The fact that the relationship was consensual in nature and not forced upon the non-applicant no. 2/first informant is evident from the statement recorded under Section 164 of the Cr.P.C. on 07.07.2021 in which she unequivocally states that it was the first informant who told the applicant that even though she is not having any contact with her husband, she is well aware that the applicant is married and having three children. It is thus obvious that there is no question of any promise to marry. Furthermore, we have also perused the reports of Ekvira Hospital in which also the non-applicant no. 2 has voluntarily signed the reports giving consent of pregnancy. In that view of the matter the offence punishable under Section 313 is also not made out. Statement of the doctor namely Dr. Shalaka Adgaonkar also state that it was the non-applicant on. 2 who consented for the termination of pregnancy. Thus the statement also falsified the case of the non-applicant no. 2. The allegation that

while consenting for termination of pregnancy she was under threat of the applicant is without any material on record.

12. The concept of consent for continuing the physical relationship has been well enunciated and crystallized in the above judgments cited by the learned counsel for the applicant. In para 14, the Hon'ble Supreme Court in judgment ***Pramod Suryabhan Pawar Vs. State of Maharashtra And Another*** reported in (2019) 9 SCC 608 has stated as under:-

“14. In the present case, the “misconception of fact” alleged by the complainant is the appellant’s promise to marry her. Specifically in the context of a promise to marry, this Court has observed that there is a distinction between a false promise given on the understanding by the maker that it will be broken, and the breach of a promise which is made in good faith but subsequently not fulfilled. In *Anurag Soni v. State of Chhattisgarh*, this Court held: (SCC para 12)

*“12. The sum and substance of the aforesaid decisions would be that if it is established and proved that from the inception the accused who gave the promise to the pros-*

*ecutrix to marry, did not have any intention to marry and the prosecutrix gave the consent for sexual intercourse on such an assurance by the accused that he would marry her, such a consent can be said to be a consent obtained on a misconception of fact as per Section 90 IPC and, in such a case, such a consent would not excuse the offender and such an offender can be said to have committed the rape as defined under Sections 375 IPC and can be convicted for the offence under Section 376 IPC.”*

*Similar observations were made by this Court in Deepak Gulati v. State of Haryana (Deepak Gulati): (SCC p. 682, para 21)*

*“21. ... There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused;”*

13. Furthermore, in para 18, the Hon’ble Supreme Court has stated as under:-

*“18. To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To*

*establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman’s decision to engage in the sexual act.”*

14. The said judgment is relied upon and confirmed in ***Sonu Alias Subhash Kumar Vs. State Of Uttar Pradesh And Another*** reported in (2021) 18 SCC 517 in the judgment relied of ***Naim Ahamed V. State (NCT of Delhi)*** in Criminal Appeal No. 257/2023, The Hon’ble Supreme Court relying on its earlier judgment of Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra And Other, observed as under:-

*“17. Again in **Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and others** (supra), this Court interpreting the Section 90 and the Clause – Secondly in Section 375 of IPC, observed as under: –*

*“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very*

*carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.”*

*19. After duly examining the record in the light of the submissions made by the learned counsels for the parties, following facts have emerged: –*

- (i) Prosecutrix was a married woman having three children.*
- (ii) Accused was staying in a tenanted premises situated in front of the house of the prosecutrix.*
- (iii) Though initially hesitant, the prosecutrix developed liking for the accused, and both started having sexual relationship with each other.*
- (iv) The prosecutrix delivered a male child on 28/10/2011 from the loin of the accused.*
- (v) The prosecutrix went to the native place of the accused in 2012 and came to know that he was a married man having children.*
- (vi) The prosecutrix still continued to live with the accused in separate premises.*
- (vii) The prosecutrix and her husband took divorce by mutual consent in 2014 and thereafter prosecutrix permanently left her three children with her husband.*
- (viii) The prosecutrix lodged the complaint on 21<sup>st</sup> March, 2015 alleging that she had consented for sexual relationship with the accused as the accused had promised her to marry and subsequently did not marry.”*

15. Co-ordinate Bench of this Court the earlier judgments recorded in Criminal Application (APL) No. 169 of 2023 has also reiterated the same position.

*“20. In case at hand, already the informant was married and her marriage was in subsistence when the things were going on. After*

*examining the entire material, the following fact emerges :-*

*(I) The informant was married woman aged 38 years.*

*(II) The informant had two grown-up daughters.*

*(III) The informant's marriage was in subsistence when the occurrence took place.*

*(IV) The informant continued relationship for long three years.*

*(V) The informant delivered a baby from the applicant.*

*(VI) The informant never alleges that under promise to marry, she was sexually exploited.*

*(VII) There was vast difference as lady was quiet older than the boy.”*

16. The proposition of law as enunciated by Hon'ble Supreme Court if examined to the facts of the present case, it is clear that the applicant as also the first informant are married, major and are therefore able to understand the repercussions of initiation and continuation of any relationship interse. Furthermore taking view of

the matter and in view of statements of the witnesses and doctor it cannot be said that the relationship between them was forced upon the non-applicant no. 2 and her consent was obtained under any misconception. It is therefore clear that the relationship inter-se was purely of consensual nature and this is the case where the said relationship has turned sour to leading to filing of the First Information Report. The continuance of criminal proceedings therefore against the applicant would therefore be an abuse of process of law and miscarriage of justice. The situation would therefore fall squarely within the laid down parameters in the case of ***State of Haryana & Others vs. Ch. Bhajan Lal & Others*** reported in 1992 Supp. (1) SCC 335, which is reproduced below :-

*“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview*

*of Section 155(2) of the Code. (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

*(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

*(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

*(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

*(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to*

*spite him due to private and personal grudge.”*

17. In that view of the matter, we pass the following order :-

**ORDER**

i) Application is allowed.

ii) First Information Report bearing Crime No. 208 of 2021 dated 08.06.2021, registered with the Police Station Janefal, District Buldana, as also the Chargesheet Bearing No. 64/2021 dated 14.09.2023 for offences punishable under Section 376, 376(2)(n), 313, 354 (a) and 506 of Indian Penal Code, 1860 is hereby quashed and set aside as far as against the applicant - Suresh Namdev Umale.

iii) Application is disposed of in above mentioned terms.

**(NANDESH S. DESHPANDE, J.)**

**(URMILA JOSHI-PHALKE, J.)**

Shubham