



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO. 1401/2024

1. Saurabh S/o Sunilsingh Sengar,
Aged about 30 years, Occ: Business,
R/o. Flat No. 101, Anita Enclave,
Manish Nagar, Somalwada,
Nagpur

... APPLICANT

...VERSUS...

1. The State Of Maharashtra,
Through Police Station Officer,
Sonegaon Police Station,
Nagpur.
2. "XYZ" informant in F.I.R. No.
437/2023 registered at Police
Station Sonegaon, Nagpur.

...NON-APPLICANTS

Mr. Amit Thakur along with Sameer P. Sonwane and Shiba Thakur,
Advocate for applicant

Mr. Nikhil Joshi, APP for non-applicant/State

Ms. Kirti Deshpande, Advocate for non-applicant no.2 (Appointed)

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

RESERVED ON : 12th DECEMBER, 2025.

PRONOUNCED ON : 23rd 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 Court by filing the present application under Section 528 of Bhartiya Nagarik Suraksha Sanhita, 2023, seeking quashing of the First Information Report (for short “FIR”) dated 20.12.2023, registered as Crime No. 437/2023 at Police Station Sonegaon, District Nagpur, as also for quashing of chargesheet dated 02.02.2024 registered as Final Report form no. 23/2024 under Section 376 (2)(n) and 417 of Indian Penal Code, 1860 (for short “IPC”) and Sections 3(1)(w)(i) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The applicant further prays to quash the proceeding pending before learned District Judge, Nagpur in Special Case No. 93/2024.

3. The prosecution case is that, Non-applicant No. 2 became acquainted with the applicant in the year 2018 through the

'Makaan.com' application while working as an online property dealer. Thereafter, they started working together in partnership, and subsequently romantic relationship developed between them and they started meeting frequently and often visited each other's houses, and thereafter they mutually decided to get married. On or about 10.07.2022, while they had gone together for site visits at Mahindra Bloomden, MIHAN, applicant allegedly demanded to have physical relations in a vacant flat and assured her that they would get married soon. On the basis of this assurance physical relations were established between them and applicant continued to establish physical relations with her at various places, including her house and other locations, while postponing the marriage on one pretext or another.

4. It is further alleged that their last physical relations took place around 15–16 October 2023 and were in regular telephonic contact till 18.12.2023. Thereafter, on 19.12.2023, when non-applicant no.2 went to the house of the applicant, she was allegedly misled by his family members regarding his whereabouts, following which police intervention took place and the applicant assured

marriage at the police station, resulting in no complaint being lodged at that time. However, on 20.12.2023, the applicant allegedly categorically refused to marry non-applicant no. 2 and severed all relations, pursuant to which the FIR came to be lodged which is challenged in the present application.

5. We have heard Mr. Sameer Sonwane, Advocate for applicant, Mr. Nikhil Joshi, Additional Public Prosecutor, for non-applicant No. 1/State and Mrs. Kirti Deshpande, Advocate for non-applicant no.2.

6. Mr. Sameer Sonwane, learned counsel for the applicant submits that Non-applicant No. 2 is about 28 years of age and is a fully mature and educated individual, capable of taking conscious and informed decisions concerning her personal life. The allegations levelled in the present FIR are wholly malafide and vindictive in nature, having been lodged with the sole intention of harassing the applicant and exerting undue pressure upon him, including with a view to extract money after the registration of the FIR.

7. He further submits that that Non-applicant No. 2 is in the habit of lodging false and motivated complaints. Prior to the present FIR, she had lodged an FIR dated 10.08.2019 bearing No. 140/2019 at Police Station Sonegaon, Nagpur, against another person for offences under Section 376 of the Indian Penal Code and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The recurrence of allegations of an identical nature clearly demonstrates a pattern of abuse of the criminal process and establishes that Non-applicant No. 2 is well acquainted with the procedure and consequences of such prosecutions.

8. Lastly, it is submitted by learned counsel for applicant that, even as per the allegations contained in the present FIR, there is not a single averment which would attract the essential ingredients of the stringent provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and present FIR is merely an outcome of personal vendetta and vested interests.

9. Per contra, Mr. Nikhil Joshi, learned Additional Public Prosecutor appearing for the State, has vehemently opposed the present application. He submits that the material collected during the course of investigation, including the statements of witnesses, clearly discloses a prima facie case for the commission of the alleged offences. It is therefore contended that no case for interference is made out and that the present application deserves to be dismissed, permitting the trial to proceed in accordance with law in the interest of justice.

10. Upon careful consideration of the facts and circumstances of the case, it is evident that the relationship between the applicant and non-applicant No. 2 was entirely consensual in nature and developed over a substantial period from 2018 onwards. Even assuming, without admitting, that the first alleged offense which happened on 10.07.2022 was induced by a promise of marriage, the subsequent and continued relationship over a considerable period, during which non-applicant No. 2 voluntarily maintained physical relations on multiple occasions, clearly demonstrates consensual conduct rather than deceit.

11. This unbroken chain of voluntary interaction and continued intimacy long after the alleged incident completely belies any claim of forcible intercourse or of consent having been vitiated by a false promise of marriage promise. The conduct of non-applicant No. 2 is wholly consistent only with a consensual, adult romantic relationship that subsequently turned sour. The concept of 'Consent' has been elaborated by the Hon'ble Supreme Court in the case of *Samadhan Manmothe v. State of Maharashtra & another*, 2025 I NSC 1351 which reads as under:

38. At this stage it is material to refer to the decision of this Court in Mahesh Damu, wherein the following observations were made:

"29. It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90IPC, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent. In this regard we may refer to Deepak Gulati v. State of Haryana [Deepak Gulati v. State of Haryana,

(2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660], in which it was held as follows: (SCC pp. 6 82-84, paras 21 & 24)

“21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused 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 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; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. 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 misrepresentation made to her by the 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 so. Such cases

must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The ‘failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term “misconception of fact”, the fact must have an immediate relevance’. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her.”

12. Further, the Apex Court, in the same judgement para 27, observed that:

27. In this regard, it becomes relevant to refer to the decision of this Court in the case of Mahesh Damu Khare vs. State of Maharashtra, (2024) 11 SCC 398, (“Mahesh Damu”) wherein the following observations were made:

“27. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.

28. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under

misconception of fact.”

13. As far as the offense under section 417 of IPC is concerned, Section 417 of IPC requires dishonest or fraudulent inducement to deliver any property or to do or omit to do anything. In the present case, there is no allegation that non-applicant No. 2 was induced to deliver any property to the applicant, nor is there any allegation that she was fraudulently induced to part with any valuable consideration. The relationship was personal and romantic in nature, developing over several years. A mere promise to marry which does not materialize cannot constitute cheating under Section 417 IPC unless it is established that such promise was made with dishonest intention from the very beginning to deceive and defraud.

14. Further as far as the offence punishable under Section 3 of Schedule Caste and Scheduled Tribe are concerned no prima facie material is on record to incriminate the applicant as there is no intention to humiliate / abuse the non-applicant no. 2 in the name of caste no there is material on record to show that applicant was

aware of the caste of non-applicant no. 2 and therefore, he acted in such manner. Accordingly, we proceed to pass the following order:-

ORDER

- i) Application is allowed.
- ii) First Information Report bearing Crime No. 437/2023 dated 20.12.2023, registered at Police Station Sonegaon, District Nagpur, as also chargesheet dated 02.02.2024 registered as Final Report form no. 23/2024 under Section 376 (2)(n) and 417 of Indian Penal Code, 1860 and Section 3(1)(w)(i) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is hereby quashed and set aside to the extent of present applicant namely Saurabh S/o Sunilsingh Sengar.
- iii) Application is disposed of in above said.

(NANDESH S. DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

Shubham