



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL)NO.13 OF 2025

1. Ashish S/o Haridas Barve,
Aged About 28 years, Occu :
Service, R/o Near Sai
Mangal Karyalaya, Rajiv
Gandhi Ward, Warora,
Ekarjun, Distt. Chandrapur.
2. Sindhu W/o Haridas Barve,
Aged About 55 years, Occu :
Household, R/o Near Sai
Mangal Karyalaya, Rajiv
Gandhi Ward, Warora,
Ekarjun, Distt. Chandrapur.

... APPLICANTS

//VERSUS//

1. The State of Maharashtra,
Through its Police Station
Officer, Police Station
Dhantoli, Tq. & Distt.
Nagpur.
2. XYZ (Victim in crime bearing
First Information Report
No.410 of 2024 registered
with the non-applicant no.1
Police Station)

...NON-APPLICANTS

Ms Kirti Deshpande, Advocate h/f Shri Tejas Deshpande, Advocate for applicants
Shri A.G. Mate, APP for non-applicant/State
Shri D.S. Lambat, Advocate for non-applicant No.2

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

DATED : 19.12.2025

JUDGMENT (PER : URMILA JOSHI-PHALKE , J.)

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

2. The applicant has approached this Court by filing present application under Section 528 of the BNSS seeking quashing of the First Information Report No. 410/2024, registered under Section 64, 64 (2)(m) and 69 of the BNS and 3(1)(w)(i), 3(1)(w)(ii), 3(2) (va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. The applicant further seeks to quash and set aside the consequent proceeding, Special Case No. 774/2024, bearing Final Report 107/2024.

3. As per the contentions in the First Information Report lodged

by the informant, she got acquainted with the present applicant in the year 2016, when she was taking education, and a friendship was developed between them. Thereafter, they were communicating with each other. In November 2019, the applicant communicated to her that he is having love feelings for her, and he wants to marry with her. Her further contention is that, thereafter, on various occasions, on the promise of marriage, he has subjected her for forceful sexual assault. She was visiting his room, and there was a physical relationship between them developed out of the love relationship. On the basis of the said report, the police have registered the crime against the present applicant.

4. Heard learned Counsel for the applicant who submitted that considering the statement of the victim who was a grown up woman, the parties entered into the relationship and there was a consensual relationship between them out of free will, therefore, no offence is made out against the present applicant. She also invited our attention towards the history narrated by the non-applicant No. 2 before the Medical Officer, and also the statement of the witnesses, including the statement of one Sumedh Prakash

Shingade, who was also taking education along with the present applicant and the non-applicant No. 2. She submitted that as per the statement of Sumedh, there was a love affair between the applicant and the non-applicant No.2, and out of their love affair, they were living in a live-in-relationship. Thus, she submitted that, considering there was a free consent on the part of non-applicant No. 2, no offence is made out, and hence the applicant's application deserves to be rejected.

5. On the other hand, the learned Additional Public Prosecutor vehemently opposes the submissions made by the learned Counsel for the applicant and states that the aspect of consent cannot be inferred at this stage, and therefore, the applicant should face the trial. Learned Counsel for the non-applicant No. 2 also supports the said contentions and submitted that on the promise of marriage, the applicant has subjected the non-applicant No. 2 for forceful sexual assault and therefore, the application deserves to be rejected.

6. Considering the submissions made by the learned Counsel for the parties, we have perused the entire case papers, including the

charge-sheet and the First Information Report, which contains the statements of the witnesses. It reveals from the statement of the witnesses that at the relevant time, that is at the time of lodging of report, the non-applicant No.2 was 26 years old, whereas the applicant was aged about 28 year. Both are adults and major. The parties are therefore having an understanding regarding the repercussions of engaging and continuing such type of relationship. Looking at the ages of the parties, and relying on the length for such a relationship continued for more than three years, it can safely be inferred that the parties engaged themselves into a physical relationship out of their own consent and free will and without any promise of marriage. The statement of witness Sumedh also substantiates said contentions that they were in a love relationship, and out of a love relationship a physical relationship developed between them. Thus, no material has been placed on record from which it can be shown that the charge-sheet in question is that the applicant never intended to marry the non-applicant No. 2, nor such intention was there at the initiation of the relationship.

7. In the judgment of *Pramod Suryabhan Pawar v. State of*

Maharashtra, (2019) 9 SCC 608: (2019) 3 SCC (Cri) 903, the Hon'ble Supreme Court while enunciating the law on subject has stated as under:

"12. This Court has repeatedly held that consent with respect to Section 375 IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or inaction, consents to such action. In Dhruvaram Sonar which was a case involving the invoking of the jurisdiction under Section 482, this Court observed : (SCC para 15)

"15....An inference as to consent can be drawn if only based on evidence or probabilities of the case. "Consent" is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of." This understanding was also emphasised in the decision of this Court in Kaini Rajan v. State of Kerala (SCC p. 118, para 12)

"12.... "Consent", for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant

circumstances."

13. This understanding of consent has also been set out in Explanation 2 of Section 375 (reproduced above). Section 3(1)(w) of the SC/ST Act also incorporates this concept of consent:

3(1)(w)(i) intentionally touches a woman belonging to a Scheduled Caste or a Scheduled Tribe, knowing that she belongs to a Scheduled Caste or a Scheduled Tribe, when such act of touching is of a sexual nature and is without the recipient's consent;

Explanation - For the purposes of sub-clause (i), the expression "consent" means an unequivocal voluntary agreement when the person by words, gestures, or any form of non-verbal communication, communicates willingness to participate in the specific act:

Provided that a woman belonging to a Scheduled Caste or a Scheduled Tribe who does not offer physical resistance to any act of a sexual nature is not by reason only of that fact, is to be regarded as consenting to the sexual activity:

Provided further that a woman's sexual history, including with the offender shall not imply consent or mitigate the offence;"

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 prosecutrix 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 Haryanas (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."

. It is therefore clear that there is a clear distinction between the breach of promise and not fulfilling a false promise. It is therefore duty of the Court to examine that the false promise was made only at the inception thereof and not thereafter.

8. In view of the fact that of the present case and in view of the law laid down by the Hon'ble Apex Court stated supra, we are of the considered opinion that the relationship was between two major persons for more than three years and therefore consensual in nature. The consent of non-applicant No. 2 was not obtained under a misconception or false promise of marriage. The situation would therefore squarely fall within the well laid down parameters of the judgment of the Hon'ble Apex Court in the case of *State of Haryana and others Vs. Bhajanlal and others, 1992 Supp (1) SCC 335*. That the continuance of such proceedings against the applicant would amount to a further continuance of proceedings against the applicant would result in a miscarriage of justice, and we therefore proceed to pass the following order :

ORDER

- i) The application is allowed.
- ii) The First Information Report in connection with Crime No. 410/2024, registered under Section 64, 64 (2)(m) and 69 of the BNS and 3(1)(w)(i), 3(1)(w)(ii), 3(2)(va) of the Scheduled Caste

and Scheduled Tribe (Prevention of Atrocities) Act, 1989, and the charge sheet No. 107/2024, as also, the Special Case No. 774/2024, is hereby quashed and set aside to the extent of the applicant 1 – Ashish S/o Haridas Barve, applicant No.2 – Sindhu W/o Haridas Barve.

iii) The parties to bear their own costs.

9. The application stands disposed of.

(NANDESH S. DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

Jayashree..