



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**CRIMINAL APPLICATION NO.3289 OF 2025**

Gokul Baban Jadhav  
Age: 25 Years, Occu. Service,  
R/o. 48, Dongarunai Tanda,  
Varavandi (Kh.) Paithan, Tq. Paithan,  
Dist. Chhatrapati Sambhajnagar.

..Applicant  
(Orig. Accused)

Versus

1. The State of Maharashtra  
Through Police Station Officer,  
Police Station CIDCO,  
Tq. & Dist. Chhatrapati Sambhajnagar.

2. XYZ (Victim),  
(Name address Pursis provided in sealed  
envelope).

..Respondents  
(Resp. No.2-Org. Complainant)

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Mr. M. R. Deshmukh, Advocate for the Applicant.  
Mr. V. M. Lomte, APP for Respondent No.1.  
Mrs. Kirti Deshpande, Advocate for Respondent No.2 (Appointed).

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**CORAM : S. G. CHAPALGAONKAR, J.  
DATED : 14<sup>th</sup> JANUARY, 2026.**

**JUDGMENT:-**

1. The applicant seeks quashment of FIR in Crime No.252/2025 registered with Police Station CIDCO, Tq. and Dist. Chhatrapati Sambhajnagar for offences punishable under Sections 64, 64(2)(m) 69 of Bhartiya Nyaya Sanhita, 2023 and consequential proceedings in Regular Criminal Case No.2013/2025 pending before Judicial Magistrate First Class at Aurangabad.

2. The investigation was set in motion on information given by respondent no.2 alleging that she married with one Anil, resident of Jalna. However, on third day after marriage she came to know that her husband had love affair since before their marriage. Hence, she left company of her husband. Since March-2024 she is serving at MGM Hospital. She was also preparing for recruitment in Police Department. In that process, she got acquaintance with applicant/accused. They used to practice in premises of University. She developed love affair with applicant/accused. She had informed applicant about her marriage. However, applicant started residing with her. He developed physical relationship under pretext that he would marry with her. The relationship continued while they were residing together. In January 2025, applicant got recruited in Maharashtra Home Guard. However, he continued to reside with applicant for 3 to 4 days a week.

3. On 14.03.2025, she noticed that applicant chatting with a lady through mobile application. When she questioned about lady, applicant replied that she is his friend. On that count, there was quarrel between informant and applicant. Thereafter, applicant introduced her to his grandmother and promised that he would marry her. The applicant's grandmother consented for the same. However, applicant discontinued relationship with informant and refused to marry under pretext that his family members are not

ready to accept marriage. It is accordingly alleged that applicant raped on her. The aforesaid information has been culminated into registration of Crime No.252/2025 with Police Station CIDCO. Eventually, investigation was progressed leading to filing of charge-sheet no.376/2025. Presently Regular Criminal Case No.2013/2025 is pending before Judicial Magistrate First Class at Aurangabad.

4. Mr. Mohit Deshmukh, learned Advocate appearing for applicant submits that contents of FIR and investigation papers depicts that physical relation between informant and applicant was consensual. There is no element of fraud, undue influence, misrepresentation or mistake at inception of consensual relationship. The informant was a married lady. Her matrimonial ties were in subsistence. In this background, physical consensual relationship was maintained by informant with application. In backdrop of such factual matrix, it can never be said that inception of physical relationship between applicant and informant was under pretext of promise to marriage. In support of his contentions he relies upon observation of Supreme Court in case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and Another***<sup>1</sup>, ***Mahesh Damu Khare Vs. State of Maharashtra and Another***<sup>2</sup> and ***Nitin B. Nikhare Vs. The State of Maharashtra & Anr***

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<sup>1</sup> (2019) 9 SCC 608.

<sup>2</sup> (2024) 11 SCC 398.

**(SLP (Cri.) No.1889/2024 decided on 21.01.2025).** Mr. Deshmukh would further submit that even assuming that there was promise of marriage, unless investigation depicts that false promise was made at inception of relationship or such false promise triggered inception of such relationship, presumption of mistaken belief or false assurance cannot be drawn. Further relying upon judgment in cases of ***Naim Ahamed Vs. State (NCT of Delhi)***<sup>3</sup> and ***Prashant Bharti Vs. State (NCT of Delhi)***<sup>4</sup>, he submits that if complaint and investigation does not inspire confidence as to false promise of marriage, prosecution cannot continue. He would, therefore, urge to quash FIR and proceeding in exercise of inherent powers under Section 528 of Bhartiya Nagarik Surksha Sanhita, 2023.

5. Per contra, Mr. Lomte, learned APP appearing for State and Mrs. Deshpande, learned Advocate appearing for respondent no.2 would submit that informant has clearly stipulated that she was unwilling for physical relationship, however, on false promise of marriage, she was induced to develop and continue physical relationship with applicant. Therefore, trial is necessary in facts of case.

6. Careful reading of FIR depicts that informant is working lady aged about 27 years. She was married. However, abandoned

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<sup>3</sup> (2023) 15 SCC 385.

<sup>4</sup> (2013) 9 SCC 293.

company of her husband. While her matrimonial relationship was subsisting, applicant and informant both were preparing for police recruitment and training together at University ground. Since March-2024 they developed intimacy. The informant had given idea about her marital status to applicant. They resided together in common house and continued consensual sexual relationship approximately for one year. If aforesaid factual matrix is taken into account, there is no semblance of ingredients constituting offence of rape. However, further stipulation in FIR that applicant had promised to marry informant and, therefore, informant was induced to consent for physical relationship may be a triggering point to attract ingredients of offence. It is, therefore, required to be examined, whether inducement on account of false promise can really be inferred from allegations in FIR.

7. Admittedly, informant was married with one Anil resident of Jalna and her matrimonial ties were intact. In this background, assuming that applicant had assured or promised to marry with informant, such marriage was not possible in law as long as her matrimonial ties with Anil were subsisting. The contents of FIR would demonstrate that applicant and informant came together being aspirant for recruitment in Police Department. They developed intimacy with each other. The informant allowed applicant to reside in common house with her. During stay

physical relationship between them was established. In this background, it is difficult to believe that applicant was induced for physical relationship under false promise of marriage. It can be safely inferred that physical intimacy was germane of love affair.

8. Perusal of charge-sheet shows that there is no other material that would substantiate theory of inducement or false promise being triggering point for sexual relationship between applicant and informant. The statement of witnesses namely Kalyani Wagh, Babitai Channe and Ravi Chavan throws light on fact that applicant and informant were residing together in shared accommodation and nothing beyond that. The statement of Babitai Channe, landlady, depicts that informant introduced applicant to be in a relationship and they were willing to marry each other. However, this statement is not sufficient to bring home allegations of sexual relationship under inducement or under pretext of false promise of marriage.

9. Since informant and applicant had love affair and resided together for more than 12 months, although informant was already married, physical relationship between applicant and informant can never be said to be on account of inducement or misrepresentation on part of applicant. It is not conceivable that informant had engaged in a physical relationship with applicant on an assurance of marriage, when she was already married to

someone else, particularly when such a promise, to begin with, was illegal and unenforceable qua applicant.

10. In similar circumstances, in case of ***Amol Bhagwan Nehul Vs. State of Maharashtra and Another***<sup>5</sup>, Supreme Court of India observed in paragraph no.9 as under:

*“9. In our considered view, this is also not a case where there was a false promise to marry to begin with. A consensual relationship turning sour or partners becoming distant cannot be a ground for invoking criminal machinery of the State. Such conduct not only burdens the Courts, but blots the identity of an individual accused of such a heinous offence. This Court has time and again warned against the misuse of the provisions, and has termed it a folly to treat each breach of promise to marry as a false promise and prosecute a person for an offence under section 376 IPC.”*

11. Similarly, in case of ***Mahesh Damu Khare*** (supra), Supreme Court of India cautioned against large number of cases wherein prolonged consensual relationships are sought to be criminalised after they later turn sour. Reference can be given to observations in paragraph nos.39 and 40, which reads thus:

*“39. In our view if criminality is to be attached to such prolonged physical relationship at a very belated stage, it can lead to serious consequences. It will open the scope for imputing criminality to such long term relationships after turning sour, as such an allegation can be made even at a belated stage to drag a person in the juggernaut of stringent criminal process. There is always a danger of attributing criminal intent to an otherwise disturbed civil relationship of which the Court must also be mindful.*

*40. It is evident from the large number of cases decided by this Court dealing with similar matters as discussed above that there is a worrying trend that consensual*

*relationships going on for prolonged period, upon turning sour, have been sought to be criminalised by invoking criminal jurisprudence.”*

12. In case of ***Naim Ahamed*** (supra), Supreme Court of India observed that prosecutrix who herself was married woman having three children, could not be said to have acted under alleged false promise given by appellant or under misconception of fact while giving consent to have sexual relationship with appellant. Undisputedly, she continued to have such relationship with him at least for about five years till she gave complaint in year 2015. Even if allegations made by her in her deposition before Court, are taken on their face value, then also to construe such allegations as ‘rape’ by appellant, would be stretching case too far. The prosecutrix being married woman and mother of three children was matured and intelligent enough to understand significance and consequences of moral or immoral quality of act she was consenting to.

13. In case of ***Pramod Suryabhan Pawar*** (supra), Supreme Court elaborately discussed issue as to consensual sexual relationship and observed in paragraph no.18 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. In light of aforesaid legal position emerging from catena of decision of Supreme Court of India, this Court finds that entire criminal proceeding initiated against applicant is nothing but abuse of process of law. In result, looking to law laid down by Supreme Court in case of ***State of Haryana and Ors. Vs. Ch. Bhajan Lal and Ors.***<sup>6</sup>, this Court finds that this is a fit case for exercise of jurisdiction under Section 528 of Bharatiya Nyaya Suraksha Sanhita, 2023. Resultantly, following order is passed:

### **ORDER**

- a. In result, Criminal Application is allowed.
- b. The FIR in Crime No.252/2025 registered with Police Station CIDCO, Tq. and Dist. Chhatrapati Sambhajinagar for offences punishable under Sections 64, 64(2)(m) 69 of Bhartiya Nyaya Sanhita, 2023 as well as charge-sheet/final report no.376/2025 and consequential criminal proceeding in RCC No.2013/2025 pending before Judicial Magistrate First Class at Aurangabad, are hereby quashed and set aside.
- c. Since Ms. Kirti Deshpande, learned Advocate is appointed through legal aid to represent respondent no.2, the Secretary, High Court Legal Services Sub-Committee, Aurangabad Bench do pay

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<sup>6</sup> AIR 1992 SC 604.

the fees of the appointed counsel for respondent no.2 as per schedule.

**(S. G. CHAPALGAONKAR)**  
**JUDGE**

Devendra/January-2026