



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

CRIMINAL APPLICATION NO. 4684 OF 2025

Mahesh Sudhir Gurav,
age 34 years, Occ. Private Service,
Permanent R/o. Flat No.103, Building Mithila,
Shri Siddhi Vinayak Sankalp, Survey No.53/7,
Undari, Pune, Tq & District Pune.
At present R/o At Post Tq. & Dist.
Chhatrapati Sambhajinagar. Applicant.

VERSUS

1. The State Of Maharashtra
Through, the Investigating Officer,
Crime No.0016 of 2024.
Pundlik Nagar Police Station,
Aurangabad. Chh. Sambhajinagar.
2. XYZ (Victim) Respondents.

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Advocate for Applicant : Mr. S.B. Rajebhosale
APP for Respondent no.1 : Mr. S.A.Gaikwad
Advocate for Respondent no.2 :Mr. A.T. Jagtap & A. V. Wadwale
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CORAM : S. G. CHAPALGAONKAR, J.

Dated : February 13, 2026

FINAL ORDER :-

1. The applicant seeks quashment of FIR in Crime No. 16 of 2024 registered with Police Station, Pundlik Nagar, Aurangabad (Chhatrapati Sambhajinagar) for the offences punishable under sections 376, 376(2)(n), 313, 406, 427, 323,

504, 506, of the Indian Penal Code and consequential proceeding.

2. Investigation was set in motion on the basis of information given by respondent no.2 alleging that, she had married in the year 2010 and is mother of a son aged about 10 years. In the year 2016 her husband was murdered. Since then, her father-in-law is taking care of her son. In the year 2017 she shifted to Aurangabad and working in shopping mall as a security guard. The applicant was working as Sales Manager in the same Mall. She had helped applicant to find out accommodation and also providing tiffin to him. On 11.8.2022 she visited applicant's residence. Applicant was knowing about death of her husband. He assured informant to marry with her and established forcible physical relationship. Since she was alone and in need of a companion, she continued relationship with him. Thereafter, on 10.9.2022 she left her rented premises and shifted to another room where she resided along with the applicant. After some days, he started troubling her. Thereafter, due to quarrels, landlord asked her to vacate room. Thereafter, they shifted to a two rooms accommodation. They pretended to be husband and wife to

the landlord and continued their relationship as husband and wife. Meanwhile, she conceived pregnancy but aborted at the instance of applicant. He extracted amount of Rs.70,000/- from her. In the month of May, 2023 informant shifted to Pune and resided at Hadapsar. Applicant took her to his residence at Chandan Nagar, Pune where she found another lady. He discloses that she is his wife. Thereafter, she insisted applicant to marry her, but he refused to marry under the pretext that he is already married. After realizing that she has been cheated, she came back to Aurangabad and started residing at Pundliknagar. Thereafter, applicant continued contact with her through mobile phone and again extracted amount of Rs.20,000/-. When she asked for return of amount, he abused her. She alleges that applicant raped her under false promise of marriage and extracted amount of Rs.2,50,000/- and refused to marry.

3. The aforesaid information culminated into FIR in crime no.16 of 2024. Investigation progressed and finally charge-sheet came to be filed against applicant in the Court of Judicial Magistrate First Class, Aurangabad for the aforesaid offences.

After committal of case, Sessions Case No. 143 of 2024 is pending for trial before Sessions Court, Aurangabad.

4. On 13.2.2026, learned advocates appearing for applicant and respondent no.2 jointly submitted that parties have arrived at amicable settlement and wish to place on record affidavit/terms of settlement. Accordingly, they were relegated to learned Registrar (Judicial) of this Court before whom respondent no.2 tendered her affidavit-in-reply and accepted the contents to be true, correct and voluntary. Respondent no.2 is identified by her advocate. Learned Registrar (Judicial) has also verified her Aadhar Card and other particulars and submitted report of verification. Perusal of affidavit shows that applicant had continued relationship with respondent no.2. During pendency of proceeding, applicant and respondent no.2 have resolved dispute. She had filed complaint due to misunderstanding and because of emotional differences, which are now settled. She do not wish to continue with criminal proceeding. Even, her dispute as regards to financial matters is now resolved. She admits that she had consensual relationship with applicant and she has no objection, if FIR and further proceeding is quashed and set aside.

5. In light of aforesaid circumstances, Mr. S.B. Rajebhosale, learned advocate appearing for applicant would submit that contents of FIR and material in the charge-sheet if taken on its face value does not constitute offence of rape. Respondent no.2 is a matured lady. She had a son aged about ten years. Consciously, she maintained relationship with the applicant. They helped each other in daily persuades and resided together in shared accommodation as husband and wife. However, due to emotional discord, under misconception she filed the complaint for alleged offences. He would submit that now respondent no.2 has withdrawn allegations in the FIR. Mr. Rajebhosale, would further invite attention of this Court to the application dated 24.11.2023 submitted by respondent no.2 to the Police Commissioner, Chhatrapati Sambhajinagr, wherein she admitted her consensual relationship due to intimacy wherein she did not assert inception of physical relationship under false promise of marriage.

6. Mr. Rajebhosale would rely upon observations of the Hon'ble Supreme Court of India in case of **Samadhan s/o Sitaram Manmothe Vs. State of Maharashtra and another** in Civil Appeal No.5001 of 2025 to contend that when the acts

complained of are occurred within contours of a relationship that was, at the time, voluntary and willing. The continuation of the prosecution in such facts would be nothing short of an abuse of court machinery.

7. Per contra, Learned APP opposed quashment of FIR and proceeding since offences alleged are serious in nature and having social impact. He would submit that consent for quashment of FIR and proceeding by respondent no.2 cannot be a ground to quash criminal proceeding involving serious offences having social impact. In support of his contentions, he relies on observations of the Hon'ble Supreme Court of India in case of **State of Madhya Pradesh Vs Laxmi Narayan and Others** reported in (2019) 5 SCC 688.

8. Having considered submissions advanced and perusal of averments in the FIR as well as material in charge-sheet, it is discernible that respondent no.2 was a mature and married lady having a son aged about ten years. She was working as a Security Guard at shopping mall. She came in contact with the applicant who was working as sales Manager in the same mall. There were relations out of which intimacy developed. They started residing together in a shared accommodation as

husband and wife and continued physical relations for almost two years prior to lodging of FIR. During course of cohabitation, informant advanced some amount to the applicant. Even after knowing that applicant is married, respondent no.2 continued physical relationship with him and shifted to Pune and continued her relations with the applicant. However, when applicant refused to marry her, she firstly filed written complaint to the Police Commissioner, which was limited to failure of return of amount. However, she specifically stated that she was in consensual relationship with applicant and they were residing as husband and wife. Despite getting knowledge of first marriage of applicant, she continued her relations with him as husband and wife. There is nothing to indicate that inception of relationship was on false promise of marriage. Such averments are first time introduced in the FIR. At this stage, reference can be made to observations of the Supreme Court of India in case of **Pramod Suryabhan Pawar Vs. State of Maharashtra reported in (2019) 9 SCC 608** in paragraph nos.10, 11 and 18 it is observed thus :-

10. Where a woman does not “consent” to the sexual acts describes in the main body of Section 3.75, the offence of rape has occurred. While Section 90 does not define the term “consent”, a “consent” based on a “misconception of fact” is not consent in the eye of the law.

11. The primary contention advanced by the complainant is that the appellant engaged in sexual relations with her on the false promise of marrying her, and therefore her “consent”, being premised on a “misconception of fact” (the promise to marry), stands vitiated.
18. To summarize 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.

9. Similarly, in case of **Amol Bhagwan Nehul Versus State of Maharashtra and Another** reported in **2025 SCC OnLine SC 1230** the Hon’ble Supreme Court observed in paragraph no.9, which reads 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.

10. Further in case of **Mahesh Damu Khare Vs. State of Maharashtra**, reported in **(2024) 11 SCC 398**, while dealing

with the issue of consensual relationship and criminality attached to prolonged physical relationship at a belated stage, the Supreme Court observed in paragraph nos.39 and 40 as under :-

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 criminalized by invoking criminal jurisprudence.”

11. In light of aforesaid observations of the Hon'ble Supreme Court of India, if averments in FIR and material in charge-sheet is considered, one thing is clear that inception of physical relationship between applicant and respondent no.2 was out of intimacy and not as a result of promise of marriage. The applicant and respondent no.2 both were married persons. They were working at common place, helped each other in daily persuades, developed intimacy for each other and resided

together as husband and wife for sufficiently long period. Even after getting knowledge of married status of applicant, relationship continued without demur.

12. Respondent no.2 has tendered affidavit-in-reply accepting consensual relationship and seeks to withdraw the allegations, which according to her made out of misunderstanding and emotional differences, which are now settled.

13. In that view of the matter, prosecution of the applicant in furtherance to FIR and charge-sheet would be a futile exercise. In fact, on consideration of merit, case is made out to exercise inherent powers. Therefore, even without looking to the consent extended by respondent no.2, case is made out to exercise inherent powers and prevent abuse of process of law. Consent affidavit filed by respondent no.2 shows that she continued her relationship with applicant even after lodging FIR, which supports the observations of this Court about consensual relationship.

14. Mr. Gaikwad, learned APP heavily relied upon a judgment in case of **State of Madhya Pradesh Vs. Laxmi**

Narayan and others (supra) to contend that in serious crime, social impact is key consideration and proceeding cannot be quashed on the basis of compromise between the accused and complainant. There cannot be two views on proposition of law espoused by Hon'ble Supreme Court in case of Laxmi Narayan. Considering this aspect, this Court has examined merits of the case and finds that this is a clear case of abuse of process of law and an attempt of criminalization of consensual sexual relationship. Therefore, exercise of inherent powers is inevitable.

15. In that view of the matter, criminal application is allowed in terms of the prayer clause 'B', 'C' and 'D' and **disposed of.**

(S. G. CHAPALGAONKAR, J.)

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