



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

ANTICIPATORY BAIL APPLICATION NO. 501 OF 2026

SHUBHAM SUBHAS HIWRALE

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

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Senior Advocate for Applicant : Mr. V.D. Sapkal h/f
Mr. N.T. Tribhuwan

APP for Respondents/State : Mrs. P. J. Bharad

Advocate for Respondent No.2 : Mr. N. J. Sonune

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CORAM : MEHROZ K. PATHAN, J.

RESERVED ON : 21st APRIL 2026

PRONOUNCED ON : 24th APRIL 2026

ORDER :

1. Heard the learned Counsel for the Applicant, the learned Counsel for Respondent No.2 and the learned APP for the Respondent/State.
2. The Applicant has approached this Court, seeking anticipatory bail application in connection with Crime No. 489/2026 registered with Osmanpura Police Station, District Chhatrapati Sambhajnagar for the offences punishable under Sections 64, 318(2), 352, 3(5) of the Bharatiya Nyaya Sanhita, 2023.
3. The case of the prosecution is that the complainant/victim lodged the present FIR on 08.03.2026, stating that the Applicant was

was known to the complainant's family and thus the marriage was fixed between them. The engagement took place on 31.05.2025 with the consent of both families at Tiwari Mangal Karyalaya, Chhatrapati Sambhajanagar, as per Buddhist rituals. On the date of engagement, with the consent of the relatives of both the complainant and the Applicant, the marriage was fixed for 12.05.2026 to be performed at Bhagya Laxmi Lawns, Chikhalthana. The complainant states that she accompanied the Applicant to watch movies and visit other places with the permission of her mother. In August 2025, the Applicant called her and asked her to accompany him. At the Applicant's house in Ramanagar, Osmanpura, after some conversation, Shubham allegedly started demanding sexual favours. The complainant refused to consent to sexual intercourse; however, the Applicant did not stop and said that their marriage was already fixed and assured her that he would marry her. Despite her opposition, the Applicant allegedly performed forcible sexual intercourse upon the complainant. As the complainant was assured of marriage, she did not inform anyone about the incident. Thereafter, the Applicant allegedly subjected her to sexual intercourse against her will on two to three occasions.

. On 14.01.2026, the mother of the Applicant, Mangalbai, and his sister, Karishma, visited the house of the complainant. As the complainant was not found at her home, they started arguing with the complainant's mother and raised suspicions about the character of the complainant. The complainant's mother objected and argued with them not to demean her daughter's character. However, the Applicant's mother and sister abused her and left. Thereafter, the

complainant received a phone call from Shubham, who informed her that he did not wish to marry her. The complainant's maternal uncle and aunt arranged a meeting with the Applicant's family, but the Applicant's family flatly refused the marriage proposal. Consequently, the complainant filed the present FIR against the Applicant and his relatives regarding the engagement ceremony performed on 31.05.2025. It is alleged that the Applicant fraudulently obtained the consent of the complainant by promising marriage and thereafter committed forcible sexual intercourse with her. Thus, the complainant prays for appropriate action against all the accused persons.

4. The learned Senior Counsel Mr. Sapkal appearing for the Applicant submits that there is considerable delay in lodging the FIR alleging an offence under Section 64 of the BNS. Even as per the allegations in the FIR, the last incident took place on 14.01.2026, whereas the FIR came to be lodged on 08.03.2026. Thus, there is a delay of about two months in registration of the FIR, even reckoning from the last alleged incident, when the Applicant had refused to marry the complainant. The learned Senior Counsel further submits that the marriage was settled and, even as per the allegations, the engagement was performed. Therefore, it cannot be said that the Applicant had no intention to marry the complainant. Consequently, the sexual intercourse took place with the consent of the complainant, who was about 25 years of age and major, would not amount to rape as defined under Section 64 of the BNS Act, much

less the offence of cheating under Section 318(2) of the BNS.

5. It is further submitted by the learned Senior Counsel that the mother of the Applicant filed a complaint on 05.03.2025 with Osmanpura Police Station, informing that the complainant and her mother had threatened to falsely implicate the Applicant and his family members in a serious crime. The complainant had also threatened to commit suicide, and both she and her mother were allegedly attempting to extort money from the Applicant and his family members. The police authorities had called upon the complainant to explain the allegations made by the Applicant's mother in the complaint dated 05.03.2025. The present FIR lodged on 08.03.2026 is a fallout of the said complaint. The Applicant is falsely implicated in the present crime. The allegations of committing forcible sexual intercourse by fraudulently obtaining consent are deliberately made to attract the stringent provisions of rape and thereby deny bail to the Applicant. The entire FIR is a concocted story of the complainant, filed with an intention to wreak vengeance against the Applicant and his family members.

6. The learned Senior Counsel relies upon the order passed by the High Court at its Principal Seat in the case of Ms. Sonali Alfred Jadhav (intervener) in the matter between Mahesh Balkrishna Dandane Vs. the State of Maharashtra in Criminal Anticipatory Bail Application No. 27/2014, wherein this Court was pleased to hold as under :

Even though if at all there is bonafide promise to marry and the girl chooses to keep physical relationship with that persons and if a boy withdraws his promise, as they are not psychologically comfortable with each other, then it cannot bring that particular act within the purport of offence under Section 375 of IPC.

7. The learned Senior Counsel further relies upon the order passed by this Court in the matter of Mr. Sidhant Anandrao Sonkamble Vs. the State of Maharashtra in Anticipatory Bail Application No. 170/2022, wherein in an identical situation, this Court relying upon the judgment of Pramod Pawar Vs. State of Maharashtra, reported in AIR 2019 SC 4010, was pleased to observe that “every breach of promise to marry cannot be said to be either a cheating or rape.”

8. The last judgment of the Hon’ble Supreme Court relied upon by the learned Senior Counsel in the matter of **Jothiragawan Vs. State represented by the Inspector of Police and Ors.**, 2025 INSC 386, wherein the Hon’ble Supreme Court relying upon the facts of the said case, was pleased to hold that the allegation of forceful intercourse on threat and coercion is also not believable, given the relationship admitted between the parties and the repeated excursions to hotel rooms and was further pleased to quash and set aside FIR of rape under Section 376.

. The learned Senior Counsel thus submits that the allegations in the FIR if considered to be true would show that the intercourse if any was consensual and cannot amount to rape.

9. The learned Senior Counsel further submits that the other family members who were implicated in the present crime are released on anticipatory bail by the learned Sessions Court by the same order vide which the application of the Applicant came to be rejected. Taking into consideration the nature of the allegations, the custodial interrogation of the Applicant is not necessary. The Applicant is not having any criminal antecedents and is ready to abide by any conditions that may be imposed by this Court. Hence the Applicant may be released on anticipatory bail.

10. As against this, the learned APP Mrs. Bharad and the learned Counsel for Respondent No.2, Mr. Sonune, strongly oppose the present application on the ground that the Applicant is involved in the serious offence of rape, which is punishable with life imprisonment. The statement of the prosecutrix was recorded under Section 183 of the BNS, wherein she specifically narrated the incident of commission of rape by fraudulently obtaining her consent. Consent obtained on the false promise of marriage is vitiated from the inception, as the Applicant had no intention to marry the complainant. The statement under Section 183 BNS further shows that the Applicant called upon the complainant to meet at Prabhodhan Library, Kranti Chowk, Chhatrapati Sambhajnagar, and thereafter committed forcible sexual intercourse upon her by threatening to make her photographs and videos viral. It is alleged that the Applicant recorded photographs and videos of private moments of the girl during video calls and threatened to make them

viral, thereby coercing her into giving consent. Such consent is vitiated in law, and therefore the intercourse cannot be said to be consensual, and thus the offence under Section 64 of the BNS is clearly made out. The engagement ceremony was conducted by inviting about 1000 people, who witnessed the engagement. Taking advantage of the engagement, the Applicant coerced the complainant into making video calls, during which certain photographs and videos were recorded and misused to commit sexual intercourse on the threat of making the photos and videos viral. The offence is serious in nature, and the investigation is at a preliminary stage. The mobile phone of the Applicant, containing obscene photographs of the Applicant and the complainant, is yet to be seized. The Applicant and the victim belong to the same locality, and there is every likelihood that if released on bail, the Applicant may threaten the prosecutrix and thereby prejudice the prosecution case.

. The learned Assisting Counsel, Mr. Sonune, further submits that the Applicant and his family members are pressuring the complainant's family to compromise the matter. It is further submitted that the complainant's family spent about 4 to 5 lakhs on marriage preparations and booked Bhagyalaxmi Lawns, Chikhalthana, for the scheduled marriage on 12.05.2026, however the Applicant has flatly refused to marry the Complainant thus prima facie establishing that he had no intention to marry right from the inception. He also points out that the initial FIR was lodged at Osmanpura Police Station and was subsequently transferred to Harsul Police Station. The transfer was objected to by the

complainant, and threats have allegedly been given by the Applicant's family to the complainant's family. The offence is punishable with life imprisonment. The Osmanpura Police Station has also registered a non-cognizable complaint on the basis of the grievance made by the Applicant. The delay in lodging the FIR is explained by the fact that efforts were being made by the complainant's family to somehow perform the marriage. However, the Applicant and his family members refused to marry the complainant, suspecting her character after committing rape upon her. The offence being serious in nature and a crime against society, this is not a fit case to release the Applicant on anticipatory bail. The learned APP as well as the learned assisting counsel therefore pray for rejection of the bail application.

11. I have gone through the investigation papers made available by the learned APP. A perusal of the same shows that the victim girl was engaged to the Applicant, and the engagement ceremony was performed on 31.05.2025. A perusal of the statement under Section 183 BNS shows that after the engagement ceremony, the complainant was called to the Applicant's home when nobody else was present. The Applicant allegedly blackmailed the complainant to perform sexual intercourse on the false pretext of marriage and took obscene photographs on his mobile phone. It is further alleged that the Applicant used to ask the complainant to send nude photographs while chatting with her on video calls. The complainant was also called to a library, where the Applicant allegedly committed sexual

intercourse with her under threats of making her photographs and videos viral on social media. Thus, from the FIR as well as the statement under Section 183, it appears that there are allegations that consent was fraudulently obtained for commission of sexual intercourse with the complainant on the pretext of marriage. Therefore, the offence under Section 64 of the BNS is prima facie made out from the record.

. The record also contains the Call Detail Records of the calls exchanged between the Applicant and the complainant. Thus there are direct allegations against the Applicant of committing forcible sexual intercourse against the will of the complainant. The offence under Section 64 of the BNS is punishable with life imprisonment, which shall mean imprisonment for the remainder of natural life, with a minimum sentence of ten years. The Applicant has placed reliance placed on the orders passed in the case of Ms. Sonali Alfred Jadhav and other judgments (cited supra), however each case must be decided on its own facts as disclosed from the record. In the present case, the Applicant is alleged to have fraudulently obtained consent by blackmailing the complainant and threatening to make her photographs and videos viral on social media. Statements recorded during the course of investigation from various witnesses show that and the statement of Complainant recorded under Section 183 BNS corroborates the allegations made in the FIR. It is no doubt true that every case of breach of promise to marry cannot automatically be said to constitute cheating or rape. However, in my opinion, the material on record prima facie makes out a case of

consent being vitiated on account of fraud played by the Applicant.

12. The Hon'ble Supreme Court in the matter of **Yedla Srinivasa Rao Vs. State of A.P reported in 2006 (11) SCC 615**, was pleased to hold that if the consent has been given under fear of injury or a misconception of fact, such consent obtained, cannot be construed to be valid consent. Therefore, the intention of the accused right from the beginning was not bona fide and the poor girl submitted to the lust of the accused completely being misled by the accused who held out the promise for marriage. This kind of consent taken by the accused with clear intention not to fulfil the promise and persuaded the girl to believe that he is going to marry her and obtained her consent for the sexual intercourse under total misconception, cannot be treated to be a consent.

13. There are NC reports filed by the complainant and her family members wherein the Applicant and his family members allegedly threatened the complainant with dire consequences. The Applicant and the complainant reside in the same vicinity. There are further allegations that the Applicant and his family members are pressurizing the complainant and her mother to compromise the matter by accepting money. Thus, there is every likelihood that if released on bail, the Applicant may threaten the prosecutrix or commit a cognizable offence, thereby causing prejudice to the prosecution case. The offence under Section 64 of BNS is punishable with life imprisonment which shall mean remainder of life as

maximum punishment.

. In my opinion, the custodial interrogation of the Applicant is also necessary to conduct his medical examination to seize the mobile phone, to collect evidence, and to conduct the investigation from all angles. Hence, the Applicant has failed to make out a case for exercise of discretion under Section 482 BNS for release on anticipatory bail. The application for grant of anticipatory bail is therefore rejected.

MEHROZ K. PATHAN
JUDGE

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