

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 6486 OF 2025

Raghav Rajesh Aggarwal,
Age : 28 years, Occ. : Business,
R/at : House No. 149-C,
Bhai Randhir Singh Nagar,
Saraba Nagar, Ludhiana,
Punjab-141012.

...Petitioner

Versus

1. The State of Maharashtra
(Through Khar Police Station,
Mumbai)

2. XYZ
Through Khar Police Station,
Mumbai.

(Complainant)

...Respondents

Mr. Faiz Merchant a/w Mr. Faisal Shaikh, Ms. Uma Nemlekar, Mr. Bhavesh Ameta, Mr. Omkar Shah & Ms. Jenifer Solomon, learned Advocates for the Petitioner.

Mr. Sukanta Karmakar, learned A.P.P. for the State/Respondent.
Mr. Ali Kaashif Khan Deshmukh a/w Mr. Mohammad Farid, learned Advocate for Respondent No. 2.
PSI Mr. Paresh Gargade (Pairavi Officer) attached to Versova Police Station, Mumbai is present in the Court.

**CORAM : ASHWIN D. BHOBE, J.
DATE : 18th FEBRUARY 2026.**

JUDGEMENT :

1. Heard Mr. Faiz Merchant, learned Advocate for the Petitioner, Mr. Sukanta Karmakar, learned A.P.P. for the State/Respondent and Mr. Ali Kaashif Khan, learned Advocate for Respondent No. 2.

2. By this Petition, filed under Article 226 of the Constitution of India and Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (“BNSS”), the Petitioner seeks to quash the FIR bearing No. 791 of 2024, registered by the Khar Police Station, Mumbai (“Impugned FIR”), as well as the charge sheet arising from the impugned FIR. The sections referred to in the charge sheet are Sections 69, 79, 351(2), and 352 of the Bhartiya Nyaya Sanhita, 2023 (the “BNS”), along with Sections 376(2)(n) & 377 of the Indian Penal Code, 1860 (“IPC”), and Sections 66(E) and 67(A) of the Information Technology Act, 2000.

3. The undisputed facts of the case are that Respondent No. 2, a 24 year old married woman (married on 19.03.2021), became acquainted with the Petitioner, aged 26, in Delhi while shopping at a garment exhibition. During their conversation, they got to know each other and exchanged mobile numbers. They started chatting and calling each other frequently. The Petitioner and Respondent No. 2 began holidaying and meeting at different places. Respondent No. 2 was gifted various items by the Petitioner. After their friendship developed, they entered into a physical relationship. The relationship is said to have begun on 15.01.2023 and continued until 03.07.2024.

4. Respondent No. 2 filed her complaint on 21.08.2024, alleging that after holidaying in Lonavala and returning to Mumbai on 13.04.2023, they booked a room in Khar, Mumbai, where they consumed alcohol. She alleges that a pill was added to her drink, causing her to fall asleep, and that the Petitioner then engaged in physical relations with her. She also alleges that under the false pretext of marriage, the Petitioner engaged in physical relations

with her at different places on multiple occasions.

5. The complaint dated 21.08.2024 mentions Respondent No.2 visiting the Petitioner's residence in Ludhiana, celebrating her birthday at the Petitioner's house, families of both the Petitioner and Respondent No.2 meeting, discussing their wedding, and then performing the "Roka ceremony," as well as booking a pre-wedding photoshoot in Dubai. Respondent No.2 claims in her complaint that the Petitioner has refused to marry her because Respondent No.2 was previously married.

6. Subsequently, the charge-sheet was filed before the Metropolitan Magistrate, 9th Court at Bandra, Mumbai ("the Magistrate") and registered as Case No. 2437/PW/2025. Case No. 2437/PW/2025 was committed to the Sessions Court.

7. Mr. Faiz Merchant, learned Advocate for the Petitioner, submits that the relationship between the Petitioner and Respondent No. 2 was consensual. He states that the Petitioner and Respondent No. 2 visited places together from 15.01.2023 to 03.07.2024. He argues that Respondent No. 2 was neither under a misconception nor misled. He claims that Respondent No. 2 concealed her ongoing marriage to Huzaifa Feroz Khan and kept the Petitioner and his family in the dark. He alleges that Respondent No. 2 took advantage of the Petitioner, causing him to spend money on travel to the Andaman & Nicobar Islands, Jammu and Kashmir, and other locations, as well as to part with valuable gifts. He states that the Petitioner performed the Roka ceremony and booked a hotel for the wedding. He asserts that the Petitioner only realised the fraud after discovering that Respondent No. 2 was

married and that her marriage was still valid. Consequently, the Petitioner had to call off the proposed marriage. He contends that Respondent No. 2 filed the complaint dated 21.08.2024 maliciously, which does not meet the ingredients of Section 376(2) (n) of the IPC. He further claims that the FIR is an abuse of legal process. He refers to the order dated 30.11.2022 in Criminal Writ Petition No.4076 of 2021 (at pages 196 to 200 of the paper book) to demonstrate Respondent No. 2's habit of making false rape allegations and filing false complaints.

8. Mr. Ali Kaashif Khan, learned Advocate for Respondent No. 2, submits that Respondent No. 2 was married to Huzaifa Feroz Khan and their marriage was still in effect during her relationship with the Petitioner.

9. Mr. Sukanta Karmakar, learned A.P.P., states that Respondent No. 1 acted in accordance with the law and registered the FIR. He adds that after completing the investigation, Respondent No. 1 filed the charge-sheet.

10. Heard Arguments. Perused the records with the assistance of the learned Advocates.

11. The Marriage Certificate dated 19.03.2021 issued by the Government of Maharashtra of Respondent No.2 (at page no.186 of the paper book), which is not disputed by Mr. Ali Kaashif Khan, indicates that she was already married. It is not the case that Respondent No.2 was divorced when she entered into a relationship with the Petitioner.

12. At face value, the allegations in the impugned FIR and the material collected do not indicate that Respondent No. 2's consent

was obtained under duress or solely on the promise of marriage. According to the allegations, the relationship between Respondent No. 2 and the Petitioner lasted from 15.01.2023 to 03.07.2024. During this period, Respondent No. 2 travelled to various places with the Petitioner and engaged in a physical relationship. Mr. Faiz Merchant's submission that the relationship between the Petitioner and Respondent No. 2 was entirely consensual and involved two mature adults is justified.

13. The material on record does not suggest that the Petitioner induced or misled Respondent No. 2 into giving consent to a sexual relationship or that the Respondent No. 2 was persuaded by the Petitioner to have physical relations, and this is not established, even *prima facie*.

14. The Hon'ble Supreme Court in ***Pramod Kumar Navratna v/s. State of Chhattisgarh and Others***, wherein in paragraph nos. 19 to 24, 26 & 27, the following observations have been made :-

“19. Upon a careful consideration of the record in the present case, we are unable to discern any material that would warrant the invocation of Section 376(2)(n) of the IPC. The facts of the present case unmistakably indicate towards a classic case of a consensual relationship turning acrimonious. Upon perusal of the records of the case, it is evident that the complainant-respondent No. 3 is a married lady with a ten years old child. The said marriage was solemnized on 02.06.2011 and although divorce proceedings are currently pending adjudication between her and her husband, by no stretch of imagination can it be held that the complainant respondent No. 3 was eligible for being married with the accused/appellant on 18.09.2022, the date on which the first of the multiple instances of acts of rape on the false pretext of

¹. Criminal Appeal of 2026 (arising out of Special Leave Petition (Crl.) No. 4452 of 2025 decided on 5th February, 2026.

marriage has been committed by the accused-appellant are alleged. Therefore, even for the sake of argument, if the contention of the respondent No. 1-State and the complainant-respondent No. 3 is accepted that there indeed was a false promise of marriage based on which the accused-appellant indulged in sexual activities, such a promise would not be legally enforceable or even capable of being acted upon as the victim herself was not eligible for marriage, neither on the date of the first alleged act of offence i.e. 18.09.2022 nor on any subsequent dates wherein the parties indulged in the sexual activities, till the point of the date of registration of FIR i.e. 06.02.2025. The said embargo arises from sub-clause (i) of Section 5 of the Hindu Marriage Act, 1955 which categorically prohibits marriage between two individuals if either of them have a living spouse. The said position of law has been reiterated under sub clause (i) of Section 4 of the Special Marriage Act, 1954.

20. In other words, the law prohibits bigamous unions and therefore disallows parties from entering into a second marriage during the subsistence of their first marriage. It is, therefore, difficult to accept the view that the complainant-respondent No. 3, who herself is an advocate, was oblivious to the said settled position of law and hence was duped and induced by the accused/appellant into having sexual relations with him on different occasions on the pretext of marriage especially when both the parties were cognizant of the marital status of the complainant/Respondent No. 3.

21. At this juncture, it is also pertinent to mention that the complainant-respondent No. 3 is a thirty-three years old woman and an advocate by profession and not a naive or gullible woman incapable of taking decisions for herself. It would be remiss not to mention, at the cost of repetition, that the complainant/Respondent No. 3 is herself an advocate and therefore she should have exercised her prudence and discretion before engaging the already burdened State machinery into a roving criminal litigation.

22. The Courts have to be extremely careful and cautious

in identifying the genuine cases filed under Section 376(2)(n) of the IPC by identifying the essential ingredients to constitute the said offence i.e. there should be a promise of marriage made by the accused solely with a view to obtain consent for sexual relations and without having any intent of fulfilling said promise from the very beginning, and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. Such genuine cases that deserve prosecution of the accused must be clearly demarcated from the litigation that arises from the cases of consensual relationships between consenting adults going acrimonious on account of dispute and disagreement or a future change of mind. In view of the aforesaid settled position of law, the respondent No. 1-State and the complainant-respondent No. 3 has failed to place any material on record to show how the accused-appellant on the subsequent meetings managed to repeatedly coax and dupe the complainant-respondent No. 3 into having physical relations with him on the false pretext of marriage considering the fact that within initial meetings, both parties were aware about the marital status of the victim and therefore it cannot be, by any stretch imagination said that the consent of the complainant-respondent No. 3 has been vitiated or obtained on fraud and misrepresentation made by the accused-appellant.

23. At this stage, it is material to refer to the decision of this Court in **Mahesh Damu Khare vs. State of Maharashtra, (2024) 11 SCC 398**, 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 90 IPC, 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. ...”

24. On a perusal of the allegations made in the present case, it is an admitted fact that the complainant-respondent No. 3, within the first initial meetings told the accused-appellant that she was a married woman with divorce proceedings pending before the Family Court. Therefore, in the same breath, she cannot be allowed to claim and allege that she was also coaxed by the accused-appellant into having a physical relationship with him on the false pretext of marriage as the two facts cannot stand together on the same plane and simultaneously as both are antagonistic and antithetical to each other. In our opinion, the facts of the present case clearly indicate a consensual relationship gone sour whereas both the parties should have exercised restraint and should have refrained from involving the State into their personal relationship turning rancour.

26. In this regard, it would be apposite to rely on the judgment in the case of **State of Haryana vs. Bhajan Lal, 1992 Suppl (1) SCC 335 (“Bhajan Lal”)** with particular reference to paragraph 102 therein, where this Court observed thus :

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power Under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their

entirety do not prima facie constitute any offence or make out a case against the Accused.

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(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the Accused.

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(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the Accused and with a view to spite him due to private and personal grudge.”

*27. On a careful consideration of the aforementioned judicial dictum, we find that the offence alleged against the accused-appellant herein is not made out at all. In fact, we find that the allegation of rape on false pretext of marriage even when taken on its face value, does not amount to an offence of rape and hence not liable for punishment under Section 376(2)(n) of the IPC in the instant case and therefore, the judgment of this Court in the case of **Bhajan Lal** squarely apply to the facts of these cases. Therefore, it is neither expedient nor in the interest of justice to permit the present prosecution emanating from the FIR and consequent Sessions Case No. 89/2025 to continue.”*

15. Respondent No. 2, being married, was not eligible to marry the Petitioner as of the date when the alleged instances of rape,

purportedly committed by the Petitioner under the false pretext of marriage, are said to have occurred. There is no material to suggest that the Petitioner's intentions were initially to deceive Respondent No. 2 and persuade her to have a physical relationship. The facts of this case clearly indicate a consensual relationship that later deteriorated. The ingredients of the offence under Section 352 of the Bhartiya Nyaya Sanhita, 2023 / Section 376(2)(n) of the IPC are not established.

16. Mr. Faiz Merchant, in support of his contention that the complaint filed by Respondent No. 2 is malicious, has relied on the order dated 30.11.2022 passed by this Court in Criminal Writ Petition No. 4076 of 2021 (Page Nos. 196 to 200 of the Petition paper-book). He submits that Respondent No. 2 in the said Criminal Writ Petition No. 4076 of 2021 is the same Respondent No. 2 herein. By referring to paragraph nos. 4 and 7 of the order dated 30.11.2021, he states that Respondent No. 2 made similar allegations of rape against the Petitioner in Criminal Writ Petition No. 4076 of 2021 and later resolved the dispute by giving No Objection for quashing the FIR bearing No. 736/2020 registered at MIDC Police Station, Mumbai.

17. Mr. Ali Kaashif Khan, learned Advocate for Respondent No. 2, was unable to show from the records how the ingredients of the offences mentioned in the impugned FIR / Charge Sheet were made out or attracted in the case.

18. This case clearly falls within the principles outlined in the case of *State of Haryana and Others v/s. Bhajan Lal and Others*,² for exercising powers under Section 528 of the Bharatiya Nagarik

². 1992 Supp (1) Supreme Court Cases 335.

Suraksha Sanhita, 2023, to quash the impugned FIR and the charge-sheet arising from it, in order to prevent abuse of the legal process.

19. Accordingly, the Criminal Application is allowed in terms of the prayer clauses (i) (ii) and (iii). Consequently, the impugned FIR bearing No. 791 of 2024, dated 21.08.2024, registered with the Khar Police Station, Mumbai, and the charge-sheet arising out of the impugned FIR, are quashed.

20. Criminal Writ Petition No. 6486 of 2025 is disposed of.

21. No order as to costs.

[ASHWIN D. BHOBE, J.]

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