

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 6675 OF 2025

Mr. Sanjay Kirkati John

...Petitioner.

V/s.

State of Maharashtra & Anr.

...Respondents.

Mr. Salil Ray, Advocate for the Petitioner.

Ms. M.S. Bajoria, APP for the Respondent No.1-State.

CORAM : GAUTAM A. ANKHAD, J.

DATE : 22ND JANUARY 2026

P.C. :

1. The Petitioner has filed this Writ Petition under Article 226 of the Constitution of India read with Section 528 of the Bharatiya Nyaya Sanhita, 2023 seeking the following reliefs.

“(b) Order passed by Additional Session Judge, Pune in Session Case No.722 of 2017, dated 24 October 2024 may kindly be set aside.

(c) Quashing of FIR (Section-417, 376 of IPC) No:330 of 2016, dt. 13 December 2016 registered with Bundgarden Police Station, Distinct-Pune, may kindly be made and accordingly the petitioner may kindly be released/no furtherance of legal action may be made from the alleged case, i.e. Session Case No: 722 of 2017.”

2. Ms. M. S. Bajoria, learned APP takes a preliminary objection as to the maintainability of this Petition on the ground that once the discharge

application is rejected by the Trial Court the appropriate remedy for the Petitioner is to file Criminal Revision Application against such order of rejection. She relies upon the judgments of the Hon'ble Supreme Court in ***Madhu Limaye v. State of Maharashtra***¹, and ***Sanjay Kumar Rai v. State of Uttar Pradesh***². The learned APP further submits that the Petitioner had filed Criminal Writ Petition No.41 of 2025 assailing the impugned order dated 24th October 2024 rejecting the discharge application (“**Impugned Order**”) and for quashing of FIR No.330 dated 13th December 2016. The writ petition was withdrawn by the Petitioner on 10th September 2025 with liberty to file proceedings challenging the impugned order. Hence, it is submitted that a second writ petition is not maintainable and if at all, the Petitioner has to file Criminal Revision Application to assail the impugned order.

3. Mr. Salil Ray, the learned counsel for the Petitioner submits that the present Writ Petition is maintainable and relies upon the definition of interlocutory order as defined in **Black Law Dictionary, 4th Edition** and on the judgments in ***Salman v. Warner and Others***³ and ***State of U.P. v. Jeet S. Bisht***⁴. He submits that the Writ Petition is maintainable and that this Court will have jurisdiction to consider the present Petition. That

¹ AIR 1978 SC 47

² (2022) 15 SCC 720

³ QBD 1891

⁴ (2007) 6 SCC 586

apart, Mr. Ray has argued the Petition on merits and submits that the alleged incident complained of is of 28th and 29th May 2016 at the time when the Petitioner was not married. The marriage certificate of the Petitioner records his marriage with Miss Thresia, daughter of Mathew Aryaseril on 26th November 2016. Thus, on the date of the alleged incident, he was not a married person and finding recorded at paragraph no.8 of the impugned order viz “*He concealed his status as a married person and gave promise to the prosecutrix for marriage and made physical relationship with her*” is incorrect. Thus, there is an error apparent on the face of the record of the impugned order and on this ground the Petition ought to be allowed. He submits that the Petitioner and the complainant voluntarily stayed at the hotel for two days and this shows that the alleged offence under Section 376 is not made out. There was no promise to marry the complainant. The FIR does not record any offence under Section 420 and the Petitioner ought not to be prosecuted for in the matter of consensual relationship.

5. On the other hand, the learned APP submits that having filed Criminal Writ Petition No.41 of 2025 and withdrawn the same, there is no question of filing a second writ petition before this Court. Prayer clauses (b) and (c) in this writ petition are inconsistent and once the order

rejecting the discharge application is passed by the trial Court, the powers under Section 482 of Cr.P.C. should not be exercised. On the merits of the matter, the learned APP submits that the complainant's statement as recorded on 12th December 2016 makes out an offence under Section 376 and that the Petitioner induced the complainant into physical relationship on the basis of false promise of marriage. This along with other material on record is a matter of trial and FIR cannot be quashed at this stage.

6. I have heard the learned counsels and perused the record and the judgments. In my view, this Petition is nothing but an abuse of process of law. The Petitioner had filed Criminal Writ Petition No.41 of 2025 seeking identical relief. On 21st January 2025 and 10th September 2025, following orders were passed in Criminal Writ Petition No. 41 of 2025:

Order dated 21st January 2025:

"1. The learned Advocate for the Petitioner makes a statement that he is not challenging the order of rejection of his discharge application, passed by the learned Additional Sessions Court, Pune, dated 24th October, 2024. He, therefore, seeks liberty to delete prayer clause (c). The deletion be carried out forthwith.

2. The learned Advocate for the Petitioner desire to research on the law, as to whether, an Application u/s 482 can be filed after the rejection of the discharge application filed post submission of the charge-sheet.

3. The Petitioner canvasses prayer clause (b). We find that prayer clause (b) as well, the Petitioner seeks quashing two sections and seeks a discharge from the Sessions Case. 722 of 2017. He, therefore, submits that he would amend prayer (b) and

only mention a prayer for quashing of the F.I.R No.330, dated 13th December, 2016, registered with the Bund Garden Police Station, District Pune.

4. Leave to amend is granted. Amendment be carried out within two weeks.

5. As per the request of the learned Advocate for the Petitioner, list this Petition on 5th February, 2025 in the urgent admissions category.”

Order dated 10th September 2025:

1. Learned counsel for the Petitioner submitted that his Discharge Application is rejected by the learned Additional Sessions Judge, Pune, vide the order dated 24/10/2024 passed in Sessions Case No.722/2017. In these circumstances, learned counsel for the Petitioner seeks liberty to withdraw this application with liberty to prefer appropriate proceedings for challenging the order of rejection of his Discharge Application.

2. Considering this request, the Petition is allowed to be withdrawn with such liberty. If such proceedings are adopted, they shall be decided in accordance with law, without being influenced by withdrawal of this Petition.

3. The Petition is disposed of accordingly.”

7. A perusal of the aforesaid orders reveals that the Petitioner initially withdrew his challenge to the Impugned Order rejecting the discharge application and intended to restrict it only to quashing of the FIR. Thereafter he withdrew the writ petition with liberty to file appropriate proceedings to challenge the Impugned Order. In my view, it is impermissible for the Petitioner to mis-use the liberty and file a second writ petition seeking the same reliefs. There is no change in circumstances between the two writ petitions.

8. Mr. Ray however insists that there is no bar to the filing of the second writ petition and has argued his case on merits. In short, the Petitioner and the complainant/ Respondent no.2 were known to each other. The allegation in the FIR is that the Petitioner forced the complainant into sexual relations under the promise of marriage. On 28th and 29th May 2016, they stayed at a hotel in Pune where the Petitioner assured the complainant of marriage and had physical relations with her. The Petitioner married someone else on 26th November 2016. The complainant lodged the FIR under sections 376 and 417 of the IPC. Section 420 was added after the completion of investigation and chargesheet is also filed before the Sessions Court. By the Impugned Order, the Petitioner's application under section 227 of the CrPC for discharge has been rejected. The Petitioner challenged the same in Criminal Writ Petition No.41 of 2025, which was also withdrawn.

9. It is well settled, as held by the Hon'ble Supreme Court in *Ganesh Narayan Hegde v. S. Bangarappa*⁵, that the High Court ought not to act as a second revisional court under the guise of exercising its inherent jurisdiction. The Hon'ble Supreme Court has held:

“12. While it is true that availing of the remedy of the revision to

⁵ (1995) 4 SCC 41

the Sessions Judge under Section 399 does not bar a person from invoking the power of the High Court under Section 482, it is equally true that the High Court should not act as a Second Revisional Court under the garb of exercising inherent powers. While exercising its inherent powers in such a matter it must be conscious of the fact that the learned Sessions Judge has declined to exercise his revisory power in the matter. The High Court should interfere only where it is satisfied that if the complaint is allowed to be proceeded with, it would amount to abuse of process of court or that the interests of justice otherwise call for quashing of the charges.”

10. I find that the Impugned Order dismissing the revision is well reasoned. It considers the relevant material and rejects the revision application after due consideration of the arguments advanced and the judgments relied upon by both sides. In my view, the mere observation in paragraph 8 of the trial Court’s order—namely, that “*He concealed his status as a married person*” cannot, by itself, be a ground to allow the present Petition or to quash the FIR. The FIR and the complainant’s statement discloses that the physical relationship was entered into on the Petitioner’s false promise of marriage even prior to the Petitioner’s marriage on 26th November 2016. This aspect has been duly noted by the trial Court in paragraphs 4 and 7 of the Impugned Order. This Court cannot reappreciate or weigh the material on record to arrive at a conclusion that the charge against the accused should not be framed. The Court is not required to assess the evidence or determine whether the

material on record is sufficient to secure a conviction. As regards prayer (b), a reading of the allegations in the FIR, prima facie constitute the offence alleged. The inherent power under Section 482 of the Code cannot be exercised to stifle a legitimate prosecution. In my view, this is not a case where permitting the complaint to proceed would amount to an abuse of the process of the Court. As regards the judgment relied upon by the Petitioner, the same are not applicable in view of the above finding. For the aforesaid reasons, no case is made out by the Petitioner warranting interference with the impugned order. **Writ Petition No. 6675 of 2025 is dismissed.**

[GAUTAM A. ANKHAD, J.]

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