

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

CRIMINAL APPLICATION NO. 239 OF 2025

Santosh Bandu Raut

...Applicant

Versus.

The State of Maharashtra & Anr.

...Respondents

Mr. G. K. Muneshwar, learned Advocate for the Applicant.

Mr. Sukanta A. Karmakar, learned A.P.P. for the State/Respondent.

Ms. Trisha Choudhari h/f Mr. Ranveer Choudhari, learned Advocate for Respondent No. 2.

API Mr. Amit B. Patil attached to Bhosari MIDC Police Station, Pimpri-Chinchwad is present in the Court.

CORAM : ASHWIN D. BHOBE, J.

DATE : 9th MARCH 2026.

P.C. :

1. Heard Mr. G. K. Muneshwar, learned Advocate for the Applicant, Mr. Sukanta Karmakar, learned A.P.P. for the State/Respondent, and Ms. Trisha Choudhari, learned Advocate for Respondent No. 2.

2. This Criminal Application is filed by the Applicant under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, seeking to quash the First Information Report bearing No. 680 of 2024 dated 26.12.2024, registered with Bhosari MIDC Police Station, District-Pimpri-Chinchwad (hereafter "Impugned FIR"), for offences punishable under Sections 64(2)(m), 351(2), and 351(4) of the Bharatiya Nyaya Sanhita, 2023 (hereafter "BNSS"), and the

charge sheet bearing Regular Criminal Case No. 410 of 2025, which was registered as Sessions Case No. 325 of 2025 before the District Judge-10 & Additional Sessions Judge, Pune.

3. Mr. G. K. Muneshwar states that Sessions Case No. 325 of 2025 is re-numbered as Sessions Case No. 1228 of 2026 and is allotted to the District Judge-1 & Additional Sessions Judge, Pimpri-Chinchwad (hereinafter referred to as “Sessions Court”).

4. The indisputable material facts from the records of this Application are that the Applicant, a married man aged 42, and Respondent No. 2, a married woman aged 35 with a 15-year-old child, formed a friendship in 2020. After developing this friendship, the Applicant and Respondent No. 2 travelled together to various locations, including hotels, restaurants, and a dance bar. During these visits, they engaged in a physical relationship. On 19.11.2024, Respondent No. 2 filed a complaint with Bhosari MIDC Police Station, Pimpri-Chinchwad, alleging that the Applicant had a sexual relationship with Respondent No. 2 based on a promise to marry.

5. Mr. G. K. Muneshwar submits that the relationship between the Applicant and Respondent No. 2 was consensual and lasted from 2020 to 2024. He submits that during this period, the Applicant and Respondent No. 2 visited various places, stayed together in lodges or hotels, visited restaurants including dance bars, and consumed alcohol together. He submits that when the Applicant and Respondent No. 2 entered a physical relationship, both were aware that they were married. He submits that

Respondent No. 2 filed the complaint only after their friendship deteriorated and the relationship soured. He submits that the allegations do not meet the criteria of the offences charged. He submits that there is no material to attract offences under Sections 351(2) and 351(4) of the BNS.

6. Ms. Trisha Choudhari, learned Advocate for Respondent No. 2, does not dispute that Respondent No. 2 and the Applicant were married to their respective spouses when they were in a relationship. However, she argues that Respondent No. 2 engaged in a physical relationship with the Applicant based on a false promise of marriage.

7. Mr. Sukanta Karmakar, learned A.P.P. for the State/Respondent, fairly submits that the records show that the Applicant and Respondent No. 2 were indeed married to their spouses at the time their relationship developed.

8. Perused the records with the assistance of learned Advocates of the parties.

9. Records in this Application indicate that during the period when the Applicant and Respondent No. 2 were in a relationship, each was married to their own spouse. From 2020 to 2024, they visited various places, stayed in lodges or hotels on outings, went to restaurants and dance bars, drank alcohol together, and engaged in a physical relationship.

10. The Hon'ble Supreme Court in *Pramod Kumar Navratna v/s.*

State of Chhattisgarh and Others¹ in paragraph nos. 19 to 24, 26 & 27, has observed as follows :-

“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 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,

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

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.

XXX

(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.

XXX

(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.”*

11. The allegations in the impugned FIR and the evidence collected do not suggest that the Applicant from the very beginning intended to deceive Respondent No. 2 or that the Applicant induced or misled Respondent No. 2 into giving consent to a sexual relationship, or that Respondent No. 2 was persuaded by the Applicant to have a physical relationship with him on the false pretext of marriage. The same is not established even *prima facie*.

12. Respondent No. 2, being married, was not eligible to marry the Applicant at the time of the alleged rape incidents, which are said to have occurred under the false promise of marriage. Respondent No. 2 had a 15-year-old child. The relationship between the Applicant and Respondent No. 2, both adults, was consensual, as rightly submitted by Mr. G. K. Muneshwar. In this case, the allegation of rape made by Respondent No. 2 on a false pretext of marriage, even if accepted at face value, does not constitute an offence of rape under Section 376(2)(n) of the IPC.

13. Regarding the offences under Sections 351(2) and 351(4) of the BNS, there are no allegations to attract the said offences. Ms. Trisha Choudhari, learned Advocate for Respondent No. 2, was unable to point out any material from the record indicating the ingredients of the charges under the mentioned sections.

14. The facts of the present case clearly indicate a consensual relationship that has soured. The ingredients of the offence under Sections 351(2) & 351(4) of the BNS are not established. The present case squarely falls within the categories enumerated in paragraph 102(5) & (7) of the case of ***State of Haryana and Others v/s. Bhajan Lal and Others***², for the exercise of powers under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to quash the impugned FIR and the charge-sheet arising out of the said FIR, so as to prevent abuse of legal process.

15. In view of the above, Criminal Application is allowed in terms of prayer clause (c). Consequently, the impugned FIR and the charge-sheet registered as Sessions Case No. 1228 of 2026 pending before the District Judge-1 & Additional Sessions Judge, Pimpri-Chinchwad, arising out of the impugned FIR, are quashed. No order as to costs.

16. Criminal Application No. 239 of 2025 is disposed of.

[ASHWIN D. BHOBE, J.]

GITALAXMI
KRISHNA
KOTAWADEKAR

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