

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

CRIMINAL APPLICATION NO. 466 OF 2025

Kedar Shankar Shirali
S/o. Balachandra Rao Shirali

...Applicant

Versus

The State of Maharashtra And Anr.

...Respondents

Mr. Amit Ghag, learned Advocate for the Applicant.

Mr. Prasanna P. Malshe, learned A.P.P. for the State/Respondent.
Respondent No. 2 is present in the Court in-person.

API Ms. Pranita Chaudhari attached to R.A.K. Marg Police Station is present in the Court.

CORAM : ASHWIN D. BHOBE, J.

DATE : 27th JANUARY 2026.

P.C. :

1. Heard Mr. Amit Ghag, learned Advocate for the Applicant, Mr. Prasanna Malshe, learned A.P.P. for the State/Respondent and Respondent No. 2 present in the Court in-person.

2. By this Application filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, Applicant has sought for the following substantive reliefs :-

“(a) This Hon'ble Court be pleased to quash and set aside the criminal proceedings/impugned Order dated 8th April 2025 taking cognizance and issuing process for offences U/s. 354, 376, 377, 420, 504, 506(2), 509 of the Indian Penal Code passed by the Ld. Judicial Magistrate (F.C.), 13th Court Dadar, Mumbai, being C.C. No. 318/PW/2025 initiated

pursuant to FIR bearing No. 33 of 2025 registered with R.A. Kidwai Marg Police Station, Mumbai.

(b) Pending the hearing and final disposal of the present Application, further proceedings in C.C. No. 318/PW/2025 pending on the file of Ld. Judicial Magistrate (F.C.) 13th Court Dadar, may be stayed.”

3. Material facts relevant for the adjudication of this Application are :-

a) On 21.05.2024, Respondent No. 2 lodged a complaint with Respondent No. 1 Police Station, alleging that the Applicant is a resident of the same building and also the Committee Member of the Sky Flama Dosi Flamigo Building, in which building the Respondent No. 2 had purchased a flat, came in contact with Respondent No. 2 and supported Respondent No. 2 to obtain NOC of the Society for transfer of the shares to enable Respondent No. 2 to obtain loan. Applicant started sending whatsapp messages to Respondent No. 2 and started developing friendship. Applicant working in TCS Company, on a false pretext of helping Respondent No. 2 to get a job, committed rape and sexually exploited her. Said complaint makes reference to various dates and the manner in which the Applicant is alleged to have sexually exploited Respondent No. 2. Allegations include Applicant having taken nude photos of Respondent No. 2, without her knowledge/consent and under the threat of making the photos viral, forcing Respondent No. 2 to have regular sex, the Applicant to have forced Respondent No. 2 to have unnatural sex, Applicant indulging in continuous sexual texting, etc. as

more particularly mentioned in the said complaint.

b) Failure of Respondent No. 1 to take cognizance of the complaint/s made by Respondent No. 2, resulted in Respondent No. 2 filing proceedings before the Judicial Magistrate First Class, 13th Court Dadar, Mumbai (Magistrate), under Section 156(3) of the Code of Criminal Procedure 1973, which were registered as C.C. No. 1883/MISC/2024. In addition to her allegation as made in the complaint dated 21.05.2024, Respondent No. 2 alleged the Applicant having induced her to obtain divorce from her husband, on the false promise of marriage. Respondent No. 2 has alleged that the intentions of the Applicant were deceitful to have physical relation with Respondent No. 2 on the false pretext of securing a job and also a false promise to marry.

c) Magistrate called for a Report from Respondent No. 1. Respondent No. 1 in its Report dated 10.12.2024 submitted to the Magistrate opined the relationship between the Petitioner and Respondent No. 2 to be consensual.

d) Vide order dated 04.02.2025, the Magistrate after considering the material on record including the Report dated 10.12.2024, held the allegation to be cognizable in nature, hence requiring registration of FIR an investigation.

e) First Information Report bearing No. 33 of 2025 came to be registered on 10.02.2025 with Rafi Ahmad Kidwai Marg Police Station, Mumbai for the offence punishable under Sections 354, 376, 377, 420, 504, 506(2) & 509 of the Indian

Penal Code, 1860.

f) Magistrate upon taking cognizance, by order dated 08.04.2025 passed in C.C. No. 318/PW/2025, issued process under Sections 354, 376, 377, 420, 504, 506(2) & 509 of the Indian Penal Code, 1860.

4. Mr. Amit Ghag submits that the complaint dated 21.05.2024, as also the contents of the Application filed by Respondent No. 2 under Section 156(3) of Cr.P.C., are false. He submits that there are contradictions and variance in the complaint dated 21.05.2024 and the communications exchanged between Respondent No. 2 and the Applicant. He submits that the complaint filed by Respondent No. 2 against the Applicant is in furtherance of malicious and malafide intention/agenda. He submits that Respondent No. 2 was a self sufficient person and did not require any job, thus the allegations of Respondent No. 2 that under a pretext of promise to get a job for Respondent No. 2, Applicant having committed rape and sexual exploitation of the Respondent No. 2, are false. He submits that there is gross delay in filing the complaint. He submits that the whatsapp messages, as also the transcription of the calls exchanged between the Applicant and Respondent No. 2 do not support the allegations. He submits that the relationship between the Applicant and the Respondent No. 2 was consensual. He submits that the allegation of promise to marry is an afterthought. In support of his case, he relies on the following decisions :- *Amit Sadanand Shelar v/s. State of Maharashtra*¹, *Tapan Anant Thatte v/s. The State of Maharashtra*

1. 2019 SCC OnLine Bom 13090.

*and Another*², *Naim Ahamed v/s. State (NCT of Delhi)*³, *XXXX v/s. State of Madhya Pradesh and Another*⁴ and *Mohd. Wajid and Another v/s. State of Uttar Pradesh and Others*⁵.

5. Mr. Prasanna Malshe, learned A.P.P. for the State/Respondent submits that the material on record establishes the Applicant having committed the offence of rape and sexually exploited Respondent No. 2 on false promise to get her the job, as also a false promise to marry. He submits the ingredients of offences, which are charged in the FIR, as also in the charge-sheet are established. He by referring to the complaint dated 21.05.2024, submits that ingredients of unnatural sex are also established. He submits that prosecution has filed supplementary charge-sheet by which additional material is brought on record to indicate the involvement of the Applicant in the crime. He therefore seeks dismissal of this Application.

6. Respondent No. 2 in person has reiterated the contents of her complaint and she maintains the Applicant a married man having children, at the time of making of promise had no intentions upholding his word and the same was to deceive her to engage in sexual relation. She states that the promise to marry was deceitful. Respondent No. 2 disputes the documents relied by the Applicant, which do not form a part of the FIR and the charge-sheet.

7. Perused the records with the assistance of Mr. Amit Ghag, Mr. Prasanna Malshe and Respondent No. 2 present in-person.

2. Criminal Writ Petition (Stamp) No. 17769 of 2023 decided on 14.11.2024.

3. (2023)15 Supreme Court Cases 385.

4. (2024)3 Supreme Court Cases 496.

5. (2023)20 Supreme Court Cases 219.

8. Sum and substance of the arguments urged by Mr. Amit Ghag is that, appreciation of the contents of complaint dated 21.05.2024 and the contents of the Application filed by Respondent No. 2 under Section 156(3) of Cr.P.C., would establish Respondent No. 2 having concocted story to falsely accuse the Applicant. Issues raised by Mr. Amit Ghag are in the realm of appreciation of evidence, which would amount to embarking upon an inquiry to test the veracity of the document and the statements made by Respondent No. 2. Contentions of Mr. Amit Ghag based on the documents viz. whatsapp messages and transcription, which are produced in this Application, are in the nature of the defense of the Applicant. Respondent No. 2 has disputed the said documents and the interpretation sought to be put forth in respect of said documents. At any rate, the Applicant has failed to establish that the documents relied by him for the first time before this Court are of unimpeachable character.

9. The Hon'ble Supreme Court in the case of ***Muskan v/s. Ishan Khan (Sataniya) and Others***⁶, in paragraph no. 22 has observed as follows :-

“22. On the aspect of the powers of the Courts under Section 482 of the Cr. P.C., it is settled that at the stage of quashing, the Court is not required to conduct a mini trial. Thus, the jurisdiction under Section 482 of the Cr. P.C. with respect to quashing is somewhat limited as the Court has to only consider whether any sufficient material is available to proceed against the accused or not. If sufficient material is available, the power under Section 482 should not be exercised.”

6. 2025 SCC OnLine SC 2355.

10. Allegations made by Respondent No. 2 in her complaint against the Applicant being salacious, reference to the same is avoided.

11. Statements in the Application filed by the Respondent No. 2 under Section 156(3) of Cr.P.C. and the documents appended to the said Application, which includes the complaint dated 21.05.2024 on the basis of which FIR was got registered, it is evident that there was a promise of employment made by Applicant to the Respondent No. 2, when the relation between the Applicant and Respondent No. 2 started. Allegations in the complaint filed by Respondent No. 2 *prima facie* disclose the ingredients of rape and Respondent No. 2 being subjected to unnatural sex. In the background of the allegations made by Respondent No. 2, the promise made by the Applicant to Respondent No. 2 appears to be with sole intention of indulging in sexual acts. Respondent No. 2 appears to have agreed to have sexual intercourse on account of the misconception created by the Applicant.

12. In the matters regarding registration or non-registration of the FIR what is necessary, is only that the information given to the police must disclose the commission of a cognizable offence (see *Lalita Kumari v/s. Government of Uttar Pradesh and Others*⁷). Magistrate in its order dated 04.02.2025 has given reasons for ordering registration of FIR and the need for investigation in the matter.

13. The position of law as enunciated in the various decisions of the Hon'ble Supreme Court, is that law punishes deceit and not

7. 2014(2) SCC 1.

disappointment. Respondent No. 2 has alleged deceitful means adopted by the Applicant to have sexual intercourse with her. Material on record does not indicate the complaint being filed on collapse of relationship. Considering the factual matrix in the case in hand, material available on record being sufficient to proceed against the Applicant, the decisions relied by Mr. Amit Ghag, do not assist the case of Applicant.

14. Material on record discloses *prima-facie* case against the Applicant, as such I do not find any infirmity in the impugned Order.

15. In view of the above, no case is made out to entertain the Application under Section 528 of the BNSS. Criminal Application No. 466 of 2025 is therefore dismissed. There shall be no order as to costs.

[ASHWIN D. BHOBE, J.]

GITALAXMI
KRISHNA
KOTAWADEKAR

Digitally signed
by GITALAXMI
KRISHNA
KOTAWADEKAR
Date:
2026.02.06
19:19:15 +0530