



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 792 OF 2024

APPLICANT :- Mohammad Subhan s/o Kalim Qureshi,  
Aged 21 years, Occupation: Student,  
R/o 20, Nagarkhana Kalyaneshwar Mandir,  
Near Gotu Miya Masjid, Nagpur.

..VERSUS..

NON-  
APPLICANT :- 1) State of Maharashtra,  
Through Police Station Officer,  
Police Station Dhantoli, District Nagpur.

NON-  
APPLICANT 2) XYZ  
In Crime No. 201/2023  
through Police Station Officer,  
Police Station Dhantoli, Dist. Nagpur.

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Mr. Amit Vasant Rao Band, counsel for applicant.  
Ms Soniya Thakur, APP for Non-applicant No.1/State.  
Ms Jayanti A. Deshpande, counsel (appointed) for non-applicant No.2.

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CORAM : PRAVIN S. PATIL, J.

DATE : 22/01/2026

ORAL JUDGMENT :

1. Heard. **Rule.** Rule made returnable forthwith. By consent of learned counsel Mr. Amit Vasant Rao Band for the Applicant, Ms Soniya Thakur, learned APP for Non-applicant

No.1/State and Ms Jayanti A Deshpande, learned counsel (appointed) for Non-applicant No.2, with permission of the parties, the application is taken up for final hearing at the stage of admission, with consent of the parties.

2. By this application, the challenge is to the proceedings registered as Sessions Case No. 78/2024, arising out of Crime No. 201 of 2023 dated 21.06.2023, for the offence punishable under Sections 376 (2)(n), 294 and 506 of the Indian Penal Code. The applicant approached this Court on the ground that the offence registered against him under Section 376(2) (n) of the IPC is not attracted in the matter for the reason that applicant and complainant were in love relations and out of that love relations, sexual intercourse were taken place between them. However, after a period of one year, due to breakdown of love affair, the present complaint came to be lodged against him and therefore according to him, the offence under Section 376(2) (n) of IPC is not made out in the matter.

3. The case of the prosecution in short is that, on 21/06/2023, the complaint was lodged by the non-applicant No.2 alleging that when she was pursuing her studies and used to travel by bus, she came in contact with a present applicant. Thereafter, their love relationship developed. According to her,

when their love affair developed, the applicant with intention to satisfy his lust has taken her to Oyo Midas Hotel, Nagpur, against her wish and forcibly committed sexual intercourse. Thereafter he has abused and assaulted her. It is also alleged that, thereafter on the threats, the present applicants had established a forcible sexual intercourse with her and the same was going on from the period from 12/09/2022 till 21/06/2023. Hence, according to the complainant, there was forceful sexual relations at the instance of the present applicant and therefore, offence punishable under Sections 376 (2)(n) and 294 of the Indian Penal Code, came to be registered against Applicant.

4. The applicant in support of his submission pointed out that in the present matter the photographs, which were available on the social media, wherein both the applicant and non-applicant No.2 are seen together in a happy hours and also pointed out the fact that the victim i.e. non-applicant No.2 is two years older than the present applicant. According to him, the victim was of 21 years old whereas non-applicant No.2 of 19 years old. He has pointed out the statement recorded by the investigation officer during the investigation particularly statement recorded under Section 164 of Cr.PC.

5. The applicant has firstly pointed out the statement of the Victim recorded on 19/07/2023, which according to him, clearly established the fact that the applicant was on her free will came to various places along with the applicant. They were regularly in contact. As such, there was never any force used by the applicant against the victim. According to the applicant, it seems that only because of one Movie namely “Kerla Story” was seen by her, from that day she feels that she has been misguided by the present applicant in the same manner and therefore, she has changed her mind and since then, she was trying to break the relations between them.

6. It is also pointed out by the applicant in the month of April 2023 on the occasion of Eid, the applicant met with an accident. At that time, the victim along with her brother came to his house to visit him. As such, applicant was having family relation with the Family of Victim.

7. It is also stated that brother, mother of the victim used to receive his call as and when the applicant was trying to contact with the victim. This fact is not denied by parents of Non-applicant No.2 in their statement. On the basis of his entire submission the applicant stated that they were having healthy relations and it cannot be concluded that he has used force or any

compulsion against the applicant.

8. Learned counsel for the applicant in support of submission has relied following judgments as under :-

- 1) **Amol Bhagwan Nehul Vs State of Maharashtra and another reported in 2025 SCC OnLine SC 1230.**
- 2) **Ms. X Vs Mr. A and others reported in 2024 SCC OnLine SC 316.**
- 3) **Criminal Application (APL) No. 99 of 2023 decided on 25/08/2025 (Nagpur Bench).**
- 4) **Amar Singh Rajput Vs State of Madhya Pradesh, through PS Seondha Dist. Datia and another reported in 2023 SCC OnLine MP 2078.**
- 5) **Pramod Suryabhan Pawar Vs State of Maharashtra and another reported in (2019) 9 SCC 608.**
- 6) **Prashant Vs State of NCT of Delhi in criminal appeal No. \_\_\_\_ of 2024 (Arising out of Special Leave Petition (Criminal) No. 2793 of 2024) decided on 20/11/2024 reported MANU/SC/1226/2024.**

9. Learned APP and counsel appearing for victim has strongly opposed the present application. According to them the perusal of the complaint as well as the statement of the Non-applicant No.2 recorded under Sections 161 and 164 of Code of Criminal Procedure wherein she is consistently stated that by using force and coercion the applicant has established physical relations with her. After physical relations were established, she

was blackmailed by the present applicant and therefore, unwillingly she was required to continue the relations with the present applicant. According to them, it is not the case of love affair but it is the case where by using the force, the applicant has established the relations with the non-applicant. Hence, the offence is prima-facie made out in the matter. According to them, it is a fit case for trial wherein everything will be considered by the learned trial Court and decide the matter on its own merits.

10. In this regard, it will be relevant to consider the observations made by the Hon'ble Supreme Court of India *Prashant vs State of NCT of Delhi referred (supra)*, wherein the Hon'ble Supreme Court has held, if the relations between the parties were cordial and consensual in nature, a mere breakup of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relation does not fructify into marital relationship. In this regard, the view recorded by the Hon'ble Supreme Court of India in para-19 is relevant, which is reproduce as under.

“19. In our view, taking the allegations in the FIR and the charge- sheet as they stand, the crucial ingredients of the offence Under Section 376(2)(n)

Indian Penal Code are absent. A review of the FIR and the complainant's statement Under Section 164 Code of Criminal Procedure discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the prosecution's case is accepted at its face value, it cannot be concluded that the complainant engaged in a sexual relationship with the Appellant solely on account of any assurance of marriage from the Appellant. The relationship between the parties was cordial and also consensual in nature. A mere breakup of a relationship between a consenting couple cannot result in initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marital relationship. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution.”

11. Furthermore, in the case of *Amol Bhagwan Nehul referred (supra)* the Hon’ble Supreme Court of India has again observed in such identical circumstances of the matter as under :-

“9. In our considered view, this is also not a case where there was a false promise to marry to begin with. A consensual relationship turning sour or partners becoming distant cannot be a ground for invoking criminal machinery of the State. Such conduct not only burdens the Courts, but blots the identity of an individual accused of such a heinous offence. This Court has time and again warned against the misuse of the provisions, and has termed it a folly to treat each breach of promise to marry as a false promise and prosecute a person for an offence under section 376 IPC.”

12. The applicant then relied upon the judgment of Hon’ble

Supreme court of India in the case of ***Pramod Suryabhan Pawar referred (supra)***, wherein the Hon'ble Supreme court of India has considered elaborately what is the promise under the misconception of facts, breach of promise and consent of the victim in such cases. After summarizing all the legal position, the Hon'ble Supreme Court of India observed in para-18 of the judgment has reads thus:-

“18.To summarise the legal position that emerges from the above cases, the “consent” of a woman with respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.”

13. In the light of the submission of both the parties and perusal of the record, it is prima-facie seems that both applicant and non-applicant were taking education in a same college and attending the college by same collage bus and thereby their relations were established.

14. It is also pertinent to note that victim was 21 years old, whereas the applicant was of 19 years old when they met each

other. Therefore, it cannot be said that victim could not understood the consequences of her relations, particularly when, she went with applicant to the Hotels and various places.

15. It is also necessary to be considered the fact that, the relations between them, during their college time was cordial in nature, because their family members were in a visiting terms for entire period of one year. It is not the case that any time during this period, the present applicant has shown her apprehension to any of her friends or her family members. On the contrary, from own statement of the complainant that her family members were in a visiting terms with the applicant family. It seems that only because of one Movie shown by her brother to her, her minds seems to be changed, and thereby relations between the applicant and non-applicant were break down. Hence, the complaint came to be lodged against the present applicant.

16. In the light of law laid down by the Hon'ble Supreme Court of India factual position of the matter, it is clear that there was a love affair between the Applicant and Non-applicant No.2 and there were consensual sexual relations between them. However, as the mind of victim was changed after period of one year, and their relations were break down, she has taken the stand that she was abused by the present applicant, cannot be

accepted in the facts and circumstances of the matter.

17. Hence, considering the entire charge-sheet as well as documents which are placed on record, I do not find that offence under Section 376(2)(n) IPC is made out against the present applicant. So also, no offence is made out under Section 294 and 506 of the IPC. In my opinion, continuation of the proceedings against the present applicant, is nothing but an abuse of process of the Court. Hence, I proceed to pass the following order.

#### **ORDER**

- a] The criminal application is **allowed**.
- b] The proceedings bearing Sessions Case No. 78 of 2024 arising out of Chargesheet No. 58 of 2023 dated 17/08/2023 in Crime No. 201 of 2023 against the applicant under Section 376(2)(n), 294 and 506 of the Indian Penal Code, 1860, is hereby quashed and set aside.
- c] The fees of the appointed counsel be quantified as per Rule.

18. Rule is made absolute in the aforesaid terms. No order as to costs.

**(PRAVIN S. PATIL, J.)**