



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

CRIMINAL APPLICATION (APL) NO. 1208 OF 2024

APPLICANT :- **ASHVAJIT DEVIDAS NAGRALE,**
Aged about 38 years, Occu: Service,
R/o Jarur, Tq. Ghantanji, District
Yavatmal, presently R/o Ghantanji,
Tq. Ghatanji, District Yavatmal.

..VERSUS..

RESPONDENTS :- 1) **STATE OF MAHARASHTRA**
through Police Station, Pandharkawada,
Tq. Kelapur, District Yavatmal.
2) **X.Y. Z. in Crime No. 258/2024, Police**
Station, Tq. Kelapur, District Yavatmal.

Mr. Y.R. Kinkhede, counsel for applicant.
Mr. G.S. Umnale, APP for respondent/State.
Ms S.P. Dhotre, counsel (appointed) for respondent No.2

CORAM : **PRAVIN S. PATIL, J.**
DATE : **03/02/2026**

ORAL JUDGMENT :

1. Heard. **Rule.** Rule made returnable forthwith. By consent of
Mr. Y.R. Kinkhede, learned counsel for applicant and Mr. G.S. Umale,
learned APP for respondent/State and Ms S.P. Dhotre, learned counsel

(appointed) for respondent No.2, the application is taken up for final hearing at the stage of admission.

2. The FIR No. 0253/2024 registered by the Police Station Pandharkawada, at the instance of respondent No.2, who alleged that the present applicant by giving false promise of marriage, has established the sexual relations with her during the period of 22/5/2022 to 28/02/2024 and on that basis the offence under Sections 376, 376 (2)(n) and 506 of the Indian Penal Code is registered and against the present applicant. After investigation, the charge sheet no. 389/2024 was filed and the case is registered as Regular Criminal Case No. 631/2024 pending before the Judicial Magistrate First Class, Kelapur.

3. The applicant herein challenge the registration of the criminal offence against him, on the ground that the allegations made against him in the complaint as well as statement which are recorded by the investigating officer prima-facie not made out the case under Section 376(2)(n) of the Indian Penal Code, 1860. According to him, it was consensual relations between them. Hence, seeks indulgence of this Court in the matter.

4. Learned APP and learned counsel for respondent No.2 have strongly opposed the application and stated that it is the applicant who has first established the relations with the respondent No.2 through social media, and thereafter with false promise of marriage, established the physical relations with the respondent No.2 and therefore, at this stage proceeding cannot be quashed and set aside the same needs to go for trial and hence present application be rejected.

5. In the light of the submission of both the parties, I have perused the oral report of the respondent No.2 dated 04/03/2024, and her statement recorded by the Investigating Officer dated 07/03/2024. In

the oral report dated 04/03/2024, she has stated that the present applicant is her cousin brother and she knows him as the distinct relative. On 22/05/2022 at around 12.00 p.m. he came to his elder sister house and promise her to perform marriage and thereby there physical relations were established. After establishing a physical relations they were in love affair and same was continued till the month of March 2024. However, in the month of March-2024 she got knowledge that the applicant is performing the marriage with another girl and therefore, she has lodged the complaint against the present applicant.

6. In the statement, which was recorded by the investigating officer, she has stated that for some certain work, the applicant was at her elder sister house. At that time, she has exchange their mobile number with the applicant. Thereafter, they were in talking terms on telephone. On 22/05/2025, when her elder sister with her brother were out of house, that time applicant entered in the house and under the pretext that he will perform the marriage with the present applicant established sexual relation with her. It is also stated that thereafter as and when her elder sister and brother in law went out the house, at that time, the applicant used to came in the house of her elder sister and established physical relations with her. Hence, according to her on the ground of false marriage, applicant has established his physical relations with her and therefore, offence is made out against the present applicant.

7. In the light of the facts of this case, it will be relevant to rely the judgment of the Hon'ble Supreme Court of India in the case of *Prashant vs. State of NCT of Delhi, (2025) 5 SCC 764*, wherein the Hon'ble Supreme Court of India, has observed in paragraph-20 as under :-

20. 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) IPC are absent. A review of the FIR and the complainant's statement under Section 164 Cr.P.C 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.

8. So also, in the case of *Dr. Dhruvaram Murlidhar Sonar Vs The State of Maharashtra and others reported in Criminal Appeal No. 1443 of 2018 (Arising out of S.L.P. (Criminal) No. 6532 of 2018) decided on 22/11/2018*, the Hon'ble Supreme Court of India has observed in paragraph-20 as under :-

“20. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the later falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases

must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 of the IPC.”

9. From this settled position of law, there is a clear distinction between rape and consensual sex. Here in the present case it is own case of complaint that all the sexual relationship were established in the house where the respondent was residing with her elder sister. It is also pertinent to note that as per the allegation of the respondent No.2 as and when her elder sister and her husband went out of the house, the applicant used to visit her and established the physical relations. Therefore, it is clear that as they were telephonically in contact since long, there was a consensual relation between them and therefore, on such dates, consensual relations were established between them.

10. Considering the above said facts, in my opinion, it is clear case consensual relationship between applicant and respondent No.2 . No offence is made out under Section 376 (2)(n) of Indian Penal Code, 1986, as alleged in the matter. Accordingly, I proceed to pass the following order.

ORDER

- a] The criminal application is **allowed**
- b) The criminal proceedings bearing Regular Criminal Case No. 63 of 2024 (State of Maharashtra Vs Ashvait Nagrale) pending before Judicial Magistrate, Kelapur, District Yavatmal, arising out of charge-sheet No. 389 of 2024 in Crime No. 0253 of 2024, registered at Pandharkawada Police Station Tq. Kelapur, District Yavatmal for the offence punishable under Sections 376, 376(2)(n), 506 of the

Indian Penal Code, 1860, are hereby quashed and set aside.

- c) The fees of the appointed counsel be quantified as per rule.
- d] All pending applications stand disposed of.

11. Rule is made absolute in the aforesaid terms. No orders as to costs.

(PRAVIN S. PATIL, J)