



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

CRIMINAL APPLICATION (APL) NO.1368 OF 2024

APPLICANT :- Pravin s/o Balkrushna Tikale,
Age about 31 Years, Occu: Private,
R/o Chikhalgaon, Ward No.1,
Tukdoji Maharaj Suare, Tah. Wani,
District Yavatmal.

..VERSUS..

RESPONDENTS :- 1) State of Maharashtra,
Through P.S.O., Wani Police Station,
Tah. Wani, District Yavatmal.
2) XYZ (Victim in Crime No.34/2024),
Registered at Police Station Wani,
District Yavatmal.

Mr. Amol Hunge, counsel for applicant.
Mr A.M. Ghogare, APP for respondent/State.
Mr Y.R. Kinkhede, counsel respondent No.2

CORAM : **PRAVIN S. PATIL, J.**

DATE : **28/01/2026**

ORAL JUDGMENT :

1. Heard. **Rule.** Rule made returnable forthwith. By consent of learned counsel Mr. Amol Hunge, for the applicant Mr A.M. Ghogare, learned APP for respondent/State and Mr. Y.R. Khinkhede, learned counsel for respondent No.2, the application is taken up for final hearing at the stage of admission.

2. The applicant herein seeks quashment of the proceeding registered against him vide Charge-sheet No. 46 of 2024 arising out of FIR No. 34 of 2024 dated 18/01/2024, for the offence punishable under Sections 376(2)(n), 417, 506 of the Indian Penal Code, 1860, which is pending in Session Case No. 26 of 2024 before the District Judge-1 and Additional Sessions Judge, Kelapur, District Yavatmal.

3. The applicant seeks indulgence of this court on the ground that the complaint lodged by respondent No.2 is frivolous in nature. It is contended that respondent No.2, who came in contact with the present applicant at the relevant time, was on 35 years of age and the relations between them were of consensual in nature. Hence, according to him, considering the facts of the matter, no offence is made out against him as alleged by respondent No.2, and therefore, he seeks indulgence of this Court in the matter.

4. Learned APP strongly opposed the said application and prayed for rejection of the application.

5. It is the submission of learned counsel for respondent No.2 that applicant had given a false promise of marriage to respondent No.2, and on the basis of this false promise, developed a love relationship and thereby committed sexual intercourse with the victim. However, when the respondent No.2 insisted for marriage, the applicant refused to perform the marriage and therefore, she was constrained to lodge the complaint against the present applicant. Hence, according to respondent No.2, the case squarely falls under Section 376(2)(n) of the IPC and therefore, it is not a fit case for indulgence of this Court in the matter and prayed for rejection of the application.

6. In the light of the submission made by both the parties, I have gone through the record and perused the charge-sheet as well as documents enclosed therein and the case laws, which are pointed out by the parties during the course of arguments.

7. From the statement and complaint of respondent No.2, it is clear that at the time of lodging the complaint on 18/01/2024, she specifically disclosed her age 35 years and stated that due to matrimonial discord with her husband, namely Shailendra Padmakar, since last three years, she is residing separately with her parents at Wani along with her two children.

8. After her matrimonial discord, when she is started residing with her parents, the applicant was on visiting terms to her house. It is also stated that respondent No.2 known the present applicant since her childhood. During such visiting terms, they have exchanged their mobile numbers and their love relations were established. They establish their first physical relationship was on 28/03/2023 at the house of her mother. Thereafter, it is stated that, applicant oftenly used to come to her house and also she went with the applicant at various station such as Chandrapur, Warora as well as to various hotels.

9. From perusal of this complaint, it is seen that respondent No.2 is a 35 years old woman and is mother of two children. As such, she being a matured woman, she was fully aware of the consequences of such relations and it's impact on her family. Therefore, prima-facie, her submission that under the pretext of marriage, the relations were established by the applicant cannot be accepted in the matter.

10. It is further pertinent to note that it is not the case of respondent No.2 that she got divorce from her earlier marriage prior to

establishing relations with the present applicant. Thus, during the existence of her marriage, she has established the relations with the present applicant. It is further pertinent to note that their physical relations were first time established in the house of her mother. Therefore, it is difficult to believe that any promise of marriage or any force was applied by the applicant while establishing such physical relations with the applicant.

11. It is also not disputed in the present case that respondent No. 2 repeatedly accompanied the applicant to various places and their sexual intercourse took place between them on several occasions. During this period, she has never raised any objection against present applicant, nor did she inform her parents about forcible relations at instance of the applicant.

12. In the light of this submission, the applicant has rightly relied upon judgment of Hon'ble Supreme Court of India in the case of *Samadhan s/o Sitaram Manmothe Vs State of Maharashtra in Criminal Appeal No. 5001 of 2025 (Arising out of Special Leave Petition (Crl.) No. 6906 of 2025) decided on 24/11/2025*, wherein the Hon'ble Supreme court has observed in paragraph Nos. 30 and 31 which reproduced here-in-below:-

“30. In *Prashant vs. State of NCT of Delhi, (2025) 5 SCC 764*, this Court speaking through one of us (Nagarathna, J.) observed that a mere break-up of a relationship between a consenting couple cannot result in the 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 marriage. The relevant portion is extracted 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 break up 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.”

(underlining by us)

“31. This Court is conscious of the societal context in which, in a country such as ours, the institution of marriage holds deep social and cultural significance. It is, therefore, not uncommon for a woman to repose complete faith in her partner and to consent to physical intimacy on the assurance that such a relationship would culminate in a lawful and socially recognised marriage. In such circumstances, the promise of marriage becomes the very foundation of her consent, rendering it conditional rather than absolute. It is, thus, conceivable that such consent may stand vitiated where it is established that the promise of marriage was illusory, made in bad faith, and with no genuine intention of fulfilment, solely to exploit the woman. The law must remain sensitive to such genuine cases where trust has been breached and dignity violated, lest the protective scope of Section 376 of the IPC be reduced to a mere formality for those truly aggrieved. At the same time, the invocation of this principle must rest upon credible evidence and concrete facts, and not on unsubstantiated allegations or moral conjecture.”

13. Respondent No. 2, in order to substantiate his submission

that at this stage this Court cannot consider the defence of the present applicant and that the matter is required to proceed to trial in view of the peculiar facts and circumstances of the case, has relied upon the judgment of the *Principal Seat at Bombay in Criminal Writ Petition No. 4399 of 2022, Pramod Dhanji Purabiya v. State of Maharashtra and another, decided on 02/08/2024*. Reliance is placed on the observations made in paragraph 11 of the said judgment, which are reproduced hereunder:

“11. It is evident from the contents of the FIR that, the sexual relationship was purely on the assurance of the Petitioner to marry the victim. She clearly states that, the Petitioner even assured her that he would look after her son of an earlier marriage. Despite this, Ms. Khan urges to us that we must appreciate the Petitioner’s defence that, he fully intended to marry her but only the fact about her son made him change his mind. We cannot at this stage analyze the defence of the Petitioner but are required to look into only the averments in the FIR and ascertain prima facie whether the alleged offence is disclosed from its bare reading. We cannot proceed to appreciate the evidence of the parties to establish intent or mala fide and conduct a mini trial at this stage. Admittedly, there existed a physical intimate relationship between the parties. As per the statement of the victim, she consented to the relationship upon a promise to marry her. However, right from the beginning, the Petitioner had no intention to marry her. The mere fact of renting various premises for the victim to reside is not an indication of an intent to marry. In fact, it is otherwise. It displays the intent of the Petitioner to keep the victim in a place where she would be easily available for his pleasure at any time of his convenience. Mere facilitating a rented house for the victim does not establish an intent to marry. It demonstrates an intention of the Petitioner to keep the victim readily available for his pleasure. In any case there was no obstruction at all to their marriage even earlier, but he continued to make mere promises. According to us, the version of the victim/victim is fully reliable and is of sterling quality.”

14. In the light of the facts are narrated herein-above and the

law laid down by the Hon'ble Supreme court of India, there is a difference in between the promise of marriage and consensual relations. If it is found that there are consensual relations between the parties and on that count, physical relations were existing between them, a mere break of such relationship between the consenting couple cannot result in initiation of criminal proceedings. In such cases, the Court should be cautious and consider the entire factual aspect involved in the matter. In the present case, it is an admitted fact that respondent No.2, at the relevant time, was mature woman. It is also an admitted fact that she was facing matrimonial discord and therefore, she was residing with her parents since last three years.

15. It is also not disputed that initially there were love relationship between the applicant and respondent No.2 and out of that love relationships, physical relations were existed between them. Hence, considering the overall factual position of the present case, I am of the considered opinion that it is a case of consensual relations between the applicant and respondent No.2. Therefore, the alleged offence is not made out against the present applicant in the matter. Hence, I proceed to pass the following order.

ORDER

- a] The Criminal Application is **allowed**.
- b] The proceedings bearing Sessions Case No. 26 of 2024 pending before the District Judge-1 and Additional Sessions Judge, Kelapur, District Yavatmal, arising out of Charge-sheet No. 46 of 2024 for the offence punishable under Sections 376(2) (n), 417, 506 of the

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

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

(PRAVIN S. PATIL, J.)