



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO. 53 OF 2025

Akash s/o Jaybhim Kamble,
Aged about- 33 years, Occ.- Service,
R/o Tope Nagar, Maltekdi, Amravati
& Dist.- Amravati.

APPLICANT

Versus

1. State of Maharashtra,
Thr. Police Station Officer, Police
Station Kotwali, Amaravti City, Tah- &
Dist.- Amravati.

2. XYZ
Victim in Crime No. 456/2024
Police Station Kotwali, Amaravti City
Tah- & Dist.- Amravati.

NON-APPLICANTS

Ms. Garima Jain, Advocate h/f Mr. S.V. Sirpurkar, Advocate for
the Applicant.

Ms. H.N. Prabhu, APP for the Non-applicant No.1/State.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 25th MARCH, 2026.

ORAL JUDGMENT :-

1. Heard.
2. **ADMIT.** Heard finally by the consent of learned Counsel for Applicant and learned APP for the Non-applicant No.1/State.
3. None appears for the Non-applicant No.2 though served.
4. The present Application is preferred by the Applicant under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 for quashing the First Information Report in connection with Crime No.456/2024 registered with Police Station Kotwali, District Amravati for the offence punishable under Sections 64(2)(m) and 69 of the Bharatiya Nyaya Sanhita (BNS), 2023 and consequent proceeding arising out of the same bearing Charge-sheet No. 12/2025.
5. Heard learned Counsel for the Applicant, who submitted that the crime is registered on the basis of a report lodged by the Victim/Non-applicant No.2 on an allegation that she got acquaintance with the present Applicant prior to six months of lodging of the FIR and thereafter the friendship was

developed between them and the said friendship is resulted into the love affair. It is further alleged that, on the promise of marriage, the present Applicant has subjected her for the forceful sexual assault on various occasions and the said relationship was continued till 25.11.2024. Thereafter the present Applicant has abused her, humiliated her and also denied to perform marriage with her. On the basis of the said report Police have registered the crime against the present Applicant.

6. After registration of the crime, the Investigating Officer has referred the victim for medical examination. After recording the relevant statements of witnesses the charge-sheet came to be filed against the present Applicant.

7. She submitted that, considering the recitals of the FIR it shows that out of love affair two grown up persons entered into the love relationship i.e. physical relationship was out of consent. She submitted that, mere breach of promise is not sufficient to attract the offence punishable under Section 64(2)(m) of BNS, 2023. She submitted that, the entire recitals of the FIR and the statement of the victim clarifies that out of

love affair they entered into the physical relationship and thereafter the marriage was not performed between them, and therefore, the FIR came to be lodged. She also invited my attention towards the Whats App chat, which is collected during the investigation and submitted that from the said Whats App chat also it reveals that, the relationship was in the nature of love relationship and out of love and affection they came together and attracted against each other and physical relationship was developed between them, and therefore, no offence is made out against the present Applicant.

8. *Per contra*, learned APP strongly opposed the said contentions and submitted that considering the recitals of the FIR under misconception of fact she was subjected for forceful sexual assault and thereby the offence is made out and hence the Application deserves to be rejected.

9. On hearing both the sides and on perusal of the entire investigation papers it reveals that the victim is 23 years old grown up girl and knows the consequences of her act. There was love relationship between her and the present Applicant and out of love relationship, physical relationship was

developed between them. The Whats App chat between both of them also discloses the nature of the relationship between both of them. It is now well settled that, mere breach of promise is not sufficient to infer that there was an intention to subject her for the forceful sexual assault and it was a false promise.

10. This aspect is considered by the Hon'ble Apex Court in the celebrated judgment in the case of ***Pramod Suryabhan Pawar vs. State of Maharashtra & Anr., (2019) 9 SCC 608***, wherein after considering the various judgments the Hon'ble Apex Court in para 18 held as under :

“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.”

11. As far as the present case is concerned, admittedly, the relationship is more than one year. Under Section 90 of IPC, the consent is given under the misconception of fact is no

consent in the eyes of law but the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration that the consent by the Non-applicant No.2 was a conscious and informed choice made by her after due deliberation.

12. In the instant case, the victim who herself is a grown up girl entered into the relationship after knowing and understanding the consequences of the act, could not be said to have acted under the misconception of fact while giving the consent. In view of that, no *prima facie* case is made out against the present Applicant, and therefore, the Application deserves to be allowed. Accordingly, I proceed to pass the following order.

ORDER

- i. Criminal Application is **allowed**.
- ii. The First Information Report in connection with Crime No. 456/2024 registered with Police Station Kotwali, District Amravati for the offence punishable under Sections 64(2)(m) and 69 of the Bharatiya Nyaya Sanhita (BNS), 2023 and consequent proceeding arising out of the same bearing

Charge-sheet No. 12/2025, are hereby quashed and set aside to the extent of the present Applicant.

13. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte