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

CRIMINAL APPLICATION (APL) NO.431 OF 2025

1. Atul s/o Ajabrao Bhoyar,
Aged about 35 Years,
Occupation : Service
Having Permanent Residence at P-254,
Priyanka Nagar, Kolar Road,
Huzur, Bhopal (M.P.) 462042
Presently Residing at Forest Quarters
Tahsil Morshi, District Amravati.

.... APPLICANT

// VERSUS //

1. State of Maharashtra,
Through the Police Inspector
Sonegaon Police Station,
Wardha Road, Nagpur 440025.
2. X Y Z (Complainant/Victim)
Crime No.83/2025
Police Station Sonegaon.

....NON-APPLICANTS

Mr. Anil Mardikar, Senior Advocate a/b Mr. Sachin Katarpawar
Advocate and Mr. G. D. Asole, Advocate for applicant.
Mr. A. M. Kadukar, APP for non-applicant No.1/State.
Mr. S. M. Joshi, Advocate for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 28/01/2026

ORAL JUDGMENT :

1. Herd.
2. **Admit.**
3. Heard finally with the consent of the learned Counsel
for the parties.

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4. By this application, the applicant prays for quashing and setting of the FIR dated 12.03.2025 bearing Crime No.0038/2025 registered with Police Station Sonagaon for the offence punishable under Section 69 of the Bharatiya Nyaya Sanhita, 2023 and the consequent proceeding arising out of the same bearing Regular Criminal Case No.1637/2025 pending before the learned Judicial Magistrate First Class, Court No.4, Nagpur.

5. The crime is registered on the basis of a report lodged by the non-applicant No.2 vide crime No.0038/2025 alleging that her marriage was settled with the present applicant, accordingly the meetings were held and everything regarding the performance of the marriage was settled and in January 2025, the applicant expressed his desire to meet her. On 05.01.2025, he had come to Nagpur, and thereafter they met in Ginger Hotel, wherein she was subjected for the forceful sexual assault on the promise of marriage. It is further alleged by her that thereafter they have done the purchasing everything on 02.02.2025 as to the marriage and subsequently, the applicant has declined to perform the marriage, on the pretext that she is 'Manglik'. On the basis of the said report, police have registered the crime against the present applicant.

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6. Heard learned Senior Counsel for the applicant, who submitted that the recitals of the FIR itself is sufficient to show that the relationship between the present applicant and the non-applicant No.2 was consensual in nature. She is grown up lady and knows the consequence of act. As far as the offence under Section 376 of IPC is concerned, mere breach of promise is not sufficient to attract the offence punishable under the aforesaid provision. He submitted that the understanding of consent has to be seen in view of the various judgments of the Hon'ble Apex Court, wherein the Hon'ble Apex Court has considered this aspect and observed that there is a distinction between the mere breach of promise, and not fulfilling a false promise. Thus, the court must examine whether there was a false promise or breach of promise. In view of that, the application deserves to be allowed. He submitted that where the promise to marry and there is breach of promise itself is not sufficient to constitute the offence. Where the promise to marry itself is false and the intention is there since inception then the offence could be made out, which is absent in the present case.

7. In support of his contention he placed reliance on the catena of decisions namely:

(i) Pramod Suryabhan Pawar Vs. State of Maharashtra and another reported in **(2019) 9 SCC 608,**

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(ii) Dr Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and others reported in **(2019) 18 SCC 191,**

(iii) Biswajyoti Chatterjee Vs. State of West Bengal and another in Special Leave Petition (Cri) No.4261 of 2024 decided on 07.04.2025, and

(iv) Jothiragawan Vs. State Rep. By the Inspector of Police and another, 2025 LiveLaw (SC) 347.

8. Per contra, learned APP strongly opposed the said contention and submitted that since inception, there was an intention to cheat the informant and therefore, after the act of forceful sexual assault on the promise of marriage, the applicant declined to perform the marriage with her which is sufficient to attract the provision and therefore, the application deserves to be rejected.

9. Learned counsel for the non-applicant No.2 has filed on record his notes of arguments and submitted that considering the statement of the victim which shows that on the promise of marriage, she was subjected for the forceful sexual assault and subsequently, he declined to perform the marriage which is substantiated by the statements of the witnesses also. Thus, the intention of the present applicant since inception is relevant and

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at this stage, *prima facie* material is there to face the trial. In view of that, the application deserves to be rejected.

10. After hearing both sides and on perusal of the entire investigation papers, the nature of the allegations levelled against the present applicant is that the marriage was settled between the present applicant and non-applicant No.2. The other talks regarding the performance of the marriage were also in progress. During that period on 05.01.2025, the applicant has called the victim in the hotel and wherein there was a physical relationship between them. During the investigation, the CCTV footage was also collected by the Investigating Officer which shows that the applicant and non-applicant No.2 were seen together in the said CCTV footage. As far as the statements are concerned, none of the statement discloses that there was any displeasure on the part of the non-applicant No.2 when she had been along with the present applicant. It is apparent that as the marriage was settled between both of them, therefore, she went along with him, and it is also apparent that as she has not shown any displeasure after the incident, is sufficient to infer that there was a physical relationship developed between them on 05.01.2025. Admittedly, the non-applicant No.2 is a grown up lady who knows the consequences of her act as well as the applicant is also grown up man, they entered into the physical

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relationship by understanding the consequences of their act and with the maturity.

11. As far as the law regarding the consensual physical relationship, the breach of promise and false promise is concerned, which is explained by the Hon'ble Apex Court in the catena of decisions. In a celebrated judgment of **Pramod Suryabhan Pawar Vs. State of Maharashtra and another** referred supra, wherein the Hon'ble Apex Court has occasioned to consider all these facts and also Hon'ble Apex Court considered the scope of Section 482 of the Code of Criminal Procedure. As far as the consensual act is concerned, it is observed by the Hon'ble Apex Court that there is a distinction between the mere breach of a promise, and not fulfilling a false promise and thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused. It is further in Para No.16 by referring the judgment of **Deepak Gulati Vs. State of Haryana, (2013) 7 SCC 675**, it is observed that "There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where

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the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the 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 so. Such cases must be treated differently.

12. The similar observation is made by the Hon'ble Apex Court in the case of **Dr Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and others** referred supra, wherein also after referring the catena of decisions it is held that "Section 90 of IPC defines "consent" known to be given under fear or misconception. Thus, Section 90 though does not define "consent", but describes what is not "consent". Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. If the consent is given by the complainant under misconception of fact, it is vitiated. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act, but also after having fully exercised the choice between resistance and assent. Whether there was any consent or not is to be ascertained only on a careful study of all relevant circumstances."

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13. Keeping in view the approach which is expressed by the Hon'ble Apex Court in the present case also. The prosecutrix who herself is a mature lady of 24 years. The marriage was settled between both of them. They met each other as a marriage was settled and thereafter, physical relationship was developed between them. As far as the submissions of the learned counsel for the non-applicant No.2 and learned APP are concerned, there was a false promise which is not apparent from the facts and circumstances of the case. On the contrary, due to the settlement of marriage, they met together and entered into the physical relationship. They both are adult persons after knowing the consequences of the act developed physical relationship between them and therefore, there is an inference of consensual relationship between of them and therefore, no offence is made out against the present applicant. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is **allowed**.

(ii) The FIR dated 12.03.2025 bearing Crime No.0038/2025 registered with Police Station Sonegaon for the offence punishable under Section 69 of the Bharatiya Nyaya Sanhita, 2023 and the consequent proceeding arising out of the same bearing Regular Criminal Case No.1637/2025 pending before the learned Judicial Magistrate First Class, Court No.4, Nagpur, are

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hereby quashed and set aside to the extent of the present applicant.

The application is disposed of.

(URMILA JOSHI-PHALKE, J)

Sarkate.