



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

CRIMINAL APPLICATION (APL) NO. 440 OF 2025

Sajan Satish Jain

Aged about 33 years,

Occupation : Businessman

R/o Mauli Apartment, Near Sai

Mandir Chandrapur, Chandrapur

APPLICANT

// V E R S U S //

1. **The State of Maharashtra,**
Through Police Station Officer,
Ram Nagar Police Station
Chandrapur

2. **XYZ (Victim)**
Through PSO, Ramnagar,
Police Station, Chandrapur

NON-APPLICANTS

Mr. Y. A. Kullarwar, Advocate for the applicant.

Mr. A.M. Kadukar, APP for non-applicant No.1/State.

Ms Gauri Mishra, Advocate h/f Mr. V.S. Mishra, Advocate for the non-applicant No.2.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 29.01.2026

ORAL JUDGMENT :

1. Heard.

2. **ADMIT.** Taken up for final disposal with the consent
of learned counsel for the parties.

3. The present application is preferred by the applicant for quashing of the First Information Report in connection with crime No.64/2025 registered with the non-applicant No.1-Police Station Ramnagar District Chandrapur for the offence punishable under Sections 64 (2) and 351(2) of the Bharatiya Nyay Sanhita (for short, BNS, 2023) read with Section 67 of the Information Technology Act and consequent proceeding arising out of the same bearing charge-sheet No.129/2025.

4. The brief facts necessary for the disposal of the application are as under:- the First Information Report came to be lodged in connection with above said crime on the basis of the report lodged by non-applicant No.2 on an allegation that she got acquaintance with the present applicant through social media. Thereafter friendship was developed between them. It is alleged that applicant has called her at Chandrapur and therefore, she came at Chandrapur. She stayed alongwith present applicant in hotels wherein on the promise of marriage, applicant has subjected her for the forceful sexual assault and also applicant obtained obscene photographs. On the basis of said report the police have registered crime against the present applicant.

5. Heard learned counsel for the applicant who submitted that out of friendship and love affair, the physical relationship was developed between them. The physical relationship was out of consent. He submitted that though it is alleged that obscene photographs are obtained but the mobile of the present applicant was seized during investigation by drawing the panchanama and the photographs are retrieved which shows that there were the photographs of the applicant and non-applicant No.2, but it nowhere discloses that these photographs are obscene photographs. On the contrary the photographs are showing love and affection between them. He also invited my attention towards the various statements of the witnesses including statement of the hotel manager and staff of the hotels wherein they resided as husband and wife. She never shown any displeasure as far as forceful sexual assault is concerned though she was having an opportunity. Thus, he submitted that the entire investigation papers disclose that the relationship between the present applicant and the non-applicant No.2 was consensual in nature. Therefore, no offence is made out against present applicant. In view that, the application deserves to be allowed.

6. Per contra, learned APP for the State strongly opposed the said contentions and submitted that on the false pretext of marriage the present applicant asked her to obtain the divorce from her husband and after she has obtained the divorce from her husband he denied to perform marriage with her sufficiently shows the intention of the present applicant and therefore the offence is made out against the present applicant and in view of that, application deserves to be rejected.

7. Learned counsel for the complainant also endorsed the said contention and invited my attention towards various statements of the witnesses and submitted that circumstances and the statements of the witnesses shows that her consent was obtained under the misconception of fact and thereby has committed offence. She invited my attention towards the statement of ex husband of non-applicant no.2 and submitted that statement of the husband of non-applicant No.2 also shows that he was threatened by the present applicant for giving divorce. Thus, prima-facie case is made out against the present applicant. In view of that application deserves to be rejected.

8. On perusal of the entire material which is collected during the investigation, it reveals that the non-applicant No.2 who is grown up lady of aged about 30 years came into contact with the present applicant through the social media. Thereafter the friendship was developed between them on the say of present applicant she all the way came from Delhi to Chandrapur wherein they have stayed in hotels and lodges. During investigation the statements of hotel Manager and employees were recorded. Their statement reveal that both applicant and non-applicant No.2 disclose that they are husband and wife when they have obtained the rooms on rent in the said hotels. The statement of ex-husband of non-applicant No.2 is also recorded which on the contrary shows that the relationship between applicant and non-applicant No.2 was not cordial. Thus, from the recitals of the FIR and entire investigation papers it reveals that non-applicant No.2 is grown up lady entered into relationship with present applicant who is also grown up man after understanding the consequences of her act and therefore, it is a consensual relationship. Now law is settled in various judgments specially in the celebrated judgment of the Hon'ble Apex Court in the case of ***Pramod***

Suryabhan Pawar vs The State Of Maharashtra reported in (2019) 9 SCC 608 wherein after considering the catena of decisions the Hon'ble Apex Court held that 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.

9. In the instant case the victim who herself a married woman and grown up lady could not be said to have acted under the misconception of fact by giving the consent to have sexual relationship with the applicant. Undisputedly she continued to have relationship with present applicant though she was married earlier. Thus, the statement of the prosecutrix as well as statements of lodge owner as well as lodged manager show that

non-applicant No.2 stayed along with applicant his wife. Thus, it is sufficient to infer that there was an consensual relationship between present applicant and non-applicant No.2. Even otherwise if her entire conduct during the course of such relationship with the accused is closely seen it appears that despite she was married and not obtained divorce she continued the relationship with the present applicant which is sufficient to show consent on her part. In view of that no prima-facie case is made out against the present applicant and mere breach of promise is not sufficient to attract the offence punishable under Section 375 of the Indian Penal Code. In view of that application deserves to be allowed.

12. Hence, I proceed to pass the following order:-

ORDER

- (i) The Criminal Application is allowed.
- (ii) The First Information Report in connection with crime No.64/2025 registered with the non-applicant No.1-Police Station Ramnagar District Chandrapur for the offence punishable under Sections 64 (2) and 351(2) of the Bharatiya Nyay Sanhita (for short, BNS, 2023) read with Section 67 of the Information Technology Act and

consequent proceeding arising out of the same bearing charge-sheet No.129/2025 is quashed and set aside against the present applicant- Sajan Satish Jain.

13. The criminal application stands disposed of in the above said terms.

Pending applications, if any, also stand disposed of.

(URMILA JOSHI PHALKE, J.)

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