



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

CRIMINAL APPLICATION (APL) NO. 760 OF 2025

Farzan S/o Gaffur Shah,
Aged about 28 years, Occ: Private,
R/o Old Amner Tehsil Warud,
District Amravati.

APPLICANT

Versus

1. The State of Maharashtra,
Thr. Police Station Tehsil, Nagpur.

2. Victim XYZ in
Crime No. 269/2024
Thr. P.S.O Tehsil, Nagpur.

NON-APPLICANTS

Mr. Sk. Sabahat Ullah, Advocate for the Applicants.
Mr. A.M. Kadukar, APP for the Non-applicant No.1/State.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 10th FEBRUARY, 2026.

ORAL JUDGMENT :-

1. Heard.

2. **ADMIT.** Heard finally by the consent of learned
Counsel for the Applicant and learned APP for the
Non-applicant No.1/State.

3. The present Application is preferred by the Applicant under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 for quashing of the First Information Report in connection with Crime No.269/2024 registered with Police Station Tehsil, Nagpur for the offence punishable under Sections 376(2)(n) and 506 of the Indian Penal Code and consequent proceeding arising out of the same bearing Sessions Trial No. 439/2024.

4. The crime is registered on the basis of the report lodged by the Victim/Non-applicant No.2 on an allegation that she got acquaintance with the present Applicant through Instagram i.e. the social media account and they were communicating with each other since 2021. In December 2022, the present Applicant had been to Kamptee Chaudhary Hospital and he called her to meet her. Accordingly, she went to meet him and thereafter he took her in one Hotel and subjected her for the forceful sexual assault. Thereafter on various occasions he has subjected her for the forceful sexual assault and the said relationship was continued till 31.01.2024. She further alleged that, the present Applicant has also promised her for marriage

but subsequently he was not accepting her phone call and was avoiding to answer whenever she raised the question of marriage. On the basis of the said report Police have registered the crime against the present Applicant.

5. Heard learned Counsel for the Applicant who submitted that, from the recitals of the FIR itself it reveals that the relationship between the Applicant and the Non-applicant No.2 was more than 4 years. It was a consensual relationship. Victim is a grown up lady and knows the consequences of her act. It is apparent that, two adult persons entered into the relationship after understanding the consequences of the said act. Thus, the act of the Non-applicant No.2 to keep the relationship with the present Applicant which is of consensual in nature, and therefore, no offence is made out against the present Applicant. In view of that, the Application deserves to be allowed.

6. *Per contra*, learned APP strongly opposed the said contentions and submitted that on the promise of marriage her consent was obtained, and therefore, it is a misconception of fact, and therefore, the offence is made out against the present

Applicant. He submitted that, the recitals of the FIR and the statement discloses the offence against the present Applicant. In view of that, the Application deserves to be rejected.

7. Despite the notice received by the Non-applicant No.2, none appears for the Non-applicant No.2 and she chooses not to contest the Application.

8. On hearing both the sides and on perusal of the entire investigation papers especially the statement of the Victim which discloses that, she got acquaintance with the present Applicant through Instagram. Thereafter they started communicating since 2021. Thereafter from 2021 to 2024 they met with each other on various occasions and there was physical relationship developed between them. It is alleged by her that on the promise of marriage her consent was obtained but it reveals that when the earlier incident had occurred she nowhere stated that he has promised her for marriage at the relevant time, and therefore, she consented for the same. On the contrary, it shows that the Applicant took her in the Hotel and she went in the Hotel and they stayed in the Hotel and there was physical relationship developed between them. Thus, in the

instant case, the Victim herself is a grown up lady and could not be said to have acted under the alleged false promise given by the Applicant but it is apparent that she is 20 years of age, knows the consequences of her act and two grown up persons entered into the relationship by understanding the consequences of the said act.

9. As far as the contention of the learned APP that the consent was obtained under the misconception of fact, 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.”

10. In the present case, admittedly the Victim went alongwith the present Applicant in various Hotels, she nowhere shows her displeasure and physical relationship was developed between them. 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 period of four years. It hardly needs any elaboration that the consent by the Non-applicant No.2 was a cautious and informed choice made by her after due deliberation. It being spread over long period of time i.e. of a four years. In view of that, 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. 269/2024 registered with Police Station Tehsil, Nagpur for the offence punishable under Sections 376(2)(n) and 506 of the Indian Penal Code and consequent proceeding arising out of the same bearing Sessions Trial No. 439/2024, are

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

- 11.** Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte