



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

CRIMINAL APPLICATION (APL) NO. 761 OF 2025

Firoz Khan Nyamat Khan,
Aged about 24 Yrs., Occ: Private,
R/o Near Shakil Kirana, Haidar
Pura, Hanuman Nagar, Amravati,
Tq. & Dist. Amravati.

APPLICANT

Versus

1. The State of Maharashtra,
Through Police Station Officer, Police
Station Shanti Nagar, Nagpur,
District Nagpur.
2. (XYZ) Victim in Crime No.
135/2024, Registered with Police
Station, Shanti Nagar, Nagpur
District Nagpur.

NON-APPLICANTS

Mr. Syed Salman Ali, Advocate a/w Mr. F.R. Kashif, Advocate for
the Applicant.

Mr. Neeraj Jawade, APP for the Non-applicant No.1/State.

Mr. Shantanu B. Taywade, Advocate (Appointed) for the
Non-applicant No.2.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 12th FEBRUARY, 2026.

ORAL JUDGMENT :-

1. Heard.

2. **ADMIT.** Heard finally by the consent of learned Counsel for the respective parties.

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.135/2024 registered with Police Station Shanti Nagar, Nagpur for the offence punishable under Sections 376(1), 376(2)(N) of the Indian Penal Code (for short "IPC") and the consequent proceeding arising out of the same bearing Sessions Case No. 362/2024.

4. The crime is registered on the basis of a report lodged by the Victim on an allegation that she got acquaintance with the present Applicant in the year 2018 in the marriage of her relative and later on they exchanged their phone calls and they were also exchanging the text messages. The Applicant has proposed her for marriage, and therefore, the engagement ceremony was also performed between them by consent of both the family members. It is alleged that on,17.04.2024 when she was alone in the house the Applicant came to Nagpur and subjected her for forceful sexual assault on the promise of

marriage. On the basis of the said report Police have registered the crime against the present Applicant. After investigation the Investigating Officer has referred the Victim for medical examination, relevant statements were recorded and after completion of the investigation the charge-sheet was submitted against the present Applicant.

5. Heard learned Counsel for the Applicant who submitted that, from the recitals of the FIR it reveals that it was the consensual relationship between the two adults. As far as the allegations are concerned, which are not substantiated by any material. Admittedly, the engagement ceremony was performed between them. There was physical relationship between them out of consent. Therefore, forcing the present Applicant to face the trial would be an abuse of process of law. In view of that, the Application deserves to be allowed.

6. *Per contra*, learned APP and learned Counsel for the Non-applicant No.2 strongly opposed the said contention and submitted that considering the allegations levelled against the present Applicant that he in the absence of other family members entered into the house and on the promise of marriage

subjected her for forceful sexual assault, which sufficient to attract the offence. In view of that, the Application deserves to be rejected.

7. On hearing both the sides and on perusal of the entire recitals of the FIR it reveals that the acquaintance between the present Applicant and the Non-applicant No.2 was in year 2018 and thereafter till year 2023 they were communicating with each other. The engagement ceremony was performed between them and thereafter as per the allegation on 17.04.2024, when she had been alone at her house at that time the alleged incident has taken place. There is no dispute regarding the fact that the engagement ceremony was already performed between them with the consent of the family members. The Victim who is aged about 23 years old and a grown up lady knows the consequences of her act. It is apparent that, she entered into the relationship out of consent as the marriage was already settled between them. Thus, in the instant case the Victim who herself is a grown up lady could be said to have acted under the alleged false promise given by the present

Applicant, but it is apparent that, she has consented for the physical relationship to the present Applicant.

8. As far as the allegation regarding the consent is obtained under the misconception of fact is concerned, admittedly 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.

9. This aspect whether the consent was obtained under the misconception of fact or not 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. The allegations in the FIR indicate that there was a consensual relationship between the Applicant and the Non-applicant No.2. The allegations in the FIR do not on their face value indicate that the promise by the present Applicant was false.

11. For these above reasons, 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. 135/2024 registered with Police Station Shanti Nagar, Nagpur for the offence punishable under Sections 376(1), 376(2)(n) of the Indian Penal Code and consequent proceeding arising out of the same bearing Sessions Case No. 362/2024, are hereby quashed and set aside to the extent of present Applicant.

iii. Fees of the appointed Counsel be quantified as per rules.

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

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte