



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

CRIMINAL APPLICATION (APL) NO. 979 OF 2025

1. **Anup Ganesh Wankhade**

Aged about 34 years,
Occupation : Service,
R/o C/o Ganesh Wankhade,
Prabhu Colony,
Mahadev Khor Road,
Amravati Tq. and Dist. Amravati

APPLICANT

// V E R S U S //

1. **The State of Maharashtra,**

Through Police Station Officer,
Police Station Rajapeth, Amravati,
Tq. and Dist. Amravati

NON-APPLICANTS

2. **XYZ, Crime No.0176/2025,**

PSO, Raja peth, Amravati,
Tq. and Dist. Amravati.

Mr. S.M. Vaishnav, Advocate for the applicant.
Mr. N.B. Jawade, APP for non-applicant No.1 /State.
Mr. Abuzain Tarique Sheikh, Advocate (appointed)for non-
applicant No.2.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 11.03.2026

ORAL JUDGMENT :

1. Heard.

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

3. By this application applicant is seeking to exercise inherent powers under Section 528 of Bharatiya Nagrik Suraksha Sanhita, 2023 and praying for quashing of the First Information Report in connection with crime No.176/2025 registered at Police Station Rajapeth District Amravati for the offences punishable under Sections 64(1), 64(2)(m), 67 and 69 of the Bharatiya Nyaya Sanhita, 2023 and consequent proceeding arising out of the same bearing Charge-sheet No.384/2025 and Special Case No.150/2025 pending before 4th Additional Sessions Judge, Amravati.

4. The crime is registered on the report lodged by non-applicant No.2 on an allegation that non-applicant No.2 in the year 2017 was studying in MA at Amravati. The applicant and non-applicant No.2 both were in love affair each other and performed registered marriage on dated 18.02.2022. Thereafter the applicant took non-applicant No.2 to reside at Pune and admitted her in the girls hostel and the applicant resided in boys hostel by informing to the non-applicant No.2 that, they will stay

together when the parents of the applicant will accept their marriage. Thereafter, the applicant told the non-applicant No.2 that, the parents of the applicant are not accepting the marriage and their condition is to dissolve the said marriage and then only they will agree to perform their marriage as per the rites and customs. Therefore the applicant and non-applicant No.2 approached to the Family Court to dissolve their marriage by taking divorce on 18.12.2024. Thereafter, the applicant sent bus ticket of Purple Travels to the non-applicant No.2 to travel to Pune. While going to Pune, it is alleged that non-applicant No.2 was not knowing that the applicant is travelling with her. He sat besides her and started touching her inappropriately and on the promise of marriage he has subjected her for the forceful sexual assault in the running bus forcibly three times. On the basis of the said report, police have registered the crime against the present applicant. After registration of the crime investigation started rotating. During investigation the victim was referred for medical examination. Her sample was obtained. The relevant statements of the witnesses are recorded and after completion of the investigation charge-sheet was submitted against the present applicant.

5. Heard learned counsel for the applicant who submitted that story narrated by the non-applicant No.2 itself appears to be improbable and unacceptable. He invited my attention towards the statement of the driver and conductor of the said bus and submitted that none of the witnesses stated that they have received any complaint as to the forceful sexual assault by the present applicant on the non-applicant No.2. He submitted that statement of the driver and conductor shows that they have not received any complaint on that day regarding alleged incident. He further submitted that the decree of divorce is passed on 18.12.2024 and on the next day itself the alleged incident according to non-applicant No.2 has taken place. He submitted that there were others passengers also. There were no hue and cry by the non-applicant No.2. There was no resistance, sufficiently shows that on the basis of false and baseless allegations applicant is implicated in the alleged offence. He submitted that even accepting that there was love affair and therefore, possibility of having consensual relationship also cannot be ruled out. In view of that, no offence is made out. Hence, 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 under the misconception of fact that they would again perform the marriage she was subjected for the forceful sexual assault by the present applicant and therefore, the offence is made out against the present applicant as there was misconception of fact. Learned APP further submitted that the bus was sleeping coach and therefore, the possibility of committing such offence cannot be ruled out. In view of that, application deserves to be rejected.

7. After hearing both the sides and on perusal of the entire investigation papers it reveals that there was love affair between applicant and non-applicant No.2. They performed the marriage against the wish of their parents. Thereafter they approached to the Family Court, Amaravati for obtaining the decree of dissolution of marriage on the ground that after taking divorce their parents will perform their marriage as per the rights and religion and thereafter the alleged incident has taken place. On perusal of the recitals of the petition which was filed for seeking the dissolution of marriage shows that there was dispute

between the husband and wife and therefore, they approached to the Family Court for obtaining the divorce and accordingly, the decree of divorce was passed in their favour. Admittedly the decree of divorce was passed on 18.12.2024 and alleged incident as per the informant has taken place on 19.12.2024. Thereafter the FIR came to be lodged after four months i.e. on 30.04.2025. Admittedly the recitals of the FIR nowhere shows the explanation as to the delay in lodging the FIR. Her subsequent statement also nowhere discloses why there was inordinate delay in lodging the FIR. During the investigation the statements of the driver and conductor of the said travelling bus were also recorded. They also stated that they have not received any complaint from any ladies as to the forceful sexual assault by any male person and such type of the incident during that period. Admittedly, none of the statement shows that the non-applicant No.2 has made any hue and cry about the said incident. It is apparent that there was love affair between the present applicant and non-applicant No.2. However, they have obtained the divorce. Subsequently also there may be possibility of physical relationship between them and thereafter the present FIR came to be lodged. As far as the misconception of fact is concerned, it reveals that as per the

allegations of the non-applicant No.2 she was promised for marriage and thereafter this incident has occurred under the garb of that he would perform the marriage with her.

8. The consent for the purpose of Section 375 of the IPC requires some voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act, but after having fully exercised the choice between resistance and assent whether there was consent or not. It is to be ascertain only on a careful study of all relevant circumstances.

9. The victim in the present case is a grown up lady aged about 30 years knows the consequences of her act. The story narrated by her that she was subjected for the forceful sexual assault in the running bus and there was no hue and cry on her part and nobody has noticed the said incident itself appears to be improbable and unacceptable.

10. The consent has also be set out in the explanation of Section 375 of the IPC which says that for the purpose of consent

which requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act, but after having fully exercised the choice between resistance and assent.

11. The misconception of fact alleged by the complainant is that there was promise of marriage the sum and substance of the aforesaid contention is to be looked into in the light of the decision of the Hon'ble Apex Court and specially in the light of the decision of the celebrated judgment of ***Pramod Suryabhan Pawar vs The State Of Maharashtra and another*** reported in ***(2019) 9 SCC 608*** wherein after considering the catena of decisions it is held 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 by considering the various decisions by summarising the legal position it is 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.

12. The allegation in the FIR indicates that the alleged incident has taken place on 19.12.2024. No hue and cry by the non-applicant No.2 though she was travelling and various passengers were already present in the bus and this aspect is to be considered in the light of the fact that there was a love affair between applicant and non-applicant No.2. Therefore, the possibility of consensual relationship cannot be ruled out. As far as the misconception of fact alleged by the non-applicant No.2 is concerned which is not sustainable in the light of the peculiar facts and circumstances of this case. In view of that application deserves to be allowed.

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

ORDER

(i) The Criminal Application is allowed.

(ii) First Information Report in connection with crime No.176/2025 registered at Police Station Rajapeth District Amravati for the offences punishable under Sections 64(1), 64(2)(m), 67 and 69 of the Bharatiya Nyaya Sanhita, 2023 and consequent proceeding arising out of the same bearing Charge-sheet No.384/2025 and Special Case No.150/2025 pending before 4th Additional Sessions Judge, Amravati is quashed and set aside against the applicant-Anup Ganesh Wankhade.

(iii) The fees of the appointed counsel be quantified as per rules.

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

Pending applications, if any, also stand disposed of.

(URMILA JOSHI PHALKE, J.)