



Judgment

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

CRIMINAL APPLICATION APL NO.1177 of 2025

Swapnil Lalit Upadhyay, aged– 39 years,
plot No.A/1, near Ram Mandir,
Ayodhya Nagar, Nagpur. **Applicant.**

:: VERSUS ::

1. State of Maharashtra,
through the Police Station Officer,
Ajni, district Nagpur.

2. Ku.Sarika Udaramji Bawne,
r/o plot No.215, Radhe Green
Apartment, MIDC, Hingna Road,
Nagpur. **Non-applicants.**

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Ms Alpana Ingolikar, Counsel for the Applicant.
Shri N.B.Jawade, APP for NA No.1/State.
Shri Aditya Pande, Counsel Appointed for NA
No.1/Complainant.

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CORAM : **URMILA JOSHI-PHALKE, J.**
DATE : **10/04/2026**

ORAL JUDGMENT

1. Heard. **Admit.** Heard finally by consent.

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2. By this application, the applicant is seeking quashing of FIR in connection with Crime No.82/2024 registered with non-applicant No.1 police station for offences under Sections 294, 323, 326, 354B, 354D, and 506(2) read with 34 of the IPC and consequent proceeding arising out of the same bearing chargesheet No.53/2025 having RCC No.1173/2025 pending before learned Chief Judicial Magistrate, Nagpur.

3. The crime is registered on the basis of a report lodged by non-applicant No.2 (the complainant) on allegations that on 9.2.2024, at about 9:50 pm, when she was returning to her home by two-wheeler "Activa" between Manewada-Omkar Nagar Road, someone dashed her vehicle from backside, due to which she fell down. Thereafter, she got up and took her vehicle to the side of a Petrol Pump.

She further alleged that co-accused Sapna Motharkar along with her brother co-accused Ashish came there. Co-accused Sapna gave fists and kick blows to her. Whereas, she

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has also instigated other co-accused to disrobe her and thereby co-accused Ashish has physically touched her breast and outraged her modesty.

She further alleged that the present applicant was along with co-accused Ashish who followed her and thereby they committed offence of “stalking” also.

She further alleged that other co-accused also took out a knife and threatened her to kill.

On the basis of the said report, the police have registered the crime against the present applicant.

4. After registration of the crime, investigation started rotating. During the investigation, the Investigating Officer has recorded relevant statements of witnesses and after completion of the investigation, submitted chargesheet against the present applicant.

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5. Learned counsel for the applicant submitted that name of the present applicant is not mentioned in the FIR. Except statement of co-accused, there is nothing on record to show that the present applicant was present along with the co-accused.

She submitted that no overt act is attributed against the present applicant.

She submitted that subsequent statement of the complainant only mentions about role of co-accused Ashish.

As far as the present applicant is concerned, even, prima facie, his presence is not established by the prosecution and, therefore, in absence of the material evidence to connect him with the alleged offence and in view of parameters laid down by the Hon'ble Apex Court, the application deserves to be allowed.

6. Per contra, learned APP for the State and learned counsel for the complainant have strongly opposed the said

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contentions and submitted that considering statement of the complainant, who specifically stated that two persons were on the vehicle and the name of the present applicant revealed during the investigation, the present application deserves to be rejected.

7. After hearing both sides and perusing of the entire investigation papers, admittedly, involvement is stated by unknown persons in the FIR.

8. As far as the name of the present applicant is concerned, the complainant nowhere stated that the present applicant was present along with the co-accused.

9. As far as co-accused Ashish is concerned, to whom the complainant has attributed the entire role of outraging of modesty as well as stalking and assault.

10. The allegation of assault is also made against other co-accused Sapna.

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11. Thus, as far as the present applicant is concerned, except statement of co-accused, that the present applicant was present along with him, there is no other material collected during the investigation. Also, no Test Identification Parade is held by the investigating agency to ascertain involvement of the present applicant.

12. Thus, in absence of the evidence, no prima facie case is made out against the present applicant.

13. By applying parameter, laid down by the Hon'ble Apex Court in the case of **State of Haryana and ors vs. Bhajan Lal and ors, reported in 1992 Supplementary (1) SCC 335**, the present application can be allowed.

The said parameters are as follows:

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

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(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal

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proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

14. In this view of the matter, as the application deserves to be allowed, this court proceeds to pass following order:

ORDER

(1) The criminal application is **allowed**.

(2) FIR in connection with Crime No.82/2024 registered with non-applicant No.1 police station for offences under Sections 294, 323, 326, 354B, 354D, and 506(2) read with 34 of the IPC and consequent proceeding arising out of the same bearing chargesheet No.53/2025 having RCC No.1173/2025

pending before learned Chief Judicial Magistrate, Nagpur are hereby quashed and set aside to the extent of the present applicant.

(3) Fees of learned counsel appointed for the complainant be quantified and the same be paid as per rules.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!