



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

CRIMINAL APPLICATION (APL) NO. 1212 OF 2025

Shubham s/o Gajanan Tale,
Aged about 29 Yrs., Occ: Private Job,
R/o Sangvi, Mohali, Akola,
Tah. & Dist. Akola.

APPLICANT

Versus

1. State of Maharashtra,
Through its Police Station Officer,
Police Station Civil Lines, Akola,
Tah. & Dist. Akola.

2. XYZ (Victim)
Through its Police Station Officer,
Police Station Civil Lines, Akola,
Tah. & Dist. Akola.

NON-APPLICANTS

Mr. N.R. Tekade, Advocate for the Applicant.
Ms. M.A. Barabde, APP for the Non-applicant No.1/State.
Mr. K.D. Bhende, Advocate 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.264/2025 registered with Police Station Civil Lines, Akola for the offence punishable under Sections 64 and 64(2)(m) of the Bharatiya Nyaya Sanhita (BNS) 2023 and the consequent proceeding arising out of the same bearing R.C.C. No. 1574/2025.

4. The crime is registered on the basis of a report lodged by the Victim/Non-applicant No.2 on an allegation that she married with Pradeep Sakhare in 2014 and her husband subjected her to cruelty and due to his ill-treatment she was residing separately. She is having two children from the said wedlock. It is further alleged that, after separation she met with the present Applicant through Instagram and thereafter the Applicant encouraged and falsely promised her for performing of marriage and because of the said influence of performing marriage she filed divorce petition against her husband, which

is pending before the competent Court. It is further alleged that, on 31.03.2024, the Applicant contacted her and asked her to meet at Akola Railway Station, where he booked a room in hotel and alleged that they engaged in consensual sexual relations. It is further alleged that, the Applicant promised her for marriage and on the promise of marriage also the Applicant subjected her for the forceful sexual assault. It is further alleged by her that on 08.01.2024, they went to Temple and the Applicant gifted her mangal sutra and also applied red kumkum on her forehead and it was represented to her that he married her and on that count also he has subjected her for forceful sexual assault. 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 is clear that there was a consensual relationship between the Applicant and the Victim. He invited my attention towards the second para of the FIR, wherein she has specifically stated that on the birthday of the present Applicant she has consented to have a physical relationship with him. He submitted that, this aspect itself is

sufficient to show that the relationship between the Applicant and the Non-applicant No.2 was consensual in nature. He further submitted that, she is 33 years old grown up lady having two children. There was a rift between the relationship between her and her husband, and therefore, she was residing separately. Thereafter she got acquaintance with the present Applicant and the relationship i.e. physical relationship was by her consent, and therefore, no offence is made out. He further submitted that, mere breach of promise is not sufficient to attract the offence punishable under the above provisions. In view of that, he prays for quashing of the FIR and the consequent proceeding.

6. *Per contra*, learned APP and learned Counsel for the Non-applicant No.2 strongly opposed the said contention and submitted that by taking disadvantage of the fact that she is not residing alongwith her husband and on the false promise and by representing her that he married with her, he has subjected her for the forceful sexual assault, and therefore, the Application deserves to be rejected.

7. On hearing both the sides and on perusal of the entire investigation papers especially the recitals of the FIR it reveals that, the acquaintance between the present Applicant and the Non-applicant No.2 was when she was residing alongwith her parents. The first incident she has narrated is dated 31.03.2024 which according to her she has consented for the physical relationship and the second incident she has narrated i.e. on 08.11.2024. Thus, it is apparent that, since 2024 there was physical relationship between them. The recitals of the FIR specifically shows that, the incident dated 31.03.2024 wherein she has consented for physical relationship, and therefore, there was physical relationship between them. Admittedly, the Non-applicant No.2 is a grown up lady and knows the consequences of her act and having two children despite of the same she entered into the said relationship. It is also apparent from the record that, the Victim who is a married woman having two children could not be said to have acted under the false promise of marriage given by the present Applicant or under the misconception of fact as while giving the consent to have a physical relationship with the present Applicant.

8. As far as the consent under the misconception of fact is concerned, which is not applicable in the present case as 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. Thus, 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. Considering the entire allegations levelled in the FIR and the statement recorded by the Investigating Officer, it is apparent that it was the consensual relationship between the Applicant and the Non-applicant No.2.

10. 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.”

11. By applying the principles laid down by the Hon’ble Apex Court in the case of ***State of Harayana & Ors. Vs. Ch. Bhajan Lal & Ors., 1992 AIR 604***, while considering the Application under Section 482 of Cr.P.C., which reads as under:

“(1) 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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(3) 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.

(4) 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.

(5) 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.

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

(7) 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.”

12. The present case is covered under the parameters laid down by the Hon’ble Apex Court, and therefore, the powers under Section 528 of BNSS/482 of Cr.PC to be exercised in favour of the present Applicant. 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. 264/2025 registered with Police Station Civil Lines, Akola for the offence punishable under

Sections 64 and 64(2)(m) of the Bharatiya Nyaya Sanhita (BNS) 2023 and the consequent proceeding arising out of the same bearing R.C.C. No. 1574/2025, are hereby quashed and set aside to the extent of present Applicant.

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

(URMILA JOSHI PHALKE, J.)

S.D.Bhimte