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

CRIMINAL APPLICATION (APL) NO.1218 OF 2025

1. Vaibhav Natthuji Gajbhe,
Aged about 28 Years,
Occupation : Student,
R/o Chargaon (Bk),
Tahsil Warora,
District Chandrapur.

.... APPLICANT

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Police Station, Ranapratap Nagar,
Nagpur.
2. XYZ (Crime No.79/2025),
registered with the
Ranapratap Nagar Police Station,
Nagpur City,
Taluka and District Nagpur.

....NON-APPLICANTS

Mr. A. G. Ramteke, Advocate for applicant.
Ms. M. A. Barabde, APP for non-applicant No.1/State.
Mr. S. L. Raut, Advocate for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 10/02/2026

ORAL JUDGMENT :

1. Heard.
2. **Admit.**
3. Heard finally with the consent of the learned Counsel
for the applicant, learned APP for the State and learned counsel
for the non-applicant No.2.

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4. Present application is preferred by the applicant for quashing of the FIR under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 in connection with Crime No.79/2025 registered with Police Station Ranaprata Nagar, District Nagpur for the offence punishable under Section 69 of the Bharatiya Nyaya Sanhita, 2023 (for short 'BNS').

5. The allegation levelled in the FIR is that she got acquaintance with the present applicant in December 2023 and thereafter, they were communicating with each other through the social media Instagram. Thereafter, the present applicant has called her in the room of his friend and on the promise of marriage, subjected her for the forceful sexual assault. She further alleged that thereafter, on various occasions on the promise of marriage, she was subjected for the forceful sexual assault and subsequently on 31.12.2025, he denied to perform the marriage with her, and therefore, she approached the Police Station and lodged the report. On the basis of the said report, police have registered the crime against the present applicant.

6. After registration of the crime, the Investigating Officer has referred the victim for medical examination, recorded the relevant statements of the witnesses and after completion of formality, filed a charge sheet against the present applicant.

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7. Heard learned counsel for the applicant, who submitted that from the recitals of the FIR itself it shows that it was a breach of promise, mere beach of promise is not sufficient to attract the offence. On the contrary, from the recitals of the FIR it reveals that it was a consensual act on the part of the non-applicant No.2, and therefore, the offence is not made out against the present applicant. Merely because the marriage was not performed, he is implicated in the present crime on the basis of the baseless allegations. In view of that, the application deserves to be allowed.

8. Learned APP and learned counsel for the non-applicant No.2 strongly opposed the said contention and submitted that on the promise of marriage i.e. under the misconception of fact she was subjected for the forceful sexual assault and therefore, the *prima facie* case is made out against the present applicant. In view of that, the application deserves to be rejected.

9. On hearing both sides and on perusal of the entire investigation papers as well as the recitals of the FIR and the statement of the victim, it reveals that there was acquaintance between the victim and the present applicant, out of that acquaintance, they were communicating with each and there was a promise to marriage by the present applicant and thereafter physical relationship was developed between them. Thus, it is

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apparent that the non-applicant No.2, who is a grownup lady and the applicant who is also grownup adult, both have entered into the relationship voluntary knowing the consequences of their own act. This aspect is already now well settled by the various decisions of the Hon'ble Apex Court in the case of **Pramod Suryabhan Pawar vs State of Maharashtra and another reported in (2019) 9 SCC 608**, wherein after referring the catena of decision the Hon'ble Apex Court has observed 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."

10. The allegations in the FIR indicate that out of the acquaintance, they started communicating with each other and thereafter out of attraction the two grownup persons entered into the physical relationship, therefore the allegation in the FIR do not on their face indicate that the promise of the applicant was false one. It is submitted by the learned counsel for the

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non-applicant No.2 that the consent was obtained under the misconception of fact. Under Section 90 of IPC, a consent given under a 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 two years or more. 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, it being spread over a long period of more than two years. Therefore, the contention of the learned counsel for the non-applicant No.2 that the consent was obtained under the misconception of fact is not sustainable.

11. In the instant case, the victim, who herself was a grownup lady and entered into the physical relationship after understanding the consequences of the act and both victim and present applicant, who are the two adult persons entered into the relationship and relationship is of a consensual in nature. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is **allowed**.

(ii) The FIR in connection with Crime No.79/2025 registered with Police Station Ranapratap Nagar, District Nagpur for the offence punishable under Section 69 of the Bharatiya Nyaya Sanhita, 2023 and consequent proceeding arising out of the same bearing RCC No.1545/2025 pending before the learned Judicial

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Magistrate, First Class, Nagpur, is quashed and set side against the present applicant.

The application is disposed of.

(URMILA JOSHI-PHALKE, J)

Sarkate.