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

CRIMINAL APPLICATION (APL) NO.1250 OF 2025

1. Nutan s/o Sitaram Bansod,
Aged about 67 Years,
Occupation : Agriculturist,
R/o. Post Futana,
Taluka Deori, District Gondia. **APPLICANT**

// VERSUS //

1. State of Maharashtra,
Through its Police Station Officer,
Police Station, Deori,
Taluka Deori, District Gondia.
2. Lalita Shahadaji Deshmukh,
Aged about 56 Years,
Occupation : Service,
R/o. Ward No.16, Gondwana Nagar,
Dewari, Tahsil Dewari,
District Gondia.**NON-APPLICANTS**

Mr. A. A. Pannase, Advocate for applicant.
Mr. Nikhil Joshi, APP for non-applicant No.1/State.
Ms. Anuprita S. Mishrikotkar, Advocate (appointed) 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 and learned APP for the State and learned
appointed counsel for the non-applicant No.2.

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4. Present application is preferred by the applicant for quashing of the FIR in connection with Crime No.64/2025 registered with Police Station Deori, District Gondia for the offence punishable under Section 69 of the Bharatiya Nyaya Sanhita, 2023 and the consequent proceeding arising out of the same bearing Sessions Case No.59/2025 pending before the Principal District Judge and Sessions Judge, Gondia.

5. The applicant is arraigned as an accused on the basis of a report lodged by the non-applicant No.2, who is 56 years old, on an allegation that she was working as a clerk in Tahsil Office from 2009. The present applicant is her the brother-in-law and he had married with cousin sister of the present non-applicant No.2. It is submitted that subsequently the present applicant has proposed her for marriage and also disclosed that he desires to marry her. On her resistance also, he has lured her and subjected her for the forceful sexual assault. On the basis of the said report, police have registered the crime against the present applicant.

6. Heard learned counsel for the applicant, who submitted that the relationship between the present applicant and non-applicant No.2 was consensual in nature which is depicted from the recitals of the FIR also. As there was some rifts between the said relationship, and therefore, this FIR came

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to be lodged against present applicant. He submitted that considering the allegations levelled against the present applicant, it is apparent that the physical relationship was developed on the promise of marriage. He further submitted that non-applicant No.2/victim is 56 years old and the physical relationship was developed between them out of love affair and therefore, no offence can be made out against the present applicant.

7. Per contra, learned APP and learned appointed counsel for the non-applicant No.2 submitted that on the pretext of marriage, she was subjected for the forceful sexual assault and therefore, the *prima facie* case is made out against the present applicant, and therefore, the application deserves to be rejected.

8. On hearing both sides and on perusal of the investigation papers, it reveals that the present applicant is already married person. They got acquaintance as to the relationship between them as the wife of the present applicant is the cousin sister of the non-applicant No.2. It is alleged that the present applicant has lured her on the promise of marriage and thereby subjected her for the forceful sexual assault. It further depicts from the recitals of the FIR that there was a promise of marriage and therefore, the physical relationship was developed between them. There is no dispute that the non-applicant No.2, who is 56 years old woman and maintained the relationship with

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the present applicant since 2009 to 2024. Thus, the prosecutrix, who herself is grownup lady and could not be said to have acted under the false promise, though she is aware that the present applicant is the husband of her cousin sister. As far as the aspect of misconception is concerned, which cannot be taken into consideration as 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 approximately more than 15 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, it being spread over a long period of time coupled with a conscious positive action not to protest. Whether it was free consent or not is to be considered. Admittedly, the informant/non-applicant No.2 in her FIR nowhere stated that there was a false promise of marriage. As far as the misconception of fact is concerned, as already observed that for years together it cannot be said that there was a misconception of fact. The Hon'ble Apex Court in the celebrated judgment of **Pramod Suryabhan Pawar vs State of Maharashtra and another** reported in **(2019) 9 SCC 608**, wherein after considering the catena of decisions observed "To summarise the legal position that emerges from the above cases, the "consent" of a woman with respect to Section 375 must

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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."

9. The allegation in the FIR do not on their face indicate that the promise given by the present applicant was false and the non-applicant No.2 engaged in sexual relationship on the basis of the said promise. Thus, it is apparent that the relationship between the non-applicant No.2 and the present applicant which was 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.64/2025 registered with Police Station Deori, District Gondia for the offence punishable under Section 69 of the Bharatiya Nyaya Sanhita, 2023 and the consequent proceeding arising out of the same bearing Sessions Case No.59/2025 pending before the Principal District Judge and Sessions Judge, Gondia, are hereby quashed and set aside to the extent of the present applicant.

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

The application is disposed of.

(URMILA JOSHI-PHALKE, J)

Sarkate.