



Judgment

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

CRIMINAL APPLICATION APL NO.1276 OF 2025

Sonu Shankar Urkude,
aged about 25 years, occupation: service,
r/o Sundar Nagar, Taroda, taluka Wani,
district Yavatmal. **Applicant.**

:: VERSUS ::

1. The State of Maharashtra,
through Police Station Officer,
Police Station Sirpuar, district
Yavatmal.

2. Komal Balu Nakhale,
aged about 27 years, occupation: education,
r/o Krishna Nagar, Mul Road, Chandrapur,
district Chandrapur. **Non-applicants.**

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Shri V.R.Hamand Counsel for the Applicant.
Shri N.B.Jawade, APP for Non-applicant No.1/State.
Shri A.M.Chandekar, Counsel for Non-applicant No.2.

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CORAM : URMILA JOSHI-PHALKE, J.

DATE : 14/01/2026

ORAL JUDGMENT

1. Heard learned counsel Shri V.R.Hamand for the
applicant, learned Additional Public Prosecutor Shri

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N.B.Jawade for the State, and learned counsel Shri A.M.Chandekar for non-applicant No.2 (the victim). **Admit.** Heard finally by consent of learned counsel for the parties.

2. The present application is preferred by the applicant for quashing of FIR in connection with Crime No.170/2025 registered for offences under Sections 64(2)(m), 69, and 88 of the BNS and consequent proceeding arising out of the same bearing Sessions Case No.24/2025.

3. The applicant is arrayed as accused on the basis of a report lodged by the victim on an allegation that she got acquaintance with the applicant in the year 2021. On 22.7.2024, she received a phone call of the applicant who expressed that he wants to take her along with him and wants to marry with her. On the promise of the marriage, she was subjected for forceful sexual assault, which resulted into her pregnancy. The applicant has given her some pills and forced her to take the said pills, which resulted into termination of

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

4. Learned counsel for the applicant submitted that considering statement of the victim, it would reveal that it was consensual physical relationship between the victim and the applicant. She willingly submitted as there was intimate relationship between them, which was wholly consensual out of romantic relationship, which subsequently turned sour. The concept of “consent” has been elaborated in catena of decisions. As far as termination of pregnancy is concerned, certificate on record sufficiently shows that with the consent of the applicant and the victim, the said pregnancy was terminated. Thus, no *prima facie* material is there to implicate the applicant with alleged offence considering the statement of the victim which discloses consensual relationship out of the romantic relationship. Hence, the application deserves to be allowed.

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5. *Per contra*, learned Additional Public Prosecutor for the State and learned counsel for the victim strongly opposed the application on the ground that on the false promise of marriage, the victim was subjected for the forceful sexual assault, which resulted into pregnancy. The pregnancy is also terminated by the applicant providing her some pills and, therefore, at this state, sufficient material is there to frame the charge against the applicant. In view of that, the application deserves to be rejected.

6. After hearing both the sides and perusing the investigation papers, it reveals that the relationship between the applicant and the victim was consensual in nature out of romantic relationship. The allegations are founded on the fact that they were acquainted with each other since 2021. In the year 2024, romantic relationship was developed between them and out of that romantic relationship, physical relationship was also developed between them. The certificate on record showing termination of pregnancy also

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shows that the pregnancy was terminated with the consent of the applicant as well as the victim. Thus, chain of voluntary interactions and continued intimacy sufficiently show the nature of relationship between the applicant and the victim.

7. The concept of “consent” has been elaborated by the Hon’ble Apex Court in the case of **Samadhan Manmothe vs. State of Maharashtra and anr**, reported in 2025 I NSC 1351, which reads as under:

“38. At this stage it is material to refer to the decision of this Court in **Mahesh Damu**, wherein the following observations were made:

“29. It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90IPC, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said

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consent is vitiated and not a valid consent. In this regard we may refer to **Deepak Gulati v. State of Haryana** [**Deepak Gulati v. State of Haryana**, (2013) 7 SCC 675: (2013) 3 SCC (Cri) 660], in which it was held as follows: (SCC pp. 6 82-84, paras 21 & 24)”

“21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a

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false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

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24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The 'failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance'. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very

beginning, the accused had never really intended to marry her.”

Further, the Apex Court, in the same judgment, in paragraph No.27, observed that :

“27. In this regard, it becomes relevant to refer to the decision of this Court in the case of **Mahesh Damu Khare vs. State of Maharashtra, (2024) 11 SCC 398**, (“Mahesh Damu”) wherein the following observations were made:

27. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.

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28. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said that there was vitiation of consent under misconception of fact.”

8. In view of arguments advanced and upon considering the entire material on record and consistent judicial pronouncement on the subject, I am of the view that the matter squarely falls within the laid down parameters of the judgment in the case of **The State of Haryana vs. Bhajan Lal reported at 1992 AIR 604**, which read as under:

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“(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;

(b) 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;

(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;

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(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 proceeding is instituted) to the institution and continuance of the proceedings and/or where

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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”.

9. In the light of the aforesaid analysis, the applicant has made out a case for quashing of the FIR as well as consequent proceeding. In view of that, I proceed to pass following order:

ORDER

(1) The Criminal Application is **allowed**.

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(2) The FIR in connection with Crime No.170/2025 registered for offences under Sections 64(2)(m), 69, and 88 of the BNS and consequent proceeding arising out of the same bearing Sessions Case No.24/2025 are hereby quashed and set aside.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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