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

CRIMINAL APPLICATION (APL) NO.1905 OF 2025

1. Nikhil s/o Tejram Ingle,
Age : 33 Years, Occ.
R/o. Plot No.120, Near,
Hanuman Mandir, Ratan Nagar,
Gadge Baba Lay Out,
Nagpur Maharashtra.

.... APPLICANT

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Mankapur Police Station, Nagpur.
2. XYZ in F.I.R. No.282/2025
registered at Police Station
Mankapur, Nagpur City.

....NON-APPLICANTS

Mr. M. D. Puranik, Advocate for applicant.
Ms. M. A. Barabde, APP for non-applicant No.1/State.
Mr. S. A. Dupare, Advocate for non-applicant No.2.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17/02/2026

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 482 of the Code of Criminal Procedure in connection with Crime No.282/2025 registered with Police Station Mankapur, Nagpur, District Nagpur for the offence punishable under Sections 69, 318(2) of the Bharatiya Nyaya Sanhita, 2023 and under Sections 3(1)(w)(i), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act.

5. The crime is registered on the basis of a report lodged by the non-applicant No.2 aged about 31 years on an allegation that in March 2019, she got acquaintance with the present applicant through social media i.e. Facebook. Thereafter, the friendship was developed between them and the applicant has promised her for marriage and there was a love affair between them. She further alleged that on 16.01.2025 at about 4.00 p.m. the present applicant met her and asked her to come along with him and took her at hotel and subjected her for the forceful sexual assault. It is further alleged by her that he used to communicate with her on Snapchat for hours together and she is having love affair with him since 2019. She further alleged that he on various occasions convinced her that he would perform marriage with her however, subsequently, he has not performed the marriage with her and denied to perform the marriage and therefore, approached to the police and lodged the First

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Information Report. On the basis of the said FIR, the crime was registered and the investigation was carried out. During investigation, the victim was referred for the medical examination, relevant statements were recorded and after completion of the investigation, the charge sheet was filed against the present applicant.

6. Heard learned counsel for the applicant, who submitted that from the recitals of the FIR and from the statement of the victim itself it reveals that out of a love affair the physical relationship was developed between them. As far as the consent under the misconception of fact is concerned, admittedly, the relationship was since March 2019 till filing of this FIR i.e. 13.06.2025 i.e. more than five years and therefore, it cannot be said that it was under the misconception of fact. He submitted that there is no proximity between the alleged act and misconception of fact. On the contrary, the statement itself shows that out of love affair the physical relationship was developed between them. He submitted that victim is grownup lady, knowing the consequences of the act. The applicant is also grownup of man. Thus, two adult persons entered into the relationship by knowing the consequences of the act and therefore, no offence is made out against the present applicant.

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7. Per contra, learned APP strongly opposed the said contention and submitted that under the misconception of fact, the consent was obtained and therefore, the offence is made out.

8. Learned counsel for the non-applicant No.2 has also endorsed the same contention and invited my attention towards the statement of the victim as well as the recitals of the FIR and submitted that she was subjected for the forceful sexual assault by the applicant on the promise of marriage, and therefore, the offence is made out. In view of that, he prays for rejection of the application.

9. After hearing both sides and after perusal of the entire investigation papers, it reveals that the victim herself has stated in her statement as well as the FIR that she got acquaintance with the present applicant through Facebook. Thereafter, since 2019, there were meeting each other. The applicant has also promised her for marriage and on various occasions, there was a physical relationship between them. It reveals from the statement that they were communicating with each other through the Snapchat and there was a love affair between them. Thus, it is apparent that the victim, who herself is a grownup lady could not be said to have acted under the alleged false promise given by the applicant or under the misconception of

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fact while giving the consent to have sexual relationship with the applicant.

10. 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 more than five years. It hardly needs any elaboration that the consent by the victim was a conscious and informed choice made by her after due deliberation. This aspect is considered by 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 the Hon'ble Apex Court after considering the catena of decisions while summarising in para No.18 observed as under:

"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. The allegation in the FIR indicate that in March 2019 she got acquaintance with the present applicant, love affair was

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developed between them and thereafter the physical relationship was developed between them. Admittedly, the victim is a grownup lady as well as the applicant is also a grownup man. The relationship between two adult persons was developed out of love affair and therefore, no offence is made out against the present applicant. 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.282/2025 registered with Police Station Mankapur, Nagpur, District Nagpur for the offence punishable under Sections 69, 318(2) of the Bharatiya Nyaya Sanhita, 2023 and under Sections 3(1)(w)(i), 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and the consequent proceeding arising out of the same bearing Sessions Case No.640/2025 pending before the learned District and Sessions Judge – 13 and Additional Sessions Judge, Nagpur, is hereby quashed and set aside to the extent of the present applicant.

The application is disposed of.

(URMILA JOSHI-PHALKE, J)