



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

CRIMINAL APPLICATION (APL) NO. 1932 OF 2025

Sunil S/o Pundlikrao Boke,
Aged 48 years, Occ. Goldsmith,
R/o. Gandhiward, Desaiganj, District
- Gadchiroli, Maharashtra.
Mob. No. 9689061200.

APPLICANT

Versus

1. State of Maharashtra
Thr. Police Station Officer, Police
Station Desaiganj, District Gadchiroli,
Maharashtra.

2. X.Y.Z.
Complaint in Crime No. 422/2025
Police Station Desaiganj,
District Gadchiroli, Maharashtra.

NON-APPLICANTS

Mr. D.M. Dixit, Advocate for the Applicant.
Ms. M.A. Barabde, APP for the Non-applicant No.1/State.
Mr. N.B. Sarwe, Advocate h/f Mr. J.S. Chilotra, Advocate for the
Non-applicant No.2.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 04th MARCH, 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.422/2025 registered with Police Station Desaiganj, District Gadchiroli for the offence punishable under Sections 64(2)(M), 69, 78, 351(2) and 3(5) of the Bharatiya Nyaya Sanhita (BNS), 2023 and consequent proceeding arising out of the same bearing Sessions Case No.119/2025.

4. The present Application is preferred on two grounds; the first ground is that, now there is a settlement between the Applicant and the Non-applicant No.2 and Non-applicant No.2 has already filed her affidavit contending that she is not intending to proceed with this Application and she wants to withdraw all the allegations levelled against the present Applicant and the second ground is that, even accepting the case as it is, she got acquaintance with the present Applicant

in the year 2023 i.e. on 27.11.2023, the love affair was developed between them and out of love affair the consensual relationship was developed between them, and therefore, no offence is made out under Section 64(2)(M) of the BNS against the present Applicant.

5. Heard learned Counsel for the Applicant, who invited my attention to the recitals of the FIR and submitted that, the Non-applicant No.2 is the grown up lady and knows the consequences of her act, they both got acquainted with each other and the present Applicant has proposed her and she has accepted his proposal despite she was knowing that he was already married and consensual relationship was developed between them. In view of that, no offence is made out against the present Applicant, and therefore, the Application deserves to be allowed.

6. *Per contra*, learned APP strongly opposed the said contention and submitted that, considering that on the false promise of marriage she was subjected for sexual assault, and therefore, the Application deserves to be rejected.

7. After hearing both the sides and on perusal of the entire investigation papers it reveals that the Non-applicant No.2 is the grown up lady of 24 years of age. As per her allegations she got acquaintance with the present Applicant in the year 2023 i.e. on 27.11.2023 and thereafter they were exchanging the messages with each other. The Applicant has also disclosed her that he is already married but there was no cordial relations with him and his wife and his wife is residing alongwith her two daughters in a separate house and he has already filed a petition for obtaining the decree of dissolution. Thereafter he promised her for marriage and subjected her for sexual assault. Thus, it reveals from the recitals of the FIR that, the Non-applicant No.2 is the grown up lady and knows the consequences of her act. She entered into the relationship after knowing the fact that he is already married and now she has filed affidavit stating that she has withdrawn all the allegations levelled against the present Applicant, and therefore, she don't want to proceed with this Application. Now, question is whether from the statement of the present Non-applicant No.2 the offence under Section 64 of the BNS is made out or not. It is the allegation of the Non-applicant No.2 that, her consent was

obtained under the misconception of the fact. Now, this aspect 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.”

8. The allegations in the FIR indicates that since 2023 the Non-applicant No.2 engaged in a relationship with the present Applicant. There has to be a proximity between the misconception of fact and the alleged incident. 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.

9. Considering that the Non-applicant No.2 is the grown up lady and knows the consequences of her act, she entered into the relationship by knowing the said consequences and now she has settled the dispute between the present Applicant. It is apparent that, the relationship was a consensual in nature. 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. 422/2025 registered with Police Station Desaiganj, District Gadchiroli for the offence punishable under Sections 64(2)(M), 69, 78, 351(2) and 3(5) of the Bharatiya Nyaya Sanhita (BNS), 2023 and consequent proceeding arising out of the same bearing Sessions Case No.119/2025, are hereby quashed and set aside to the extent of the present Applicant.
10. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)