



Judgment

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

CRIMINAL APPLICATION APL NO.1939 OF 2025

Chetan @ Sani s/o Sudesh Nikose,
aged 40 years, occupation: service,
r/o Mohan Nagar, Near Hasanbag
Garage, Sadar, Nagpur.

..... **Applicant.**

:: V E R S U S ::

1. State of Maharashtra,
through Police Station Officer,
Police Station Sadar, Nagpur,
district Nagpur.

2. XYZ victim,
in crime No.41/2019,
(Sessions Case No.521/2021)
through police station Sadar,
Nagpur. **Non-applicants.**

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Shri Tejas Deshpande, for Applicants.
Mrs.R.V.Sharma, APP for NA No.1/State.
Shri U.Changle, Counsel Appointed for NA No.2.

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CORAM : URMILA JOSHI-PHALKE, J.

DATE : 10/03/2026

ORAL JUDGMENT

1. Heard learned counsel appearing for the respective
parties. **Admit.** Heard finally by consent.

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2. By this application, the present applicant is seeking quashing and setting aside order dated 4.10.2025 passed in Sessions Case No.521/2021 below application Exh.4 by learned Additional District and Sessions Court-11, Nagpur and also for quashing and setting aside proceeding in Sessions Case No.521/2021 pending before learned Additional District and Sessions Court-11, Nagpur.

3. Brief facts necessary for disposal of the application are as under:

On the basis of the report lodged by non-applicant No.2 (the complainant,) the applicant is arrayed as accused in connection with Crime No.41/2019 registered with non-applicant No.1 police station for offences under Sections 376 and 506 of the IPC.

As per the FIR, the present applicant is cousin of the complainant. She is having acquaintance with him since her childhood.

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Her marriage was performed with another person, but for some reasons, she has obtained divorce from him and now staying separately.

It is alleged by her that in the year 2017, the applicant has expressed that he is having feelings for her and he wants to perform marriage with her. On the basis of the said promise of marriage, he has subjected her for forceful sexual assault and also threatened her that if she performs marriage with anybody, he will commit suicide.

Thereafter, on various occasions, he subjected her forceful sexual assault.

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

During investigation, the investigating officer has referred her for medical examination, recorded relevant statements of witnesses and after completion of the investigation, submitted chargesheet against the applicant.

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The Magistrate has committed the case to the court of sessions. On committal of the case to the Court of Sessions, it was numbered as Sessions Case No.521/2021. Thereafter, the applicant has preferred an application under Section 227 of the CrPC for discharge. The said application was strongly opposed by the State on the ground that there is a *prima facie* material against the applicant and, therefore, the said application deserves to be rejected.

Learned Sessions heard both the sides and perused the investigation papers and came to conclusion that there is a *prima facie* material against the applicant to connect the applicant with the alleged offence and, therefore, rejected the said application.

4. Being aggrieved and dissatisfied with the same, the present application is preferred by the applicant for discharge as well as quashing of the criminal proceeding.

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5. Learned counsel for the applicant submitted that recital of the FIR and statement of the complainant itself show that it was consensual relationship between both of them. The complainant is a grown up lady of 33 years and she knows consequences of her act and she has consented for the sexual relationship. Therefore, no offence is made out against the applicant.

6. *Per contra*, learned APP for the State and learned counsel for the complainant have strongly opposed the said contentions and submitted that consent of the complainant was obtained under misconception of fact by the applicant that he would perform marriage with her and, therefore, it was not consent at all. In view of that, they both supported the order passed by the trial court and submitted that the present application deserves to be rejected.

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7. Before entering into merits of the case, it is necessary to see what are considerations for considering the application for discharge.

8. It is a settled principle of law that at the stage of considering an application for discharge, the court must proceed on the assumption that the material which has been brought on record by the prosecution is true and evaluate the material in order to determine whether the facts emerging from the material, taken on its face value, disclose the existence of the ingredients necessary of the offence alleged.

9. The Hon'ble Apex Court in the case of **State of Gujarat vs. Dilipsinh Kishorsinh Rao, reported in MANU/SC/1113 2023**, adverting to the earlier propositions of law in its earlier decisions in the cases of **State of Tamil Nadu vs. N.Suresh Rajan and ors, reported in (2014) 11 SCC 709** and **The State of Maharashtra vs. Som Nath Thapa, reported in (1996) 4**

SCC 659 and The State of MP Vs. Mohan Lal Soni, reported in (2000) 6 SCC 338, has held as under:

“10. It is settled principle of law that at the stage of considering an application for discharge the court must proceed on an assumption that the material which has been brought on record by the prosecution is true and evaluate said material in order to determine whether the facts emerging from the material taken on its face value, disclose the existence of the ingredients necessary of the offence alleged. This Court in State of **Tamil Nadu vs. N.Suresh Rajan and ors, (2014) 11 SCC 709** adverting to the earlier propositions of law laid down on this subject has held:

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage

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of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

10. Thus, the defence of the accused is not to be looked into at this stage when the application is filed for discharge. The expression "the record of the case" used in Section 227 of the Code of Criminal Procedure is to be understood as the documents and materials, if any, produced by the prosecution. The provisions of the Code of Criminal Procedure does not give any right to the accused to produce any document at the stage of framing of the charge. The submission of the accused is to be confined to the material produced by the investigating agency. The primary consideration at the stage of framing of charge is the test of existence of a *prima facie* case, and at this stage, the probative value of materials on record need not be gone into. At the stage of entertaining the application for discharge under Section 227 of the Code of Criminal Procedure, the court cannot analyze or direct the evidence of the prosecution and defence or the points or possible cross

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examination of the defence. The case of the prosecution is to be accepted as it is.

11. In the case of **Union of India vs. Prafulla Kumar Samal and anr, reported in (1973)3 SCC 4**, the Hon'ble Apex Court considered the scope of Section 227 of the Code of Criminal Procedure. After adverting to the various decisions, the Hon'ble Apex Court has enumerated the following principles:

“(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out.

(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully

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justified in framing a charge and proceeding with the trial.

(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused.

(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the

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Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.”

12. Thus, the catena of decisions explains the scope of Sections 227 and 228 of the Code of Criminal Procedure from which following principles emerge:

1. While considering the question of framing the charges under section 227 of the Code, the court has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out: The test to determine prime facie case would depend upon the facts of each case.

2. Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court

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will be, fully justified in framing a charge and proceeding with the trial.

3. The court cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

4. If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

5. At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied

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that the commission of offence by the accused was possible.

6. At the stage of sections 227 and 228 the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging there from taken at their face value discloses the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

7. If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

13. With the above principles, if the material in the present case collected during the investigation is seen, there is

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no dispute that the applicant and the complainant were having acquaintance with each other, as the applicant is the cousin of the complainant. As per the allegations, in the 2017, the applicant has shown his interest and thereby promised her for marriage and on the promise of marriage, allegedly, he has subjected her for forceful sexual assault. The FIR came to be lodged on 25.1.2018.

14. Thus, it appears that the relationship was continued approximately for one year. Admittedly, the complainant who herself is a married woman could not be said to have acted under the alleged false promise given by the applicant or under the misconception of fact while giving consent to have sexual relationship with the applicant.

15. Undisputedly, she is an adult woman and knows consequences of her act as well as the applicant is also a grown up man. They both entered into the relationship after knowing the consequences of their act.

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16. The aspect of misconception of fact is considered by the Hon'ble Apex Court in the case of **Pramod Suryabhan Pawar vs. State of Maharashtra and anr**, reported in (2019)9 SCC 608. The Hon'ble Apex Court, after considering catena of decisions, held 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".

17. In the present, the complainant, who herself is a married woman, could not be said to have acted under alleged false promise given by the applicant or under the

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misconception of fact. Moreover, under Section 90 of the 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 one year. It hardly needs any elaboration that the consent by 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.

18. In view of the above settled legal position, if facts of the present case are taken into consideration, admittedly, it is apparent that the relationship between the applicant and the complainant was consensual in nature. Mere breach of promise is not sufficient to attract the offence under Section 376 of the IPC.

19. Learned Judge below has not considered this aspect and rejected the application for discharge.

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20. Perusal of the entire investigation papers nowhere shows that since inception there was an intention to cheat the complainant and in view of that, he has given false promise to marry with her. On the contrary, it reveals that out of acquaintance, friendship was developed between them and, thereafter, there was consensual physical relationship between them. Therefore, no *prima facie* case is made out against the applicant.

21. In view of the principles laid down, as far as discharge application is concerned, admittedly, no case is made out even for framing of the charge against the applicant.

22. In view of that, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(1) The criminal application is **allowed**.

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(2) The order dated 4.10.2025 passed in Sessions Case No.521/2021 below application Exh.4 by learned Additional District and Sessions Court-11, Nagpur and proceeding in Sessions Case No.521/2021 pending before learned Additional District and Sessions Court-11, Nagpur are hereby quashed and set aside to the extent of present applicant Chetan @ Sani s/o Sudesh Nikose.

Application stands **disposed of**.

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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