



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

CRIMINAL APPLICATION (APL) NO. 69 OF 2026

Dewashish Anilkumar Bisen,
Aged about 25 years, Occ. Private,
R/o Medha, Post. Thanegaon,
Tah. Tiroda, Dist. Gondia.

APPLICANT

Versus

1. State of Maharashtra,
Thr. Police Station Officer, Police
Station, M.I.D.C., Nagpur City,
Nagpur.

2. XYZ (Victim in Crime No.187/2025
registered with P.S.O., M.I.D.C.,
Nagpur city, Nagpur

NON-APPLICANTS

Mr. P.J. Vairagade, Advocate Advocate for the Applicant.
Ms. H.N. Prabhu, APP for the Non-applicant No.1/State.
Ms. M.J. Saraykar, Advocate (Appointed) for the Non-applicant
No.2.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 16th 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.187/2025 registered with Police Station M.I.D.C., District Nagpur for the offences punishable under Section 64(2)(m) and 351(3) of the Bharatiya Nyaya Sanhita (BNS), 2023 and consequent proceeding arising out of the same bearing Sessions Case No. 523/2025.
4. The crime is registered on the basis of a report lodged by the Non-applicant No.2 on an allegation that, she was residing alongwith her husband as her marriage was performed on 13.11.2020. In the year 2024 i.e. on 10.07.2024 she alongwith her husband came to Nagpur for permanent residence and this fact came to the knowledge of the present Applicant, the present Applicant has threatened her that if she denies to come alongwith him for roaming, he will kill her

husband, and therefore, she went along with him. He took her to Paradise Hotel, wherein he has subjected her for the forceful sexual assault and thereafter on various occasions he has subjected her for the forceful sexual assault. It is further alleged that, when she was working in metallic assembly at that time she got acquaintance with the present Applicant and since then the present Applicant was expressing that he likes her and she has to accompany him and on that count also she was subjected for forceful sexual assault. On the basis of the said report Police have registered the crime against the present Applicant. After registration of the crime the wheels of the investigation started rotating. During investigation, the Investigating Agency has recorded the statements of various witnesses and after completion of the investigation submitted the charge-sheet against the present Applicant.

5. Heard learned Counsel for the Applicant, who submitted that, in fact the present Applicant has lodged a report against the Non-applicant No.2, as the Non-applicant No.2 and her husband were blackmailing him by demanding the money from him and on the basis of that report non-cognizable offence

is already registered against the present Non-applicant No.2 and her husband. To give a counter blast to the said complaint, this false FIR came to be lodged against him. He submitted that, even accepting the allegations as it is, it reveals that it was consensual relationship between the Applicant and Non-applicant No.2 and thereafter by taking disadvantage of the said incident, the Non-applicant No.2 started blackmailing him, and therefore, he lodged the report.

6. He invited my attention towards the extract of register which was seized from the lodge owner, which shows that, since 13.04.2024 on various occasions she has visited alongwith the present Applicant in the said Hotel and lodge and stayed alongwith him and despite she was having an opportunity she has not made any complaint against the present Applicant. He submitted that, the last incident as per the Non-applicant No.2 has taken place on 15.12.2024 and the FIR came to be lodged on 22.02.2025. No explanation for the said delayed FIR. For all above these grounds, the Application deserves to be allowed.

7. *Per contra*, learned APP and learned Counsel for the Non-applicant No.2 strongly opposed the said contention and submitted that, as she was threatened by the present Applicant and therefore she could not approach to the Police Station and lodge report. They both submitted that, as far as the dates are concerned, which are clarified by the Non-applicant No.2 in her subsequent statement, and therefore, the *prima facie* case is made out against the present Applicant. In view of that, the Application deserves to be rejected.

8. After hearing both the sides and on perusal of the entire recitals of the FIR as well as the investigation papers it reveals that, as per the allegations levelled by the Non-applicant No.2, she got acquaintance with the present Applicant when she was working in metallic assembly in the year 2024. At the relevant time, she was residing at Chattisgarh. It is further alleged by her that, on 10.07.2024 she alongwith her husband had been to Nagpur to stay at Nagpur, this fact was came to the knowledge of the present Applicant and thereafter the present Applicant started harassing her and threatening her that she has to accompany with him otherwise he will kill her husband and

on that count she had been to the lodge alongwith the present Applicant in November 2024 and December 2024. Subsequently, these dates are verified by her and subsequent statement recorded by the Investigating Agency, wherein she has corrected the dates as her joining date in TATA Advanced Systems Ltd. Nagpur, was 01.08.2024. The Applicant has taken her to Hotel or lodge on 13.04.2024 and 21.08.2024. In the light of the above said statement, if the extract of the lodge is perused it shows that on 13.04.2024 for the first time she has visited alongwith the present Applicant in the said lodge and the second visit was on 11.12.2024. Thus, even accepting her statement that, she had been alongwith the present Applicant on lodge on 13.04.2024 and 21.08.2024, which is not substantiated by the record, which is collected from the lodge owner.

9. From the recitals of the statement it revealed that, the Non-applicant No.2 is the grown up lady of 23 years old knows the consequences of her act though she got acquaintance with the present Applicant in the year 2024 and present Applicant has expressed his feelings to her and thereafter also

she continued to meet him, visited alongwith him in the lodge and hotels, shows that there was consent on her part. Admittedly, the consent has to be ascertained from the circumstances. She has stated the dates visiting alongwith the present Applicant, which is not substantiated by the extract of the register which is collected from the lodge. It shows that, on 13.04.2024 they both had been to the lodge and thereafter on 11.12.2024 also they had been to the lodge. These dates are not mentioned by her either in the recitals of the FIR or the subsequent statement. There is no explanation as far as the delay in FIR is concerned.

10. As far as the allegation regarding the consent is obtained under the misconception of fact is concerned, admittedly 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 two years. Here the present Applicant and the Non-applicant No.2 were in the relationship for more than one year.

11. The prosecutrix is a grown up lady. The allegation in the FIR indicate that the Applicant has taken her in hotel or lodge and subjected her for the forceful sexual assault though she was having an opportunity she has not made any complaint about the same. Thus, the prosecutrix herself is a married lady could not be said to have acted under the false promise given by the present Applicant or under the misconception of fact while giving a consent to have a sexual relationship with the present Applicant. There is no explanation for delay also as the FIR is lodged approximately after two months. Thus, considering all above these facts, no *prima facie* case is made out against the present Applicant.

12. By applying the parameters laid down by the Hon'ble Apex Court in the case of ***State of Harayana & Ors. Vs. Ch. Bhajan Lal & Ors., 1992 AIR 604***, while considering the Application under Section 482 of Cr.P.C., which reads as under:

“(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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 there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) 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.”

13. In the light of the above parameters and by applying the facts of the present case, it is apparent that, it is a consensual relationship between the Applicant and the Non-applicant No.2. The report lodged by the Applicant against

the Non-applicant No.2 is also having a relevance. Considering all these above facts, 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. 187/2025 registered with Police Station M.I.D.C., District Nagpur for the offences punishable under Section 64(2)(m) and 351(3) of the Bharatiya Nyaya Sanhita (BNS), 2023 and consequent proceeding arising out of the same bearing Sessions Case No. 523/2025, are hereby quashed and set aside to the extent of present Applicant.
 - iii.** Fees of the appointed Counsel be quantified as per rules.
- 14.** Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)