



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

CRIMINAL APPLICATION (APL) NO. 118 OF 2026

APPLICANT :

Rupesh S/o Yuvraj Bhagat,
Aged about : 32 years,
Occupation : Private, R/o Chakwa,
Tq. Mangrulpir, Dist – Washim.

V E R S U S

NON-APPLICANTS :

1. The State of Maharashtra,
Through its PSO of Police Station
Karanja City, Tq. Karanja,
District – Washim.
2. XYZ, Through PSO, P.S.
Karanja City,
Dist. Washim.

Shri M. S. Dube, Advocate a/w Shri Sahil Shaikh and Ms. Shirin Siddiqui, Advocates for Applicant.

Shri K. R. Lule, Additional Public Prosecutor for non-applicant No.1.

Shri U. Y. Khobragade, Advocate (Appointed) for non-applicant No.2.

CORAM: URMILA JOSHI-PHALKE, J.
DATED : 05/03/2026.

ORAL JUDGMENT :

1. Heard. **Admit.** Heard finally with the consent of learned counsel appearing for the parties.

2. By this application, applicant is seeking quashing of the First Information Report in connection with Crime No.707/2025 registered under Sections 69, 351(2) and 352 of the BNSS, 2023.

3. A crime is registered on the basis of report lodged by the non-applicant No.2 on an allegation that she is aged about 32 years a married woman having one daughter and doing the labour work. When she was studying in ITI college in the year 2009 at Mangrulpur, she got acquaintance with the present applicant, as he was also studying in the same college. At the relevant time, he has expressed that he is having feelings for her but she denied for the same. Her marriage was performed in the year 2013 with one Ravindra Ingole. Within one year of marriage, there was dispute between her and her husband and therefore, she went to her parents house to stay along with her child. When she was residing along with her parents, the present applicant met her and disclosed to her that from the college days, he was having feelings for her. Now, she is not residing along with her husband. He will perform marriage with her and also will maintain her daughter. Thereafter, they started communicating with each other. The applicant has also insisted her to admit her daughter in the school and therefore, she obtained a room on rent and started residing along with her daughter. On 03/10/2022 when she was alone in the house, the present applicant came there and on the promise of marriage, he has subjected her for the forceful sexual assault. Thereafter, on various occasions, she asked him for marriage, but

he has denied for the same and subjected her for the forceful sexual assault. She further alleged that he has also abused her when she insisted him for marriage. On the basis of said report, police have registered a crime against the present applicant.

4. Heard learned counsel for the applicant who submitted that from the recitals of the FIR itself, it reveals that the relationship between the present applicant and the non-applicant No.2 was consensual in nature. She is 32 years old grown up woman knows the consequences of her act. By knowing the consequences of her act, she entered into the said relationship and the said relationship was continued from 2022 to 2024. Therefore, there is no proximity with the misconception of fact and the alleged incident. He submitted that considering the recitals of the FIR which apparently shows that the relationship is consensual in nature. No offence is made out against the present applicant. In view of that, application deserves to be allowed.

5. Per contra, learned APP and learned counsel for non-applicant No.2 strongly opposed the said contentions and submitted that under the misconception of fact, her consent was obtained by the present applicant and subsequently, she was

subjected for the sexual assault and not only this sexual assault, but also she was abused by the present applicant regarding the same. NC report was also registered with the concerned police station i.e. Lonikand Police Station. Thus, the intention of the present applicant since inception was to deceive the complainant and not to marry with her and therefore, offence is made out against the present applicant. In view of that, application deserves to be rejected.

6. On hearing both the sides and on perusal of the investigation papers, it reveals that the applicant and the non-applicant No.2 were having acquaintance with each other since 2009. The marriage of the present non-applicant No.2 was performed with some other person, but there was dispute between them and therefore, she started residing along with her parents. During that period, she came into contact with the present applicant in June, 2022. Thereafter, communication was there between both of them. As per her allegations on 03/10/2022, the present applicant had been to her room and on the promise of marriage, he had subjected her forceful sexual assault and thereafter, on various occasions, but on asking her to perform marriage with her, he has not performed marriage. On the

contrary, she was abused and humiliated by the present applicant and therefore, she lodged report against the present applicant. After perusal of the statement of the victim, it reveals that she is a grown up woman knowing the consequences of her act, having one daughter aged about 11 years. She entered into relationship after understanding the fact and the consequences of the act. The victim who herself was a married woman having one daughter could not be said to have acted with misconception of fact while giving consent to have sexual relationship with the present applicant. The aspect of consensual relationship was whether it is misconception of fact is considered by the Hon'ble Apex Court in the case of **Pramod Suryabhan Pawar Vrs. State of Maharashtra and another**, reported in **(2019) 9 SCC 608**, wherein after referring the catena of decisions while summarizing the legal position, it is observed "to summarize 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 deliberations 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.”

7. Though the charge sheet is not filed, but I have perused the entire investigation papers from which it reveals that since 2022 to 2024, she is in relationship with the present applicant and due to acquaintance, they entered into said relationship with each other and physical relationship was developed between them. As far as aspect of consent is concerned under Section 90 of IPC, a consent given under the misconception of fact is no consent in the eyes of law. The Hon'ble Apex Court in the case of **Maheshwar Tigga Vrs. State of Jharkhand (SC), Law Finder Doc Id No.1744698**, wherein it is observed that under Section 90 of IPC, a consent 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 4 years, it hardly needs any elaboration that the consent of the non-applicant was conscious and informed choice made by her, after due deliberation, it being spread over a long period of time coupled with the conscious positive action not to protest.

8. In view of the observations of the Hon'ble Apex Court and by applying the same to the facts of the present case, admittedly, no prima facie case is made out as the relationship appears to be consensual in nature. In view of that, 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.707/2025 registered under Sections 69, 351(2) and 352 of the BNSS, 2023 is hereby quashed and set aside to the extent of the present applicant.
- vi] The application is disposed of.

9. The fees of the appointed counsel be quantified as per Rules.

[JUDGE]