



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

CRIMINAL APPLICATION (APL) NO. 730 OF 2026

Shubham Krishna Isaya Komatpalliwar
Aged 26 years, Occ: Private,
R/o Lalpeth Collory, Chandrapur,
Dist. Chandrapur.

APPLICANT

Versus

1. The State of Maharashtra,
Thr. Police Station Officer Police
Station, Chandrapur City,
Dist. Chandrapur.
2. XYZ (Victim. Crime No. 228/2022)
Hence identity is Not disclosed. Details
are submitted in Closed Envelop
separately annexed).

NON-APPLICANTS

Mr. A.A. Dhawas, Advocate for the Applicant.
Ms. R.V. Sharma, APP for the Non-applicant No.1/State.
Mr. A.D. Mhala, Advocate for the Non-applicant No.2.

CORAM : URMILA JOSHI PHALKE, J.

DATED : 08th APRIL, 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, 2023 for quashing the First Information Report in connection with Crime No.228/2022 registered with Police Station Chandrapur City, District Chandrapur for the offence punishable under Section 376(1) of the Indian Penal Code and consequent proceeding arising out of the same bearing Sessions Case No.114/2022 (Charge-sheet No.150/2022).

4. The crime is registered on the basis of a report lodged by the Non-applicant No.2 on an allegation that she got acquaintance with the present Applicant in the year 2021. Thereafter the present Applicant has visited her house on various occasions and promised her for marriage despite her reluctance he insisted her and also disclosed to her about his feelings. He has also disclosed his desire to marry with her to the mother of the present Non-applicant No.2 and thereafter on various occasions subjected her for the forceful sexual assault.

On the basis of the said report Police have registered the crime against the present Applicant.

5. After registration of the crime the investigation started rotating. During investigation she was referred for the medical examination, CDR reports were also collected and after completion of the investigation submitted charge-sheet against the present Applicant.

6. During pendency of this Application both the Applicant and Non-applicant No.2 arrived at a settlement. She has filed her written submissions cum reply on record and stated that now she has got married and she has settled the dispute with the present Applicant and she do not want to proceed with the Application. It is further submitted by her that, she is major and now married to someone else and has already moved on in her life, the Applicant has also moved in his life and she do not want to have any hardship mental stress to the Applicant, and therefore, she wanted to settle the dispute. She has further submitted that, they have already arrived at a compromise with free consent and there is no force coercion by anybody.

7. Heard learned Counsel for the Applicant, who submitted that, even if the allegations levelled against the present Applicant is taken into consideration, it is apparent that, it was the consensual relationship between the present Applicant and the Non-applicant No.2. He invited my attention towards the recitals of the FIR and submitted that, there was a promise of marriage and out of that promise the physical relationship was developed between them, and therefore, no offence is made out against the present Applicant. He submitted that, considering the entire recitals of the FIR, nothing is on record to show that it was a forceful sexual assault by the present Applicant on the Non-applicant No.2. He submitted that, the relationship was continued from 2021 till filing of the complaint i.e. till 02.05.2022. Therefore, there is no proximity between misconception and sexual assault on her. For all above these reasons, the Application deserves to be allowed.

8. *Per contra*, learned APP strongly opposed the said contention and submitted that, considering there is a breach of promise on the part of the present Applicant, the offence is made out and hence the Application deserves to be rejected.

9. After hearing both the sides and on perusal of the entire investigation papers especially the recitals of the FIR, it reveals that the Applicant and the Non-applicant No.2 both got acquaintance in March 2021, thereafter the Applicant was visiting her house, they were communicating with each other through telephonic call also, the Applicant has also expressed his desire to marry with her in front of her mother and thereafter physical relationship was developed between them. Thus, it is apparent that, the relationship was consensual in nature out of love affair between both of them. As far as the misconception of fact is considered, which is not applicable as the relationship was continued for more than one year.

10. 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 more than one year. It hardly needs any elaboration that the consent by the Non-applicant No.2 was a conscious and informed choice made by her after due deliberation.

11. 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.”

12. The allegation in the FIR indicate that, they got acquaintance with each other in the year 2021, relationship was continued till 2022 i.e. for more than two years. The Non-applicant No.2 who is a grown up lady knows the consequences of her act and the Applicant is also an adult male, they both entered into the relationship after knowing the consequences of the said act, and therefore, it could not be said that the Non-applicant No.2 acted under the false promise given by the Applicant or under the misconception of fact. In view of

that, the Application deserves to be allowed. In view of that, I proceed to pass the following order.

ORDER

- i. Criminal Application is **allowed**.
 - ii. The First Information Report in connection with Crime No.228/2022 registered with Police Station Chandrapur City, District Chandrapur for the offence punishable under Section 376(1) of the Indian Penal Code and consequent proceeding arising out of the same bearing Sessions Case No.114/2022 (Charge-sheet No.150/2022) pending on the file of District and Sessions Court-3, Chandrapur, is hereby quashed and set aside to the extent of the present Applicant.
- 13.** Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)