



2026:AHC:14575

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 36258 of 2025

Amarjit Pal and another

.....Applicant(s)

Versus

State of U.P. and another

.....Opposite Party(s)

Counsel for Applicant(s) : Anurag Rai, Vinay Kumar Jaiswal

Counsel for Opposite Party(s) : Ankita Pandey, G.A.

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AFR

Judgment Reserved on 25.11.2025

Judgment Delivered on 21.01.2026

Judgment Uploaded on 21.01.2026

Court No. - 78

HON'BLE AVNISH SAXENA, J.

1. Heard, Sri Vinay Kumar Jaiswal, learned counsel for the applicants, Ms. Seema Shukla, learned AGA-Ist for the State and Ms. Ankita Pandey, learned counsel for the opposite party no.2. Perused the record.

2. The application under Section 528 B.N.S.S. has been moved by the accused/applicants, son and his mother, respectively for quashing the charge sheet, summoning order and the entire proceedings of Sessions Case No. 1241 of 2025 (State Vs. Amarjit Pal and another) arising out of Case Crime No. 38 of 2025 for the offence under Sections 69, 352, 351(3) BNS and Sections 3, 4 of Protection of Children from Sexual

Offences Act, P.S. Barwapatti, District Kushinagar, on the ground argued by learned counsel for the applicants that the allegation of rape is on applicant no.1 on false promise of marriage. The victim has incorrectly shown her age as below 18 years, although she is nearly 20 years of age; the mother of victim has initially moved an application under Section 175(3) BNSS, which was converted to complaint, but subsequently that complaint was withdrawn and the revision petition was dismissed as infructuous, that carries the same prosecution case as is alleged in the FIR. Further submits that the victim was a consenting party and there was a denial of internal medical examination by the victim and lastly non-compliance of the procedure provided under Section 233 BNSS.

3. Learned counsel for the opposite party no.2 and learned AGA for the State have stated that the victim was minor, who has continuously been raped by the applicant no.1 on false promise of marriage. There was a compromise between the parties that the applicant no.1 and the victim will get married for which the marriage invitation cards were printed specifying the date of marriage as 23.05.2025, but the accused/applicant no.1 has refused. Further submits that the victim was minor as such her consent for sexual intercourse, which is admitted by the applicant no.1 fall within the category of rape. Further submits that initially the complaint was made at the police station which was not registered. As such, the opposite party no.2 has moved an application under Section 175(3) BNSS and simultaneously sent the complaint to the higher police authorities. When the higher police authorities have directed the police station concerned, the FIR was registered. In the meantime, the application under Section 175(3) BNSS was converted to a complaint, which was challenged in revision and after registration of FIR, the complaint was withdrawn, which was filed by the mother of victim and the revision became infructuous and therefore dismissed as infructuous. Further submits that the complaint was withdrawn at pre-cognizance stage, as such the provision of Section 233 BNSS will not be applicable. Further submits that it is an admitted case of applicant that the applicant no.1 has entered into sexual intercourse with the victim, which was

allegedly consented, whereas the consent with the minor is no consent in the eye of law, as such submits that the application is devoid of merits and deserves to be rejected.

4. This Court has taken into consideration, the rival submission made by the parties.

5. The prosecution case evolved from the bare perusal of first information report dated 26.05.2025 registered at 19:40 hours lodged by the brother of victim against the applicants, which reveals that the date of birth of victim is 01.01.2008 and since last four years, the accused/applicant no.1 was entering into sexual intercourse with victim on false promise of marriage, when the accused/applicant has refused to marry the victim, she has intimated the plight to her family members. The family members of the accused/applicant and the victim met and there was compromise that the marriage of the two will be solemnized on 23.05.2025 but 'Bidai Ceremony' will be performed only when the victim became 18 years of age. The invitation cards were distributed and the present FIR is lodged when the accused/applicant no.1 has refused to marry. The allegation against the mother of accused/applicant no.1 is of criminal intimidation.

6. The victim in her statement under Section 183 BNSS has made specific mention that she is high school pass and born on 01.01.2008 and since last 4 years, the accused/applicant is entering into sexual intercourse with her on promise of marriage. Though, she in her statement under Section 180 BNSS, has stated that she is consenting to the sexual intercourse. She also refused to get her internal medical examination. The High School Certificate of the victim, which has been issued by the Madhyamik Shiksha Parishad, U.P. reveals that her date of birth is 01.01.2008.

7. The accused/applicants have made a clear and explicit admission in paragraph 18 of the affidavit accompanying the application under section 528 BNSS that the accused/applicant no.1 used to visit the house of victim as he is relative to the sister-in-law (bhabhi) of the victim and

there was love affair between the two since last four years and there was physical relations on the consent of the victim. The relevant paragraph-18 of the affidavit is reiterated underneath :-

“18. That the story set up by the first informant against the applicants is not correct whereas reality is that the victim and applicant no. 1 is major girl and boy and the applicant no. 1 was regular visitor at the house of the victim due to relationship of her sister in law (Bhabhi) and where they met to each other for time to time and in between they fell in love affection and since four year, they were talking to each other on phone and thereafter, they were met and made their physical relationship with each other by their free and sweat will but when the informant as well as other family members were came know about their relationship then the informant made pressure upon the applicants to perform the marriage of the applicant no. 1 with his sister/victim but the applicants refused for the same then this false story has been created and lodged the false FIR against the applicants maliciously to harass as well as to create the pressure upon them to perform the marriage with the victim.”

This admission of the accused/applicant no.1 has been answered by the opposite party no.2 in the way that the accused/applicant no.1 has entered into sexual intercourse with the victim knowing that the victim was minor and there was a false promise of marriage since the inception. It is because of this false promise that the accused/applicant no.1 have refused to enter into marriage on the date fixed i.e. 23.05.2025.

8. On these prima facie facts, the point of concern in the present application is whether the allegation levelled is prima facie sufficient to proceed with the trial or the trial would tantamount to cause miscarriage of justice.

9. After the investigation, the Investigating Officer has submitted charge sheet for offence under Section 69 BNS (sexual intercourse on false promise of marriage) invoking the provisions of POCSO Act against applicant no. 1 and criminal insult and intimidation against both the accused applicants.

10. On the face of record, the victim is minor as is shown from her matriculation certificate annexed along with the counter affidavit filed

by opposite party no.2. The argument of learned counsel is that the age of the victim is nearly 20 years and the date of birth shown in the matriculation certificate is only certificate age. The argument of learned counsel has no basis as the matriculation certificate is to be given primacy.

11. Section 69 of Bhartiya Nyaya Sanhita, 2023 provides that “Whoever, by deceitful means or by making promise to marry a woman without any intention of fulfilling the same, has sexual intercourse with her, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine”.

12. The provision contained in Section 69 of BNS is a new induction in penal law, wherein sexual intercourse with a woman, by deceitful means including false promise of marriage is not ‘Rape’, but is made punishable. Prior to the enactment the courts interpret the conduct of parties in view of the provisions of Section 375 I.P.C. (Rape) coupled with the provision of Section 90 I.P.C (Consent known to be given under fear or misconception). The explanation provided under Section 69 BNS of ‘Deceitful means’ “shall include the false promise of employment or promotion, inducement, or marrying after suppressing identity”.

13. Though the charge sheet is not submitted under the offence of rape, but it would be expedient in the interest of justice that the provision of rape under Section 63 BNS is required to be dealt with, which clearly provides for sexual intercourse, by way of implication provided under subsections (a) to (d) under seven circumstances is considered as Rape. It is explicitly provided under subsection (vi) that “if the penetration is with or without her consent when she is under 18 years of age”. In the present case, the sexual intercourse is admitted by the applicant no.1 and the age of victim is under 18 years, as is prima facie explicit from her matriculation certificate.

14. Even otherwise Section 69 BNS provides for sexual intercourse by employing deceitful means and false promise of marriage as one of the

deceitful means. In the case of *Pramod Suryabhan Pawar Vs. State of Maharashtra, (2019) 9 SCC 608*, Hon'ble the Supreme Court has drawn a clear distinction between 'false promise of marriage, which is given on understanding by the maker that it will be broken' and 'a breach of promise which is made in good faith but subsequently not fulfilled'. It is former which outrightly attracts penal provision.

15. So far as moving of an application under Section 175(3) BNSS by the mother of victim is concerned. The court of Special Judge, POCSO Act, Kushinagar while disposing of the application by order dated 01.04.2025 has converted it to a complaint and fixed 23.04.2025 for recording of statement under Section 223 BNSS. The FIR was registered on 26.05.2025 and on 29.05.2025, the mother of victim has not pressed the complaint, which was accordingly dismissed on the same day. It is the order dated 01.04.2025, whereby the court refused to register the FIR, which was challenged in revision before this Court registered as Criminal Revision No. 2685 of 2025. The coordinate Bench of this Court by order dated 02.07.2025 has dismissed the revision being infructuous. This shows that neither the special court nor the High Court have taken into consideration the allegations made to summon the accused and therefore, the stage was pre-cognizance stage. As such, Section 233 BNSS will not put any dent on the prosecution case because the provision is about consolidation of the two cases with the aim to avoid conflicting outcome of the two. Hence, the application moved under Section 528 BNSS is devoid of merit and liable to be dismissed.

16. The Application under Section 528 BNSS is hereby **dismissed**.

(Avnish Saxena,J.)

January 21, 2026
Abhishek Sri