



2026:AHC:35083

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 32942 of 2025

Shyam Bahadur Yadav

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Aditya Gupta, Sr. Advocate

Counsel for Opposite Party(s) : G.A., Munna Tiwari, Prakash Veer
Tripathi

Court No. - 78

HON'BLE AVNISH SAXENA, J.

1. Heard Sri G.S. Chaturvedi, learned Senior Advocate assisted by Sri Aditya Gupta, learned counsel for the applicant, Sri Prakash Veer Tripathi, learned counsel for opposite party No.2 and Sri Chandra Badan, learned AGA for the State.

2. The present application under Section 528 BNSS is moved by the accused applicant with the prayer to quash the charge sheet dated 9.4.2023, summoning order dated 18.8.2025 and the proceedings of Criminal Case No. 2944 of 2025(State of U.P. vs. Shyam Bahadur Yadav), arose out of Case Crime No.53 of 2025 for offence under Section 376(2)(n) and 420 IPC, Police Station Kotwali, District Basti.

3. For the sake of brevity, the accused-applicant is referred as 'applicant' and opposite party no.2 is referred as 'victim' in this judgment.

4. The victim has lodged the FIR on 12.2.2025 at Police Station Kotwali district Basti at 17:10 hour for offence under section 420, 376, 504, 506 and 313 of IPC against the applicant and his brother, mother, father, and sisters, whose names have not been disclosed in the FIR. The allegation in the FIR is such that the victim was serving on contract basis as Data Executive from 2019 at District Hospital, where the victim came in contact with the applicant for the first time. The applicant has proposed the victim for marriage, on which the victim has replied that she will ask from parents. On his assurance, the applicant started visiting the house of the victim. The parents of victim were ready for marriage but the applicant has postponed the marriage after getting a job and submits that he will certainly marry. On 5.10.2020, the applicant was celebrating his birthday and pressurized the victim to come to his room. At about 7 PM, the victim reached there and the

applicant has entered into sexual intercourse on the promise that he will marry. The applicant has also taken certain indecent photographs of the victim. The victim has intimated the incident to her parents and the applicant has admitted his fault but assured that he will certainly marry the victim, due to which the victim has not submitted any police report. Thereafter, the victim was consistently subjected to rape on false promise of marriage. In the year 2020, the victim became pregnant twice. The victim was given the pills for abortion. She has also sought advice of a gynecologist and undertook abortion. The applicant then gave assurance that within 4 to 6 months, he will marry, but later on, he kept on extending time. Then, in the month of May 2023, the applicant got service as a junior clerk at Ambedkar Nagar Medical College. But thereafter, his behavior got changed and his parents were trying to get him married somewhere else. On 9.2.2025, at about 5 p.m., the victim with her brother, sister, and brother-in-law went to the house of applicant to meet his parents, on which the sister of applicant has put a lock from outside the house and got away at the park outside their house with lathi-danda in their hands. The family members of the victim were roughed up by the family members of the applicant. The information of this act was given at 112 dial. Later on, parties have entered into a compromise owing to the pressure built up by the applicant and also offered money. But when nothing has happened, the FIR is lodged.

5. In the statement under section 180 BNSS, the victim has stated that she is 30 years of age. The rest of the allegations are the same as she has levelled against the applicant in the FIR. In the statement of 183 BNSS, the victim has stated that she is BMM(Block Mission Manager) and knew the applicant since 2016. But she has stated talking to him in the year 2018. She got a job at district hospital as data executive in the year 2019. She got the call of applicant that he wanted to meet the victim and he came to the hospital to meet her. The applicant often comes to the hospital as his father was not well. The applicant and victim started meeting and applicant has given victim the proposal to marry her. Rest of the statements given by the victim are the same as disclosed in the FIR. She has further submitted that she has met Dr. Pramila Singh for the purpose of abortion. She has also disclosed that her mother got apprehensive and asked the victim to lodge a police case. For five years, the applicant has continuously raped the victim on false promise of marriage. She further submits that the applicant has kept on extending dates for entering into marriage with the victim on one pretext or the other, but lastly, has refused to marry.

6. Learned Senior Counsel has submitted that the victim has leveled allegations of false promise of marriage against the applicant, whom she knew since the year 2016 and the friendship between them was started in the year 2019. He submits that there was a proposal of marriage given by the applicant to her, which was a true proposal, as it was not false for the purpose of deceiving. On contrary, the victim herself has deceived the applicant by not disclosing her previous marriage and divorce to the

applicant. Learned counsel has drawn attention of this court towards the judgment of the Family Court dated 9.7.2019 passed in Petition No. 599 of 2018, Smt Rema vs. Ghanshyam, which was allowed by the Family Court, as the petition was for divorce by mutual consent between the victim and her husband with whom she has married on 29.6.2017. Learned counsel further submits that the bare perusal of the FIR and the statement of the victim on the face of it shows that it is the consensual relation between the two educated adults which continued from the year 2019 and subsists up to 2025. Between these years, the victim was continuously subjected to sexual intercourse on false promise of marriage. It is also revealed that twice the victim became pregnant and aborted.

7. Learned counsel has relied on a case of **Pramod Kumar Navratna versus State of Chhattisgarh & others** reported in **2026 INSC 124** and the case of **Prashant versus State NCT of Delhi** reported in **2024 INSC 879**. Learned senior counsel has also drawn attention of the court towards the information received under Right to Information from the office of Senior Superintendent, District Jail, Basti, dated 13.05.2025 annexed at page 300 with the application to show that the victim came to the District Jail, Basti on 03.03.2025 to meet the applicant. Learned counsel further submits that this information is entered in paragraph 66 and 67 of the application, which is not being replied by the victim in the counter affidavit. The purpose of receiving information under Right to Information is that relation between the applicant and the victim was consensual. Learned counsel has also drawn the attention of this court towards the money transaction between the applicant and victim. Hence, seeks interference to quash charge sheet, summoning order and the proceedings of the case started against the applicant.

8. Learned AGA and learned counsel for opposite party No. 2/victim, have stated that the intention of the applicant not to marry the victim was from the very start of their relationship, is reflected from the conduct of the applicant. Learned counsel submits that the applicant has given promise to marry the victim and proposal was initiated from the side of applicant. There was no occasion to the victim to disclose that she is a divorcee, as it was the proposal given by the applicant for marriage. Further submit that for more than five years, the victim was subjected to sexual intercourse on false promise of marriage given by the applicant. There is ample evidence on record to show that the victim is subjected to rape and the consent of the victim for sexual intercourse was obtained by the applicant by deceitful means. Referred the provision of section 90 of Indian Penal Code that consent of the victim was due to misconception of fact. Learned counsel for victim has relied on the case of **Anurag Soni versus State of Chhattisgarh** reported in **2019 LawSuit(SC) 1053** on the point that Hon'ble Supreme Court has clearly found evidence adduced before the trial court to convict the accused for offence of rape on false promise of marriage. He relied on paragraph 9 and 14 of the judgment and relied on the case of **Pramod Suryabhan Pawar versus State of Maharashtra**, reported in **2019**

LawSuit(SC) 1504, wherein Hon'ble Supreme Court has clearly explained the Misconception of fact and the deceit played by a person for seeking consent. He has also relied on the judgment of **Ravi Pal versus State of UP & another** reported in **2025 LawSuit(All) 1063** decided by this court on 4.11.2025 considering the principles of law laid down in the case of **Pramod Suryabhan Pawar(supra)**. Learned counsel submits that the application is devoid of merits and is liable to be dismissed.

9. The court has taken into consideration the rival submission made by the learned counsel and perused the record.

10. The fact which culled out from the material on record, particularly from the FIR, statement of victim, and other facts are reiterated below:-

(i) The victim has stated to know the applicant since 2016 though in the FIR, she knew him since 2019;

(ii) The victim was doing the job at District Hospital in the year 2019 when she received the call of applicant to meet, on which the applicant came to meet her in hospital;

(iii) The applicant has proposed the victim for marriage in the year 2019 and there were talks of marriage between the families and the victim's family was ready for the marriage;

iv) The applicant took time for marriage as he was in search of a job;

v) In the year 2020 the victim became pregnant twice. A date 5.10.2020 is reflected in the FIR as well as in the statement of victim, which shows that on that date the victim was subjected to sexual intercourse on false promise of marriage, for the first time. If this would be the date of sexual intercourse for the first time then how it could be stated that the victim was pregnant twice in the year 2020;

vi) From the year 2020 to year 2025, prior to lodging of FIR victim was continuously subject to sexual intercourse on false promise of marriage;

vii) It is the allegation that after getting a job in the year 2023, the behaviour of the accused has changed and he has refused to marry the victim.

11. The point of concern in the present case is whether the continuance of proceedings would tantamount to abuse of process of law or there is substantive material against the accused on the basis of which the trial would continue.

12. The facts culled out from the material on record is already discussed herein above. Now, the principles enunciated through judgments of Hon'ble the Supreme Court relied on by the parties are to be discussed.

13. In the case of **Pramod Kumar Navratna(supra)** relied on by learned Counsel for the applicant, two relevant paragraphs, which deals with the sexual intercourse on false promise of marriage are taken into consideration are reiterated underneath:-

“24. On a perusal of the allegations made in the present case, it is an admitted fact that the complainant-respondent No.3, within the first initial meetings told the accused-appellant that she was a married woman with divorce proceedings pending before the Family Court. Therefore, in the same breath, she cannot be allowed to claim and allege that she was also coaxed by the accused-appellant into having a physical relationship with him on the false pretext of marriage as the two facts cannot stand together on the same plane and simultaneously as both are antagonistic and antithetical to each other. In our opinion, the facts of the present case clearly indicate a consensual relationship gone sour whereas both the parties should have exercised restraint and should have refrained from involving the State into their personal relationship turning rancour.

25 At this juncture, it is important to place reliance upon the observations in Prashant vs. State of NCT of Delhi, (2025) 5 SCC 764, wherein this Court speaking through one of us (Nagarathna, J.) observed that a mere break-up of a relationship between a consenting couple cannot result in the initiation of criminal proceedings. What was a consensual relationship between the parties at the initial stages cannot be given a colour of criminality when the said relationship does not fructify into a marriage. Furthermore, this Court in Samadhan Vs. State of Maharashtra, 2025 SCC OnLine SC 2528 through one of us (Nagarathna, J.) observed that this Court has, on numerous occasions, taken note of the disquieting tendency wherein failed or broken relationships are given the colour of criminality. The offence of rape, being of the gravest kind, must be invoked only in cases where there exists genuine sexual violence, coercion, or absence of free consent. To convert every soured relationship into an offence of rape not only trivialises the seriousness of the offence but also inflicts upon the accused indelible stigma and grave injustice. Such instances transcend the realm of mere personal discord. The misuse of the criminal justice machinery in this regard is a matter of profound concern for the judiciary already facing a heavy load and calls for condemnation.”

14. Learned Counsel for the applicant also relied on a case, **Prashant(supra)**, this case is reported in the previous case in paragraph 25 on the point that mere breakup of relationship between the consenting couple cannot result in initiation of criminal proceedings.

15. Learned Counsel for opposite party No. 2 has relied on a case of **Anurag Soni(supra)**, particularly in paragraph 9 and 14, wherein Hon'ble Supreme Court has dealt with evidences on record adduced during trial and it is on the

basis of evidences that Hon'ble Supreme Court has found that trial court as well as High Court were rightly maintaining conviction of the applicant/appellant for the offence of rape on false promise of marriage considering consent obtained by the accused is deceptive from the very beginning, the relevant paragraphs are quoted herein below:-

"[9] In the present case, the accused has been convicted for the offence under Section 376 of the IPC. It is the case on behalf of the appellant-accused that as it is a case of a consensual sex, the Courts below have committed an error in convicting the accused for the offence under Section 376 of the IPC. Both the Courts below have accepted the case of the prosecution that the consent of the prosecutrix was given on the basis of misconception of fact and, therefore, considering Section 90 of the IPC, such a consent cannot be said to be a consent and, therefore, the accused has committed the rape as defined under Section 375 of the IPC and thereby has committed an offence under Section 376 of the IPC. Therefore, the question which has been posed before this Court is, whether in the facts and circumstances of the case and considering the evidence on record, the Courts below have committed any error in holding the accused guilty for the offence under Section 376 of the IPC?

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[14] Considering the aforesaid facts and circumstances of the case and the evidence on record, the prosecution has been successful in proving the case that from the very beginning the accused never intended to marry the prosecutrix; he gave false promises/promise to the prosecutrix to marry her and on such false promise he had a physical relation with the prosecutrix; the prosecutrix initially resisted, however, gave the consent relying upon the false promise of the accused that he will marry her and, therefore, her consent can be said to be a consent on misconception of fact as per Section 90 of the IPC and such a consent shall not excuse the accused from the charge of rape and offence under Section 375 of the IPC. Though, in Section 313 statement, the accused came up with a case that the prosecutrix and his family members were in knowledge that his marriage was already fixed with Priyanka Soni, even then, the prosecutrix and her family members continued to pressurise the accused to marry the prosecutrix, it is required to be noted that first of all the same is not proved by the accused. Even otherwise, considering the circumstances and evidence on record, referred to hereinabove, such a story is not believable. The prosecutrix, in the present case, was an educated girl studying in B. Pharmacy. Therefore, it is not believable that despite having knowledge that that appellant's marriage is fixed with another lady - Priyanka Soni, she and her family members would continue to pressurise the accused to marry and the prosecutrix will give the consent for physical relation. In the deposition, the prosecutrix specifically stated

that initially she did not give her consent for physical relationship, however, on the appellant's promise that he would marry her and relying upon such promise, she consented for physical relationship with the appellant accused. Even considering Section 114-A of the Indian Evidence Act, which has been inserted subsequently, there is a presumption and the court shall presume that she gave the consent for the physical relationship with the accused relying upon the promise by the accused that he will marry her. As observed hereinabove, from the very inception, the promise given by the accused to marry the prosecutrix was a false promise and from the very beginning there was no intention of the accused to marry the prosecutrix as his marriage with Priyanka Soni was already fixed long back and, despite the same, he continued to give promise/false promise and alluded the prosecutrix to give her consent for the physical relationship. Therefore, considering the aforesaid facts and circumstances of the case and considering the law laid down by this Court in the aforesaid decisions, we are of the opinion that both the Courts below have rightly held that the consent given by the prosecutrix was on misconception of fact and, therefore, the same cannot be said to be a consent so as to excuse the accused for the charge of rape as defined under Section 375 of the IPC. Both the Courts below have rightly convicted the accused for the offence under Section 376 of the IPC."

16. Learned Counsel for opposite party No.2 has relied upon the case of **Pramod Suryabhan Pawar(supra)**, which is earlier relied on by this court in Paragraph 11 of its judgment passed in **Ravi Pal(supra)**, wherein paragraph 18 of judgment in **Pramod Suryabhan** is reiterated. The same is reiterated hereunder:-

"[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."

17. It is a settled principles of law that the facts of every case is different and therefore applying precedents requires careful judicial analysis. Moreover, while invoking the inherent jurisdiction for quashing a criminal case, the test is, the facts of the case, if taken to be true could end in conviction. The scope of ambit of the powers of the High Court invoking under Section 482 CrPC or 528 BNSS are very wide, but should be exercised with circumspection and in rarest of rare and appropriate cases. This power do not confer arbitrary jurisdiction to act according to whims and caprice and

is used to prevent the abuse of process of law and for procuring the ends of justice. This preposition of law is enunciated in the cases of ***Kurukshetra University Vs. State of Haryana (1977) 4 SCC 451*** and ***the State of Haryana Vs. Bhajan Lal***, reported in ***1992 Supp(1) SCC 335***. In the case of ***Som Mittal Vs. Government of Karnataka***, reported in ***(2008) 3 SCC 574***, Hon'ble the Supreme Court has given an expression of 'rarest of rare case', while describing the scope of Section 482 CrPC. This view is consistently maintained by Hon'ble the Supreme Court till the present day, which is settled by 'en' number of judgments, latest are ***Naresh Potteries Vs. Aarti Industries***, reported in ***2025 SCC OnLine SC 18*** and ***Punit Beriwal Vs. State (NCT) of Delhi***, reported in ***2025 SCC OnLine SC 983***.

18. In the present case, it is a fact situation that the victim was a divorced lady. The victim's divorce is not mentioned ever in the FIR or in the statement of the victim, though it is an admitted fact. It is also a fact that the relation between the applicant and the victim started from the year 2019 on the promise of marriage, which continued for a long period upto the year 2025. It is also an admitted fact that the applicant and victim are educated, in a job and had frequent sexual intercourse. Now, the point of concern is only about the consent or not consent. The Hon'ble Supreme Court, in catena of judgments, has observed that two able minded adults, if maintain a long term physical relationship, then a presumption would be drawn that they have voluntarily chosen their consensual relations and subsequent non-fulfillment of promise of marriage would not attract any offense. This analogy has been drawn from the case of ***Ravish Singh Rana v. State of Uttarakhand***, reported in ***2025 SCC OnLine SC 1055 (Paragraph 14,15)*** and in the cited case of ***Prashant (supra)*** in paragraph 20.

19. In view of the discussions made herein above, this Court is of the view that continuance of proceedings will tantamount to miscarriage of justice. The perusal of material available on record does not justify continuance of trial.

20. The application under section 528 BNSS is **allowed**.

21. Consequently, the proceeding of Criminal Case No. 2944 of 2025(State of U.P. vs. Shyam Bahadur Yadav), arose out of Case Crime No.53 of 2025 for offence under Section 376(2)(n) and 420 IPC, Police Station Kotwali, District Basti including charge sheet dated 9.4.2023, summoning order dated 18.8.2025 are quashed.

(Avnish Saxena,J.)

February 17, 2026

P.P.