Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL WRIT PETITION NO.7 OF 2026

NILESH RAJARAM JALMI
s/o late Rajaram Vasu Jalmi, aged 36 years,
Private Service, R/o H.No.54, Math Wada,
Piligao, Bicholim, Goa. … PETITIONER

Versus

1. STATE OF GOA
through the Public Prosecutor, High Court,
Porvorim, Goa.

2. THE POLICE INSPECTOR, Bicholim
Police Station, Bicholim, Goa.

3. XXXXXXXXXXXXXXX,
XXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXX
X, Sarvan, Bicholim, Goa. … RESPONDENTS

Mr Sagar Dhargalkar, Ms Nilima Divkar and Ms Radhika Purohit, Advocates for the Petitioner.

Mr S. Karpe h/f Mr P. Talaulikar, Additional Public Prosecutor for the Respondent- State.

Ms S. Parulekar, Advocate U/LAS for the Respondent No.3.

CORAM: ASHWIN D. BHOBE, J.

DATED: 21st OCTOBER 2026

ORAL JUDGEMENT:

1. Heard Mr Sagar Dhargalkar, learned Advocate for the Petitioner, Mr S. Karpe, learned Additional Public Prosecutor for Respondent Nos. 1 and 2 and Ms Shweta Parulekar, learned Advocate for Respondent No.

2. Rule. Rule returnable forthwith and with the consent of the parties, this Petition is heard finally.

3. By this Petition filed under Article 226 of the Constitution of India, read with Section 528 of BNSS, 2023, the Petitioner seeks the quashing of the FIR bearing No. 163/2025 registered at Bicholim Police Station for offences punishable under Sections 376(2)(n) and 506 of the Indian Penal Code ("impugned order") and of the charge-sheet registered as No. 13/2026 dated 04.02.2026 arising out of the impugned FIR.

4. Mr Sagar Dhargalkar, learned Advocate for the Petitioner, submits that Charge Sheet No. 13/2026 is registered as Criminal Case No. SCORS/61 of 2026 and is pending before the Special Court (Fast Track) at Panaji (POCSO) ("Trial Court").

5. Crime No. 163/2025 was registered based on the complaint dated 08.12.2025 filed by Respondent No. 3-Complainant. Respondent No. 3, a married woman with a minor daughter, developed a friendship with the Petitioner in 2016. This friendship evolved into a relationship and subsequently into a physical relationship. Respondent No. 3 alleged that the

Petitioner began blackmailing her, threatening to circulate her photos and videos on social media if she did not fulfil his sexual desires. Respondent No. 3 further alleged that the Petitioner was forcing her into prostitution.

6. Mr Sagar Dhargalkar, learned Advocate for the Petitioner, submits that the Petitioner and Respondent No. 3 initially developed a friendship in 2016, which later deepened into a physical relationship. He submits that the Petitioner's physical relationship with Respondent No. 3 was consensual and the same continued till just prior to the filing of the complaint. He submits that this relationship existed during Respondent No. 3's marriage. He further submits that when the relationship between the Petitioner and Respondent No. 3 soured, Respondent No. 3 filed the complaint dated 08.12.2025, making false, frivolous and mischievous allegations against the Petitioner, with sole intent to cause harassment and embarrassment. He relies on the decision of this Court in *Raghav Rajesh Aggarwal v The State of Maharashtra & Anr.*[1]

7. Ms Shweta Parulekar, learned Advocate for Respondent No.3, submits that the Petitioner, under the pretext of marriage, developed a relationship with Respondent No.3. To clarify, she submits that Respondent No.3 entered a physical relationship with the Petitioner on the promise of marriage. She, by referring to the statement of the daughter of Respondent No.3, submits that the daughter of Respondent No.3 has also stated that the Petitioner, on the promise to marry, entered the relationship with

1 Criminal Writ Petition No.6486/2025 decided on 18.02.2026

Respondent No.3. She submits that the Petitioner has an alternate and efficacious remedy of filing an application for discharge before the Trial Court. She therefore submits that this Court should not entertain this Petition. Ms Parulekar submits that the case set out by the Petitioner does not fall within the parameters of *State of Haryana v/s. Bhajan Lal*[2].

8. Mr S. Karpe, learned Additional Public Prosecutor for Respondent Nos. 1 and 2, submits that as the case of Respondent No. 3 is one of promise to marry, the intent to deceive Respondent No. 3 must be established at the very outset.

9. Perused the records with the assistance of the learned Advocates.

10. From the material in the file of this Petition, it is not in dispute that Respondent No. 3 was married when she developed a friendship and a physical relationship with the Petitioner. In her statement, the daughter of Respondent No. 3 stated that Respondent No. 3 was married when she entered the relationship with the Petitioner and continued in the same. Unnumbered paragraph 2 of the complaint dated 08.12.2025 states that Respondent No. 3 and the Petitioner have been in a relationship since 2016. The complaint dated 08.12.2025 neither mentions nor does Respondent No. 3 claim to have obtained a divorce or filed any divorce proceedings.

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2 1992 Suppl (1) SCC 335

11. The material on record again does not suggest that the Petitioner induced or misled Respondent No.3 into consenting to a sexual relationship nor that Respondent No.3 was persuaded by the Petitioner to have a physical relationship. This is not even *prima facie* established.

12. Mr Dhargalkar for the Petitioner is justified in submitting that the relationship between the Petitioner and Respondent No.3 was consensual and not one of lust.

13. The Hon'ble Supreme Court in *Pramod Kumar Navratna v/s. State of Chhattisgarh and Others*[3], wherein in paragraph nos.19 to 24, 26 & 27, the following observations have been made :-

> "*19. Upon a careful consideration of the record in the present case, we are unable to discern any material that would warrant the invocation of Section 376(2) (n) of the IPC. The facts of the present case unmistakably indicate towards a classic case of a consensual relationship turning acrimonious. Upon perusal of the records of the case, it is evident that the complainant-respondent No. 3 is a married lady with a ten years old child. The said marriage was solemnized on 02.06.2011 and although divorce proceedings are currently pending adjudication between her and her husband, by no stretch of imagination can it be held that the complainant respondent No. 3 was eligible for*

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3 Criminal Appeal of 2026 (arising out of Special Leave Petition (Cri.) No.4452/2025 decided on 05.02.2026)

being married with the accused/appellant on 18.09.2022, the date on which the first of the multiple instances of acts of rape on the false pretext of marriage has been committed by the accused-appellant are alleged. Therefore, even for the sake of argument, if the contention of the respondent No. 1-State and the complainant-respondent No. 3 is accepted that there indeed was a false promise of marriage based on which the accused-appellant indulged in sexual activities, such a promise would not be legally enforceable or even capable of being acted upon as the victim herself was not eligible for marriage, neither on the date of the first alleged act of offence i.e. 18.09.2022 nor on any subsequent dates wherein the parties indulged in the sexual activities, till the point of the date of registration of FIR i.e. 06.02.2025. The said embargo arises from sub-clause (i) of Section 5 of the Hindu Marriage Act, 1955 which categorically prohibits marriage between two individuals if either of them have a living spouse. The said position of law has been reiterated under sub clause (i) of Section 4 of the Special Marriage Act, 1954.

20. In other words, the law prohibits bigamous unions and therefore disallows parties from entering into a second marriage during the subsistence of their first marriage. It is, therefore, difficult to accept the view that the complainant-respondent No. 3, who herself is an advocate, was oblivious to the said settled position of law and hence was duped and induced by the accused/appellant into having sexual relations with him on different occasions on the pretext of

marriage especially when both the parties were cognizant of the marital status of the complainant/Respondent No. 3.

21. At this juncture, it is also pertinent to mention that the complainant-respondent No. 3 is a thirty-three years old woman and an advocate by profession and not a naive or gullible woman incapable of taking decisions for herself. It would be remiss not to mention, at the cost of repetition, that the complainant/Respondent No. 3 is herself an advocate and therefore she should have exercised her prudence and discretion before engaging the already burdened State machinery into a roving criminal litigation.

22. The Courts have to be extremely careful and cautious in identifying the genuine cases filed under Section 376(2)(n) of the IPC by identifying the essential ingredients to constitute the said offence i.e. there should be a promise of marriage made by the accused solely with a view to obtain consent for sexual relations and without having any intent of fulfilling said promise from the very beginning, and that such false promise of marriage had a direct bearing on the prosecutrix giving her consent for sexual relations. Such genuine cases that deserve prosecution of the accused must be clearly demarcated from the litigation that arises from the cases of consensual relationships between consenting adults going acrimonious on account of dispute and disagreement or a future change of mind. In view of the aforesaid settled position of law, the respondent No. 1-State and the complainant-respondent No. 3 has failed to place

any material on record to show how the accused-appellant on the subsequent meetings managed to repeatedly coax and dupe the complainant-respondent No. 3 into having physical relations with him on the false pretext of marriage considering the fact that within initial meetings, both parties were aware about the marital status of the victim and therefore it cannot be, by any stretch imagination said that the consent of the complainant-respondent No. 3 has been vitiated or obtained on fraud and misrepresentation made by the accused-appellant.

23. At this stage, it is material to refer to the decision of this Court in ***Mahesh Damu Khare vs. State of Maharashtra, (2024) 11 SCC 398****, wherein the following observations were made:*

> "29. *It must also be clear that for a promise to be a false promise to amount to misconception of fact within the meaning of Section 90 IPC, it must have been made from the very beginning with an intention to deceive the woman to persuade her to have a physical relationship. Therefore, if it is established that such consent was given under a misconception of fact, the said consent is vitiated and not a valid consent.....*"

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.

26. In this regard, it would be apposite to rely on the judgment in the case of ***State of Haryana vs. Bhajan Lal, 1992 Suppl (1) SCC 335*** *("Bhajan Lal") with particular reference to paragraph 102 therein, where this Court observed thus :*

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power Under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or*

otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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.

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(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.

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(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."*
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> *27. On a careful consideration of the aforementioned judicial dictum, we find that the offence alleged against the accused-appellant herein is not made out at all. In fact, we find that the allegation of rape on false pretext of marriage even when taken on its face value, does not amount to an offence of rape and hence not liable for punishment under Section 376(2) (n) of the IPC in the instant case and therefore, the judgment of this Court in the case of Bhajan Lal squarely apply to the facts of these cases. Therefore, it is neither expedient nor in the interest of justice to permit the present prosecution emanating from the FIR and consequent Sessions Case No. 89/2025 to continue."*

14. In the case at hand, Respondent No. 3, being married, was not eligible to marry the Petitioner on the date when the alleged instances of rape, purportedly committed by the Petitioner under the false pretext of marriage, are said to have occurred. Respondent No. 3 would be under an impediment if the Petitioner decided to honour his promise. No material on record suggests that the Petitioner's initial intention was to deceive Respondent No. 3 and persuade her to have a physical relationship. The facts clearly indicate a consensual relationship between two adults of mature age, which later deteriorated. The

ingredients of the offence under Section 376(2)(n) of the Indian Penal Code are not established.

15. With reference to the offence under Section 506 of the Indian Penal Code, no material indicates the ingredients of the offence. Ms Parulekar was unable to point out any material to indicate the ingredients of Section 506 of the Indian Penal Code.

16. This case squarely falls within the principles laid down in *Bhajan Lal (supra)* for exercising powers under Section 528 of BNSS, 2023, to quash the FIR and the charges arising therefrom to prevent abuse of the legal process.

17. Accordingly, this Criminal Writ Petition is allowed and Rule is made absolute in terms of prayer clauses (a), (Aa), (Ab) and (Abc). Consequently, the impugned FIR No. 163/2025 dated 11.12.2025 and the Charge Sheet No. 13/2026, registered as Criminal Case No. SCORS/61 of 2026 are quashed.

18. Ms Parulekar has appeared for Respondent No. 3 under the legal aid scheme. Accordingly, the Member Secretary, Goa State Legal Services Authority, is directed to quantify and pay Ms Parulekar's legal fees in terms of the rules.

19. The Criminal Writ Petition No.7 of 2026 is disposed of.

ASHWIN D. BHOBE, J.

Signed by: SUCHITRA NANDAN SINGBAL
Designation: Personal Assistant
Date: 21/10/2026 18:45:16