VERDICTUM.IN

2025 INSC 1351

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.5001 OF 2025
(Arising out of Special Leave Petition (Crl.) No.6906 of 2025)

SAMADHAN S/O SITATRAM MANMOTHE ...APPELLANT

VERSUS

STATE OF MAHARASTHRA & ANOTHER ...RESPONDENTS

J U D G M E N T

NAGARATHNA, J.

Leave granted.

2. Being aggrieved by the order dated 06.03.2025 passed by the Bombay High Court at Aurangabad in Criminal Application No. 601 of 2025 dismissing the application filed by the appellant under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short "BNSS") seeking quashing of FIR No. 294 of 2024, registered with City Chowk Police Station, District Chhatrapati

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Reason:

VERDICTUM.IN

Sambhajinagar City on 31.08.2024, for the offences punishable under Sections 376, 376(2)(n) and 507 of the Indian Penal Code, 1860 (for short "IPC"), the appellant is before this Court.

3. We have heard learned counsel for the appellant, learned counsel for respondent No.1-State and learned *Amicus Curiae*, Ms. Radhika Gautham, for respondent No.2 as the latter has not responded to the notice issued and served on her.

4. Briefly stated the facts of this case as per the prosecution are that respondent No.2 had lodged a complaint with City Chowk Police Station, District Chhatrapati Sambhajinagar City, stating that she was married to a person ABC in the year 2019 and had a minor daughter out of the said wedlock. However, due to matrimonial discord with her husband and in-laws, she had been residing separately since May 2020 and was living with her parents at Rajangaon, Taluka Paithan, District Chhatrapati Sambhajinagar.

5. In July 2020, respondent No.2 had filed a complaint against her husband at the Women's Grievance Redressal Centre, Office of Superintendent of Police, Chatrapati Sambhajinagar. However, owing to the failure of reconciliation between them, respondent

VERDICTUM.IN

No.2 initiated proceedings against her husband seeking alimony/ maintenance from him.

6. It is in connection with the said proceedings that respondent No.2, on 27.01.2022, was introduced to the appellant, who is a practising advocate in the courts of Aurangabad. Later, appellant took respondent No.2's contact number and the two regularly kept in touch on WhatsApp and through phone calls. Over a period of time, the appellant and respondent No.2 developed a close relationship. It was then that the appellant proposed to meet respondent No.2 in person at Vivekananda Garden in TV Centre. During the course of their meeting, the appellant expressed his desire to marry respondent No.2. However, owing to her troubled marital past, respondent No.2 declined the proposal. Despite her reluctance, the appellant continued to insist on marriage at each subsequent meeting.

7. On 12.03.2022, the appellant called respondent No.2 to Hotel Citizen, near Mill Corner, Chhatrapati Sambhajinagar, where he once again expressed his desire to marry her and assured her that he would marry her despite her concern that his mother might not

VERDICTUM.IN

approve of the alliance. Based on such assurance, the appellant established physical relations with her.

8. Subsequently, in September 2022, the complainant discovered that she was pregnant with the appellant's child. However, with the consent of the appellant, she aborted the child. Thereafter, when respondent No.2 decided to part ways with the appellant, he continued to assure her of marriage and engaged in further sexual relations with her, as a result of which she got pregnant again in July 2023 and later in May 2024. Both the pregnancies were terminated.

9. On 20.05.2024, the appellant once again called respondent No.2 to Hotel Citizen, where he engaged in physical acts with her. Later, when respondent No.2 insisted on marriage, the appellant flatly refused to marry her and further threatened to kill her if she disclosed the matter to anybody.

10. Based on the aforesaid facts, FIR No. 294 of 2024 dated 31.08.2024 came to be registered against the appellant for the offences punishable under Sections 376, 376(2)(n) and 507 of the IPC at City Chowk Police Station, District Chhatrapati Sambhajinagar City.

VERDICTUM.IN

11. Being aggrieved, the appellant filed an anticipatory bail application bearing Criminal Bail Application No. 1841 of 2024 before the Additional Sessions Judge, Aurangabad (hereinafter referred to as "Trial Court"). The Trial Court, by order dated 19.09.2024, allowed the application and enlarged the appellant on anticipatory bail. During the course of the investigation, both respondent No. 2 and her mother, in their statements, supported the prosecution's version of events. Subsequently, on completion of the investigation, a charge-sheet bearing No. 143 of 2024 dated 25.10.2024 came to be filed against the appellant under Sections 376, 376(2)(n) and 507 of the IPC.

12. Being aggrieved, the appellant preferred an application bearing Criminal Application No. 601 of 2025 before the Bombay High Court at Aurangabad under Section 528 of the BNSS, seeking quashing of FIR No. 294 of 2024.

13. By the impugned order dated 06.03.2025, the High Court refused to quash the criminal proceedings pending against the appellant in FIR No. 294 of 2024 on the ground that a chargesheet had already been filed and the matter was ready for trial; the appellant could not sufficiently prove that the instant case was a

VERDICTUM.IN

clearly case of consensual relationship; that the relationship between the appellant and respondent No.2 could be termed as a fiduciary relationship inasmuch as the appellant was discussing the maintenance case of respondent No.2 with her; and that in view of the aforesaid, the facts of the present case warranted the conduct of a trial to test the veracity of the allegations made by respondent No.2 and to ascertain whether the acts alleged to have occurred between the appellant and respondent No.2 were against her will or otherwise.

14. We have heard learned counsel for the appellant and learned counsel for the respondent-State and learned Amicus on behalf of respondent No.2.

15. Learned counsel appearing for the appellant submitted that the appellant has been falsely implicated as there is no evidence against him with respect to the commission of the offences punishable under Sections 376, 376(2)(n) and 507 of the IPC.

16. It is further submitted that the respondent No.2 is a well-educated lady who is married and has a minor daughter. It was contended that there is no divorce decree passed between respondent No.2 and her husband. Therefore, during the

VERDICTUM.IN

subsistence of her marriage, respondent no.2 consequently entered into a relationship with the appellant for a period of three years. Further, during the subsistence of their relationship, no complaint whatsoever was ever lodged by respondent No.2 against the appellant. It was only in August 2024 after the appellant refused to pay a sum of Rs.1,50,000/- demanded by respondent No.2, that in a fit of anger, she lodged the present criminal case against him.

17. Learned counsel for the respondent-State, on the other hand, supported the impugned order and submitted that the allegations made by respondent No.2 discloses commission of a cognisable offence and warrants no interference at the threshold. It is submitted that the veracity of the defence taken by the appellant is a matter for trial and not for adjudication under the limited jurisdiction of a petition for quashing.

18. Learned Amicus also supported the respondent-State by contending that there is no merit in this appeal.

19. Having heard the learned counsel appearing for the parties and having perused the material on record, the only question that needs to be addressed is whether FIR No. 294 of 2024 dated

VERDICTUM.IN

31.08.2024, along with Chargesheet No.143 of 2024 filed on 25.10.2024 against the appellant herein, should be quashed.

20. In the instant case the allegations in the FIR are under Sections 376, 376(2)(n) and 507 of the IPC. An offence of rape, if established in terms of Section 375 of the IPC, is punishable under Section 376 of the IPC. In the present case, the second description of Section 376 is relevant which is set out below:

> **"376. Punishment for rape. –** (1). Whoever, except in the cases provided for in sub- section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine.
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> 2. Whoever, -
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> xxx
>
> (n) commits rape repeatedly on the same woman,
>
> shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.
>
> *Explanation*.—For the purposes of this sub-section,—
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> (a) "armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

VERDICTUM.IN

> (b) “hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;
>
> (c) “police officer” shall have the same meaning as assigned to the expression “police” under the Police Act, 1861 (5 of 1861);
>
> (d) “women's or children's institution” means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.”

21. Section 376(2)(n) of the IPC provides for enhanced punishment in cases where rape is committed repeatedly on the same woman. It mandates rigorous imprisonment for a term of not less than ten years which may extend to life imprisonment for the remainder of the person's natural life. The object of this provision is to address aggravated instances of sexual assault where the offence is not a single incident but has occurred repeatedly on the same victim. The expression “repeatedly” employed in the provision is of significance. It contemplates more than one act of sexual assault, committed at different points in time on the same victim. Courts have consistently interpreted this phrase to mean a series

VERDICTUM.IN

of acts that are separate in nature and not a continuation of a single transaction.

22. In genuine cases under Section 376(2)(n) of the IPC, the pattern is usually unmistakable; it is an initial act of sexual assault, followed by multiple acts under fear, pressure, captivity, or continued deceit, often when the woman is rendered vulnerable and unable to escape the situation.

23. In the present case, a bare perusal of the FIR and the statement on record reveals that respondent No.2 met the appellant, who is a practising advocate, for the first time in reference to a case which was instituted by respondent No.2 against her husband. Thereafter, they exchanged numbers and regularly kept in touch. Over a passage of time, respondent No.2 and the appellant developed a close relationship and started meeting each other frequently. During this time, they established sexual relations multiple times between 12.03.2022 to 20.05.2024. The appellant contends that during the course of their relationship, not once did respondent No.2 file a complaint regarding the alleged non-consensual sexual relations, and it is inconceivable that the appellant would force himself upon her for so many years without

VERDICTUM.IN

there being any protest or complaint from the side of respondent No.2. Notably, it was only in August of 2024 when the appellant refused to fulfil respondent No.2's demand of payment of Rs.1,50,000/- that the instant criminal case came to be instituted against the appellant.

24. Another question which arises for consideration is whether the appellant engaged in physical relationship with respondent No.2 based on a deception or a false promise to marry.

25. The allegation of rape in the present case hinges entirely on respondent No.2's claim that appellant established physical relations with her on false pretext of marriage. It is alleged by the appellant that respondent No.2 opposed the idea of marriage whenever the appellant broached the said idea; however, the appellant kept on insisting possibly this was because her first marriage was in subsistence. It is, however, not clear as to why, despite being opposed to the idea of marriage, respondent No.2 continued to meet the appellant and indulged in physical relations with him even though she was already married.

26. The FIR in the present case also states that in September 2022, when respondent No.2 found out that she was pregnant with

VERDICTUM.IN

the appellant's child, she told the appellant, "You live your life and I will live my life". At that time, the appellant again assured her that they would get married and asked for some time from respondent No.2, to which she refused. However, despite her refusal to be with the appellant, respondent No.2 continued to meet him at Hotel Citizen and engaged in physical relations with him.

27. In this regard, it becomes relevant to refer to the decision of this Court in the case of ***Mahesh Damu Khare vs. State of Maharashtra, (2024) 11 SCC 398, ("Mahesh Damu")*** wherein the following observations were made:

> "27. In our view, if a man is accused of having sexual relationship by making a false promise of marriage and if he is to be held criminally liable, any such physical relationship must be traceable directly to the false promise made and not qualified by other circumstances or consideration. A woman may have reasons to have physical relationship other than the promise of marriage made by the man, such as personal liking for the male partner without insisting upon formal marital ties.
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> 28. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said with certainty that the said physical relationship was purely because of the alleged promise made by the appellant to marry her. Thus, unless it can be shown that the physical relationship was purely because of the promise of marriage, thereby having a direct nexus with the physical relationship without being influenced by any other consideration, it cannot be said

VERDICTUM.IN

that there was vitiation of consent under misconception of fact."

(underlining by us)

28. We find that the present case is not a case where the appellant lured respondent No.2 solely for physical pleasures and then vanished. The relationship continued for a period of three long years, which is a considerable period of time. They remained close and emotionally involved. In such cases, physical intimacy that occurred during the course of a functioning relationship cannot be retrospectively branded as instances of offence of rape merely because the relationship failed to culminate in marriage.

29. 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 sour 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

VERDICTUM.IN

criminal justice machinery in this regard is a matter of profound concern and calls for condemnation.

30. In ***Prashant vs. State of NCT of Delhi, (2025) 5 SCC 764,*** 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. The relevant portion is extracted as under:

> "20. In our view, taking the allegations in the FIR and the charge-sheet as they stand, the crucial ingredients of the offence under Section 376(2)(n)IPC are absent. A review of the FIR and the complainant's statement under Section 164CrPC discloses no indication that any promise of marriage was extended at the outset of their relationship in 2017. Therefore, even if the prosecution's case is accepted at its face value, it cannot be concluded that the complainant engaged in a sexual relationship with the appellant solely on account of any assurance of marriage from the appellant. The relationship between the parties was cordial and also consensual in nature. A mere break up of a relationship between a consenting couple cannot result in 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 marital relationship. Further, both parties are now married to someone else and have moved on in their respective lives. Thus, in our view, the continuation of the prosecution in

VERDICTUM.IN

> the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution."
>
> **(underlining by us)**

31. This Court is conscious of the societal context in which, in a country such as ours, the institution of marriage holds deep social and cultural significance. It is, therefore, not uncommon for a woman to repose complete faith in her partner and to consent to physical intimacy on the assurance that such a relationship would culminate in a lawful and socially recognised marriage. In such circumstances, the promise of marriage becomes the very foundation of her consent, rendering it conditional rather than absolute. It is, thus, conceivable that such consent may stand vitiated where it is established that the promise of marriage was illusory, made in bad faith, and with no genuine intention of fulfilment, solely to exploit the woman. The law must remain sensitive to such genuine cases where trust has been breached and dignity violated, lest the protective scope of Section 376 of the IPC be reduced to a mere formality for those truly aggrieved. At the same time, the invocation of this principle must rest upon credible

VERDICTUM.IN

evidence and concrete facts, and not on unsubstantiated allegations or moral conjecture.

32. 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 that it is a classic instance of a consensual relationship having subsequently turned acrimonious.

33. The appellant has unequivocally asserted that, during the subsistence of the relationship, no grievance or allegation was ever raised by respondent No.2 regarding the absence of consent in their physical relations. It was only upon the appellant's refusal to fulfil her demand for payment of the sum of Rs.1,50,000/- that the present criminal proceedings came to be instituted. Furthermore, the alleged incidents are stated to have occurred between 12.03.2022 and 20.05.2024; however, the FIR was lodged only on 31.08.2024, i.e. nearly three months after the last alleged act of sexual intimacy.

34. The FIR is conspicuously silent as to any specific allegation that the appellant had either forcibly taken or compelled respondent No.2 to accompany him to the hotel, nor does it

VERDICTUM.IN

disclose any circumstance suggesting deceit or inducement on the part of the appellant to procure her presence there. Therefore, the only logical inference that emerges is that respondent No.2, of her own volition, visited and met the appellant on each occasion. It is also borne out from the record that whenever the appellant brought up the subject of marriage, respondent No.2 herself opposed the proposal. In such circumstances, the contention of respondent No.2 that the physical relationship between the parties was premised upon any assurance of marriage by the appellant is devoid of merit and stands unsustainable.

35. We deem it appropriate to refer to the decision of this Court in ***Rajnish Singh vs. State of Uttar Pradesh, (2025) 4 SCC 197,*** whereby it was held that when a woman who willingly engages in a long-term sexual relationship with a man, fully aware of its nature and without any cogent evidence to show that such relationship was induced by misconception of fact or false promise of marriage made in bad faith from the inception, the man cannot be held guilty of rape under Section 376 of the IPC. The relevant portion of the judgment is extracted as under:

> "33. <u>There is no dispute that from the year 2006 onwards, the complainant and the appellant were residing in</u>

VERDICTUM.IN

different towns. The complainant is an educated woman and there was no pressure whatsoever upon her which could have prevented her from filing a police complaint against the accused if she felt that the sexual relations were under duress or were being established under a false assurance of marriage. On many occasions, she even portrayed herself to be the wife of the appellant thereby, dispelling the allegation that the intention of the appellant was to cheat her right from the inception of the relationship.

34. We cannot remain oblivious to the fact that it was mostly the complainant who used to travel to meet the appellant at his place of posting. Therefore, we are convinced that the relationship between the complainant and the appellant was consensual without the existence of any element of deceit or misconception.

35. Further, the application filed by the complainant at One Stop Centre, Lalitpur on 23-3-2022, makes it abundantly clear that she was in a consensual relationship with the appellant since 2006. It is alleged in the complaint that when she had proposed that they should marry and live together, the appellant physically abused her and beat her up. If at all there was an iota of truth in this allegation then the FIR should have been registered immediately after this incident. However, it is only when it came to the knowledge of the complainant that the appellant was getting married to another woman, in an attempt to stop his marriage, she filed aforesaid complaint at the One Stop Centre wherein she also admitted that she was equally guilty as the appellant and therefore, his marriage must be stopped.

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39. It is, therefore, clear that the accused is not liable for the offence of rape if the victim has wilfully agreed to maintain sexual relations. The Court has also recognised that a prosecutrix can agree to have sexual intercourse on account of her love and passion for the accused."

(underlining by us)

VERDICTUM.IN

36. By the impugned order dated 06.03.2025, the High Court observed that although it was contended on behalf of the appellant that the relationship between him and respondent No. 2 was consensual in nature, no such categorical statement was made by him in the memo of application and that the plea of consent was merely inferred. In this regard, reliance was placed by the High Court on the case of ***Ganga Singh vs. State of Madhya Pradesh, (2013) 7 SCC 278***, wherein this Court had stated that unless there was a specific defence of a consensual relationship, such a defence cannot be inferred.

37. The said finding of the High Court, however, fails to appreciate that a plain reading of the FIR in question itself reveals that the relationship between the parties was, in fact, consensual, inasmuch as respondent No.2 met the appellant whenever he expressed a desire to meet her. Furthermore, respondent No. 2, being a major and an educated individual, voluntarily associated with the appellant and entered into physical intimacy on her own volition. It is also pertinent to note that, at the relevant time, the marriage of respondent No.2 was subsisting. In light of the foregoing circumstances, even upon a bare reading of the material

VERDICTUM.IN

on record, it is manifest that the relationship between the parties was consensual, and therefore, the absence of an express statement to that effect in the memo of application, as emphasised in the impugned order, cannot be held against the appellant when the same can be otherwise clearly discerned.

38. At this stage it is material to refer to the decision of this Court in ***Mahesh Damu,*** 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 90IPC, 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. In this regard we may refer to Deepak Gulati v. State of Haryana [Deepak Gulati v. State of Haryana, (2013) 7 SCC 675 : (2013) 3 SCC (Cri) 660] , in which it was held as follows: (SCC pp. 682-84, paras 21 & 24)
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> > "21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must

VERDICTUM.IN

examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

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24. Hence, it is evident that there must be adequate evidence to show that at the relevant time i.e. at the initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The 'failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term "misconception of fact", the fact must have an immediate relevance'. Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."

(underlining by us)

VERDICTUM.IN

39. In ***State of Haryana vs. Bhajan Lal***, ***1992 Supp (1) SCC 335***, this Court formulated the parameters in terms of which the powers under Section 482 of the Code of Criminal Procedure, 1973 (now Section 528 of the BNSS) could be exercised. While it is not necessary to revisit all these parameters, a few that are relevant to the present case may be set out. The Court held that quashing may be appropriate:

> "102. xxx
>
> (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.
>
> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
>
> xxx"

40. In view of the foregoing analysis, we are unable to concur with the findings recorded by the High Court, inasmuch as the present case pertains to a consensual relationship, and the acts of respondent No.2 clearly manifest consent to such a relationship devoid of any coercion, fraud, or misrepresentation as

VERDICTUM.IN

contemplated in Section 19 of the Indian Contract Act, 1872. In our opinion, the High Court's refusal to exercise its jurisdiction under Section 528 of BNSS is unsustainable. The acts complained of in the present case occurred within the contours of a relationship that was, at the time, voluntary and willing. The continuation of the prosecution in such facts would be nothing short of an abuse of the court machinery.

41. We accordingly allow the appeal and set aside the impugned judgment and order of the High Court dated 06.03.2025 in application under Section 528 BNSS bearing Criminal Application No. 601 of 2025. The said application accordingly stands allowed. Consequently, FIR No. 294 of 2024 dated 31.08.2024, registered with City Chowk Police Station, District Chhatrapati Sambhajinagar City under Sections 376, 376(2)(n) and 507 of the IPC and Chargesheet No. 143 of 2024 dated 25.10.2024, filed in the Court of the 3rd Judicial Magistrate First Class, Aurangabad, accordingly stands quashed.

42. We express our sincere appreciation of the services rendered by Ms. Radhika Gowtam, learned Advocate-on-Record who had been appointed as *Amicus Curiae* in the matter. Registry of this

VERDICTUM.IN

Court is directed to pay honorarium of Rs.15,000/- (Rupees Fifteen Thousand only) to the learned *Amicus Curiae*.

.....J.
(B.V. NAGARATHNA)

.....J.
(R. MAHADEVAN)

NEW DELHI;
NOVEMBER 24, 2025.