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CNR No : HCBM040305392026

2026:BHC-NAG:15063

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

CRIMINAL REVISION APPLICATION NO. 270 OF 2026

Vishal S/O Sunil Ingle]
Aged 24 years, Occu.: Service]
Resident of Ruikhed, Tq. Akot,]
District Akola] … **Applicant**

Versus

The State of Maharashtra,]
Through Police Station Officer, P.S.,]
Akot (Rural), Tq. Akot,]
District Akola] … **Respondent**

** Adv. Anil Thakkar for the Applicant.*

** Ms. Swati V. Kolhe, APP for Respondent/State.*

CORAM : MEHROZ K. PATHAN J.

RESERVED ON : 27th OCTOBER, 2026

PRONOUNCED ON : 3rd NOVEMBER, 2026

JUDGMENT :

1. The present Revision challenges the order dated 06.07.2026 passed by the learned Additional Sessions Judge, Akot, whereby the discharge application filed by the Applicant under Section 250 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), came to be rejected.

2. That, on 01/11/2025 one [redacted]. Akola, lodged the report with

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the Respondent/P.S. Akot (Rural) against the present applicant stating that the Complainant is a transgender. It was further alleged that, in the year 2015 in order to develop his breast, he used to take medicines and pills and that due to medicines his breasts have been developed and in the year 2021 and he started wearing girls' dresses. In the report it was further alleged that, the present applicant who is serving in Indian Army as Agniveer got friendly with him. It was alleged that, the present applicant proposed him for marriage and under the pretext of marriage, the applicant committed forcible sexual intercourse with him on 28.10.2025. It was further alleged that, on 30/10/2025 the applicant called him at Akot Bus Stand and thereafter took him on Motorbike to one flat and committed sexual intercourse by abusing her in a filthy language.

3. On the basis of the aforesaid report, the respondent/P.S. Akot (Rural) has registered the offence under sections 75, 296, 351 (2) of Bhartiya Nyay Sanhita, 2023 read with section 18(D) of the Transgender Persons (Protection of Rights) Act, 2019 vide Crime No. 493/2025.

SUBMISSIONS OF APPLICANT :

4. The learned Counsel Mr. Thakkar, appearing for the

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Applicant, submits that, for the offence under Section 75 of the Bharatiya Nyaya Sanhita, 2023 (BNS), to be attracted, the victim must be a woman. In the present case, the victim/Complainant is a transgender person, and, therefore, no offence under Section 75 of the BNS is made out against the Applicant. He further relies upon the definition of the term "woman" under Section 235 of the BNS and submits that, since the term "woman" means a female human being of any age, the offence under Section 75 of the BNS is not attracted in the present case.

5. Mr. Thakkar, the learned counsel for the Applicant, further submits that Section 75 of the BNS deals with sexual harassment and provides that a man who commits any of the acts specified therein, including physical contact and advances involving unwelcome and explicit sexual overtures, a demand or request for sexual favours, or showing pornography against the will of a woman, is liable to be punished under the said provision.

6. It is further submitted that even the offence under Transgenders Act 2019 is not made out against the Applicant as the victim transgender has obtained the certificate on 12.02.2026 after the alleged incident of sexual assault on 28.10.2025 and

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30.10.2025. The offence thus cannot be made out, as the Complainant was declared transgender after the alleged incidents of sexual assault.

7. Mr. Thakkar, learned counsel for the Applicant, further submits that the allegations, even if taken at face value, indicate that the physical relationship, if any, was consensual and was allegedly entered into on the promise of marriage with the Complainant. He further submits that the Bharatiya Nyaya Sanhita, 2023, does not contain any provision corresponding to Section 377 of the Indian Penal Code, which was struck down by the Hon'ble Supreme Court in **Navtej Singh Johar & Ors. v. Union of India, through Secretary, Ministry of Law and Justice reported in (2019) 1 SCC (Cri.) 1.** Learned counsel further submits that the learned Trial Court ought to have allowed the discharge application and discharged the Applicant from the aforesaid offences. He, therefore, contends that the impugned order is liable to be quashed and set aside and that the Applicant deserves to be discharged from the aforesaid crime.

SUBMISSIONS OF STATE :

8. As against this, learned APP strongly opposes the application on the ground that the offences alleged against the

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Applicant are prima facie made out from a bare perusal of the FIR. She submits that the allegations clearly indicate that the Applicant engaged in physical contact and made advances involving unwelcome and explicit sexual overtures, demanded or requested sexual favours, thereby attracting the penal provision in question. The learned APP further submits that Section 75(1) of the Bharatiya Nyaya Sanhita, 2023, does not expressly stipulate that the victim must be a woman. She further submits that transgender persons are entitled to self-identify their gender. The Complainant, who is a transgender person and identifies as a woman, has allegedly undergone hormonal treatment in furtherance of her gender identity. Learned APP, therefore, submits that the Complainant is entitled to seek legal recourse in respect of the alleged acts of sexual harassment committed by the Applicant. Learned APP further submits that the impugned order rejecting the discharge application duly considers the contentions raised by the Applicant in detail. She, therefore, contends that the impugned order is just and proper and is thus liable to be maintained.

REASONS :

9. I have perused the order dated 06.07.2026. I have also

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considered the provisions of Section 75 of the Bharatiya Nyaya Sanhita, 2023, and Section 4 of the Transgender Persons (Protection of Rights) Act, 2019 (hereinafter referred to as "the Act of 2019" for the sake of brevity). Section 2(k) of the Act of 2019 defines a "transgender person" as a person whose gender does not match with the gender assigned to that person at birth. The definition also includes transgender men and transgender women, irrespective of whether they have undergone sex reassignment surgery, hormone therapy, laser therapy, or any other such therapy. It defines a "transgender person" and expressly includes persons having socio-cultural identities such as kinner, hijra, aravani and jogta.

10. The perusal of Section 2(k) of the Transgender Persons (Protection of Rights) Act, 2019, indicates that a person may identify as a transgender person, including a transgender man or a transgender woman, even in the absence of a certificate of identity. Section 5 of the Act of 2019 provides an enabling mechanism for making an application to the District Magistrate for the issuance of a certificate of identity. The transgender certificate was issued to the victim on 12.02.2026, whereas the alleged assault was on 28.10.2025 and 30.10.2025. However

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merely because the Complainant did not possess a certificate of identity under Section 6 of the Act of 2019 at the time of the alleged commission of the offence by the Applicant would not, by itself, preclude the invocation of the penal provisions of the Transgender Act of 2019. A perusal of the FIR would show that Section 18(D) of the Transgender Act of 2019 have been rightly invoked, and the allegations therein prima facie attract the provisions invoked against the Applicant.

11. Insofar as the submissions as regards the Complainant not being a woman are concerned, it would be pertinent to note that the Hon'ble Supreme Court in the case of **National Legal Services Authority Vs. Union of India reported in (2014) 5 SCC 483**, was pleased to hold that it is entirely for the transgender to self-identify her gender and that this self determination cannot be questioned by others.

12. The Transgender Persons (Protection of Rights) Act, 2019 came to be amended by the Transgender Persons (Protection of Rights) Amendment Act, 2026, which received the assent of the President of India on 30.03.2026. The incidents mentioned in the FIR are of 28.10.2025 and 30.10.2025. By the Amendment Act of 2026, sub-section (2) of Section 4 of the Act of 2019 is omitted.

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However, Clause (2) of Section 4 was in existence as on the dates of the alleged incidents i.e. 28.10.2025 and 30.10.2025. The said provision was also in existence on the date of registration of the FIR, i.e., 01.11.2025. The acts attributed to the Applicant constituted an offence under the law as it stood at the relevant point of time. Whether the prosecution would be able to establish the commission of the offence on the basis of the evidence collected by it, is a matter to be assessed during the course of trial.

13. The perusal of the FIR would show that the Complainant/Victim has identified herself to be a woman and the aforesaid self determination cannot be questioned at least at the present stage while accused is seeking discharge. Section 4 of the Transgender Persons (Protection of Rights) Act, 2019, before Amendment of 2026 which deals with the recognition of the identity of transgender persons, reads as under:

> **4. Recognition of identity of transgender person. —**
>
> (1) A transgender person shall have a right to be recognised as such, in accordance with the provisions of this Act.
>
> **(2) A person recognised as transgender under sub-section (1) shall have a right to self-perceived gender identity.**
>
> (omitted in the Amendment Act of 2026)

14. The perusal of Section 4 of the Transgender Persons

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(Protection of Rights) Act, 2019, before Amendment of 2026 specifically recognised the right of a transgender person to self-perceived gender identity. The Complainant, who is a transgender person, identified herself as a woman and has allegedly undergone hormonal treatment in furtherance of her gender identity. In addition, the Complainant has also obtained a certificate of identity issued by the District Magistrate under Section 5 of the Transgender Persons (Protection of Rights) Act, 2019.

15. Section 2(k) of the Act of 2019 before Amendment of 2026 defines a “transgender person” as a person whose gender does not match with the gender assigned to that person at birth. The definition also includes transgender men and “**transgender women**”, irrespective of whether they have undergone sex reassignment surgery, hormone therapy, laser therapy, or any other such therapy. It defines a “transgender person” and expressly includes persons having socio-cultural identities such as kinner, hijra, aravani and jogta. The perusal of Section 2(k) of the Transgender Persons (Protection of Rights) Act, 2019, indicates that a person may identify as a transgender person, including a transgender man or a transgender woman, even in the absence of a certificate of identity.

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16. The perusal of the FIR would reveal that there are direct allegations against the Applicant of outraging the modesty of the Complainant, who identifies itself as a woman following hormone therapy Thus, an offence under Section 75 of BNSS appears to be prima facie made out. The offence under Section 18(D) of the Transgenders Act of 2019 is also made out. The charge-sheet shows that there is sufficient evidence to proceed against the Applicant.

17. In my considered opinion, therefore, the allegations of assault and outraging the modesty of a woman can be sustained even where the victim is a transgender person who identifies herself as a woman. The submission that even if the allegations are taken to be true, the same appears to be consensual is a matter to be evaluated during the course of trial. Thus no case is made out for interference of the well-reasoned order, rejecting discharge application. The application is devoid of substance and merits and is hereby **dismissed**.

[MEHROZ K. PATHAN]
JUDGE

Najeeb

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