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HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. 15439 of 2025

Neeraj Kumar and
Another

.....Applicant(s)

Versus

State of U.P. and
Another

.....Opposite Party(s)

Counsel for Applicant(s)	: Amit Kumar Srivastava, Keshari Nath Tripathi, Raghuvansh Misra, Ram Kumar Yadav
Counsel for Opposite Party(s)	: Adarsh Bhushan, Anurag Kumar Pandey, G.A.

Court No. - 78

HON'BLE AVNISH SAXENA, J.

1. The present application under Section 528 BNSS has been moved by the accused-applicants to quash the Charge Sheet No. 70/2025 dated 12.02.2025, the cognizance taking order dated 28.02.2025 and the entire proceedings of Criminal Case No. 1686/2025 (State Vs. Neeraj Kumar and another) arising out of Case Crime No. 883/2024, for offence under Section 376(2)(n), 323 & 506 IPC and Section 67 of Information Technology (Amendment) Act, Police Station- Izzatnagar, District- Bareilly against applicant no. 1 and Sections 354(d) & 506 IPC and Section 67 of Information Technology (Amendment) Act against applicant no. 2.

2. Heard Shri Amit Kumar Srivastava, learned counsel for applicants, Shri Anurag Kumar Pandey, learned counsel for opposite party no. 2 and Shri Chandra Badan, learned A.G.A. for State.

3. The first information report has been lodged by opposite party no. 2 on 01.12.2024 at 20:37 hours against the accused applicants alleging therein that opposite party no. 2 (victim) is a married woman whose husband is in Army. During her preparation of PCS (Provincial Civil Service), she became friend with one Mamta, who has introduced the victim with her brother accused applicant no. 1 Neeraj Kumar. On 07.08.2022 accused applicant no. 1 has called the victim at Rajrani Hotel, Pilibhit bypass road Bareilly to attend his birthday celebration, on that date accused has forcefully raped her and recorded her indecent videos and photographs. The victim was then threatened that he will make the video viral. On threatening of making the video viral, the accused has again called the victim at Rajrani Hotel on 14.08.2022, thereafter on 27.10.2022 and committed rape on her. She was again called to hotel Radisson Bareilly on 18.11.2023, where she was again subjected to rape on being blackmailed. On 19.05.2024, the accused has called the victim on her mobile phone and threatened to make her video viral. Thereafter, he has transferred those video and photo to his cousin brother, applicant no. 2, who has also threatened her to make her video viral and asked her for sexual favours, but she has refused the demand, on which the accused applicant no. 2 has sent the videos and photographs to the family members of victim and made her life became miserable, she has also thought of ending her life.

4. In the statement of victim recorded under Section 180 BNSS, she has stated that while preparing for PCS examination, she came in contact with one Mamta, who has intimated her that her brother Neeraj is also preparing for PCS examination and she could take his help. The victim has started visiting the house of Neeraj for taking notes. After sometime Neeraj has called the victim at Rajrani Hotel to celebrate his birthday, where he has forcefully entered into physical relation with her and recorded her videos. Subsequently, he has started blackmailing her and

called her to hotel and committed rape on her. Further reveals that he has transferred the videos to his cousin brother Shobhit, who has also started blackmailing her and has passed all the videos to her family members.

5. The victim in her statement under Section 183 BNSS has further disclosed that she came in contact with Mamta through facebook in the year 2022, while she was preparing for her PCS examination. Mamta has intimated her that her brother Neeraj got selected in PCS and could help in getting her examination cracked. The two started visiting each other's house and sometime she also meet Neeraj outside but only for the purpose of taking guidance. She further stated that once Neeraj has called her at Rajrani Hotel on his birthday. She entered the room of the hotel. She was tired and drank the water kept in the hotel room, within no time she felt dizziness, on which Neeraj entered the room and has forcefully raped her. He has also recorded videos of committing rape, he has not shown it to her but has been consistently threatening that the video would be made viral. The applicant no. 1 also beat her and she was repeatedly subjected to rape on threatening of getting the videos viral. Whenever she refused to enter into sexual intercourse, the accused used to threaten that he will kill her children and kidnap them, due to which she could not intimate the same to her husband. Subsequently, accused Neeraj has transferred the videos to his brother Shobhit, who has also started blackmailing her. She further submits that, last time accused Neeraj has entered into sexual intercourse with her at her residence. The cousin brother of Neeraj has also blackmailed her and tried to enter into physical relations, but she has refused. On which both the applicants have transferred the videos and photographs to her husband and family members. She further states that she has two sons of 13 & 12 years of age. Further submits that on 18.11.2023 she was called at hotel Radisson and was not only beaten up but also raped.

6. The statement of husband of victim recorded under Section 161 CrPC is considered on the point, what the victim has stated about the transfer of video. He on questioning about the video received to his mobile phone,

has stated that he has deleted the videos and photographs, which were sent by Neeraj and Shobhit, hence, presently not available with him.

7. Raja Ram the father of victim has stated in his statement under Section 161 CrPC that he has not received any videos or photographs. He further submits that his elder daughter (victim) was married in the year 2006, having two sons.

8. The statement of Mamta Rani, whose name is reflected in the FIR, has stated in her statement under Section 161 CrPC that she did not know the victim but received a friend request on 03.04.2021 on her facebook account. For about a year, she did not accept the friend request but finally has accepted the same on 03.04.2022 and started chatting. With no time there was friendship between the two and frequent visits between the families. She states that she is already married, having two children and working in primary school at Bareilly, since 2016.

9. She further states that within no time she became apprehensive of the behaviour of victim and maintained distance with her, but she has no knowledge about the relations between Neeraj and Suman (victim). She submits that accused Neeraj is her real brother and working as Child Development Program Officer under the Government of Uttar Pradesh, Director of ICDS.

10. Shri Adesh Kumar, the Manager of hotel Rajrani has given his statement under Section 161 CrPC that the hotel registers of the year 2022-23 are with CO-III, as such, he could not provide any report about the stay of visitors during that period.

11. Jakir Ali, the Manger of hotel Radisson has stated that on 18.11.2023 one Room No. 506 was booked through makemytrip.com app by Neeraj Kumar for two persons. On 18.11.2023 at about 15:12 hrs. there was entry in the hotel and on 19.11.2023 at about 9:39 hrs. exit from the hotel. He has provided the IDs and bill of the visitors but stated that the CCTV camera records is kept only for 15 days, which is not available.

12. Learned counsel for applicants submits that the FIR is grossly delayed. The informant is a married lady having two children, who has

some oblique motive to fulfil. The record shows that the victim herself has sent friend request to the sister of accused through facebook, came closer to her and thereafter made distance with Mamta and came closer to accused applicant Neeraj. It is the statement of victim that initially the accused applicant Neeraj and victim used to meet at their residence and sometime outside. The victim has changed her stand in the FIR and in her statement that on the date of birthday celebration of accused applicant Neeraj, she was called at Rajrani Hotel. At one place she has stated that she was being forcefully raped and at the other, she states that she has taken the water kept in hotel room, which has a dizziness effect on her and she was raped. She herself has stated that her video of sexual intercourse was shot by the accused Neeraj but he has not showed it to her but has blackmailed her through those videos and raped her at hotels. Further submits that there is no material that the videos and photographs of victim were transferred to her husband and family members because the husband of victim has stated that he received videos but deleted the same and father of the victim states that he never received any videos. Thus, submits that the basis of blackmail does not exist and the victim was consistently being raped, which is only considered to be the consensual and consenting sexual relations between the accused applicant no. 1 and the victim. Further submits that invoked provision of Information Technology Act is not attracted against the applicants. In substantiation of arguments, learned counsel has relied on the judgments in *Tomaso Bruno and another Vs. State of Uttar Pradesh* reported in (2015) 7 SCC 178 (Paragraph No. 21 & 27) , on the point of non availability of best evidence. On the point of delay of lodging the FIR the applicant relied on the judgments in *Hasmukhlal D. Vora and another Vs. State of Tamil Nadu* reported in (2022) 15 SCC 164 (Paragraph No. 23 & 24) and *Chanchalpati Das Vs. State of West Bengal and another* reported in (2023) 20 SCC 120 (Paragraph No. 21), on the point of quashing of charge sheet relied on the judgments in *Pankaj Singh Vs. State of Haryana* reported in [(2024(3) JIC 124 (SC)] (Paragraph No. 11 & 15) and *Shiv Pratap Singh Rana Vs. State of M.P. and another* reported in [2024(128) ACC 966] (Paragraph No. 24 & 25) . Further submits that the

mobile chats annexed with the application shows that it is the victim, who has pressurized the accused applicant no. 1 to enter into relations. The relevant paragraphs of each citation are quoted underneath:-

In Tomaso Bruno (supra):-

21. To invoke Section 106 of the Evidence Act, the main point to be established by the prosecution is that the accused persons were present in the hotel room at the relevant time. PW-1 Ram Singh-Hotel Manager stated that CCTV cameras are installed in the boundaries, near the reception, in the kitchen, in the restaurant and all three floors. Since CCTV cameras were installed in the prominent places, CCTV footage would have been best evidence to prove whether the accused remained inside the room and whether or not they have gone out. CCTV footage is a strong piece of evidence which would have indicated whether the accused remained inside the hotel and whether they were responsible for the commission of a crime. It would have also shown whether or not the accused had gone out of the hotel. CCTV footage being a crucial piece of evidence, it is for the prosecution to have produced the best evidence which is missing. Omission to produce CCTV footage, in our view, which is the best evidence, raises serious doubts about the prosecution case.

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27. As per Section 114 (g) of the Evidence Act, if a party in possession of best evidence which will throw light in controversy withholds it, the court can draw an adverse inference against him notwithstanding that the onus of proving does not lie on him. The presumption under Section 114 (g) of the Evidence Act is only a permissible inference and not a necessary inference. Unlike presumption under Section 139 of Negotiable Instruments Act, where the court has no option but to draw statutory presumption under Section 114 of the Evidence Act. Under Section 114 of the Evidence Act, the Court has the option; the court may or may not raise presumption on the proof of certain facts. Drawing of presumption under Section 114(g) of Evidence Act depends upon the nature of fact required to be proved and its importance in the controversy, the usual mode of proving it; the nature, quality and cogency of the evidence which has not been produced and its accessibility to the party concerned, all of which have to be taken into account. It is only when all these matters are duly considered that an adverse inference can be drawn against the party.

In Hasmukhlal D. Vora (supra):-

23. In the present case, the Respondent has provided no explanation for the extraordinary delay of more than four years between the initial site inspection, the show cause notice, and the complaint. In fact, the absence of such an explanation only prompts the Court to infer some sinister motive behind initiating the criminal proceedings.

24. While inordinate delay in itself may not be ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint.

In Chanchalpati Das (supra) :-

“21. As regards inordinate delay in filing the complaint it has been recently observed by this Court in Hasmukhlal D. Vora v. State of T.N. that though inordinate delay in itself may not be a ground for quashing of a criminal complaint, however unexplained inordinate delay must be taken into consideration as a very crucial factor and ground for quashing a criminal complaint.”

In Pankaj Singh (supra) :-

“11. In this case, no charge was framed against the appellant- accused for the offence punishable under clause (f) of sub-Section(2) of Section 376 of the IPC. A perusal of clause (f) of sub- Section (2) of Section 376 shows that the punishment for the offence covered by sub-Section (2) of Section 376 is more stringent than the punishment for the offence under sub-Section (1) of Section 376. In the absence of the charge framed at any stage against the appellant-accused for the offence punishable under clause (f) of sub-Section (2) of Section 376 of the IPC, now, at this stage, neither the prosecution nor the victim can contend that clause (f) of sub-Section (2) of Section 376 of the IPC was applicable. Another important aspect which goes to the root of the matter is that in his examination under Section 313 of the Cr.PC, the case that he was in a position of trust to the victim, was not put to him. In any event, the contention of the learned counsel appearing for the Prosecutrix that the appellant-accused was a person in a position of trust as far as the Prosecutrix is concerned is completely erroneous. There was no fiduciary relationship between the appellant-accused and the Prosecutrix, which will be apparent when we examine the Prosecutrix's evidence. Therefore, on the face of it, the presumption under Section 114A of the Evidence Act will not apply, and, therefore, the burden will be on the prosecution to prove that the sexual intercourse was without the consent of the Prosecutrix. We may also add here that in our jurisprudence unless there is a specific legislative provision which puts a negative burden on the accused, there is no burden on the accused to lead evidence for proving his innocence. The accused may have some burden to discharge in case of a statutory prescription, such as Section 114A of the Evidence Act. In this case, the burden was on the prosecution to lead evidence to prove the guilt of the accused beyond a reasonable doubt.

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15. Thus, the evidence of the Prosecutrix and the other prosecution witnesses shows that more than one month before the alleged incident, the appellant-accused and the Prosecutrix exchanged frequent WhatsApp messages. Secondly, the appellant- accused met the Prosecutrix when she was travelling on the way to Hansi. The Prosecutrix had informed the appellant about her visit to Hansi. Thirdly, while coming out of the hotel room, the Prosecutrix did not raise any protests, did not make any hue and cry, or did not complain. She signed the hotel register while leaving the hotel with the appellant. Lastly, while entering the Hotel, the appellant-accused and the Prosecutrix posed as husband and wife. All this has to be appreciated in light of the fact that we are dealing with a case of a well-educated

victim who was married and a graduate. Her age at the time of the incident was about 28 years.”

In Shiv Pratap Singh Rana :-

“24. Learned counsel for respondents had relied heavily on the expression “misconception of fact”. However, according to us, there is no misconception of fact here. Right from the inception, it is the case of the prosecution that while the appellant was insisting on having a relationship with the prosecutrix, the later had turned down the same on the ground that appellant was the friend of her younger brother and a distant relative of her jijaji. That apart, according to the prosecutrix, the appellant was younger to her. Nonetheless, the prosecutrix had accompanied the appellant to a temple, where she had voluntarily taken bath under a waterfall. Her allegation that appellant had surreptitiously taken photographs of her while she was bathing and later on changing clothes and was blackmailing her with such photographs remain unfounded in the absence of seizure of such photographs or the mobile phone on which such photographs were taken by the appellant. If, indeed, she was under some kind of threat from the appellant, it defies any logic, when the prosecutrix accompanied the appellant to Gwalior from Dabra, a journey which they had made together by train. On reaching Gwalior, she accompanied the appellant on a scooter to a rented premises at Anupam Nagar, where she alleged that appellant had forced himself upon her. But she did not raise any alarm or hue and cry at any point of time. Rather, she returned back to Dabra alongwith the appellant. The relationship did not terminate there. It continued even thereafter. It is the case of the prosecutrix herself that at one point of time the family members of the two had met to discuss about their marriage but nothing final could be reached regarding their marriage. It was only thereafter that the FIR was lodged. As already pointed out above, neither the affidavit nor stamp papers have been recovered or seized by the police; so also the jewellery. The alleged cheque of the prosecutrix’s mother given to the appellant or the bank statement to indicate transfer of such money have not been gathered by the police. In the absence of such materials, the entire sub-stratum of the prosecutrix’s case collapses. Thus, there is hardly any possibility of conviction of the appellant. As a matter of fact, it is not even a case which can stand trial. It appears to be a case of a consensual relationship which had gone sour leading to lodging of FIR. In the circumstances, Court is of the view that compelling the appellant to face the criminal trial on these materials would be nothing but an abuse of the process of the Court, result of the trial being a foregone conclusion.

25. From the factual matrix of the case, the following relevant features can be culled out:

- (i) the relationship between the appellant and the prosecutrix was of a consensual nature;
- (ii) the parties were in a relationship for a period of almost two years; and
- (iii) though there were talks between the parties and their family members regarding marriage, the same did not fructify leading to lodging of FIR.”

13. Learned counsel for opposite party no. 2 and learned A.G.A. for State have stated that the delay in lodging the FIR is fully explained as there were threats of life on the victim, moreover, the victim was merely saving her family and family life being a married woman. On the point of delay in lodging the FIR and its explanation the learned counsel has relied on the judgment in ***Deepak Vs. State of Haryana*** reported in (2015) 4 SCC 762 (Paragraph No. 15) and ***Manendra Prasad Tiwari Vs. Amit Kumar Tiwari and another*** reported in (2022) 20 SCC 757 (Paragraph Nos. 21, 22 and 23). The relevant paragraphs of each citation are quoted underneath:-

In Deepak (supra):-

“15. The courts cannot overlook the fact that in sexual offences and, in particular, the offence of rape and that too on a young illiterate girl, the delay in lodging the FIR can occur due to various reasons. One of the reasons is the reluctance of the prosecutrix or her family members to go to the police station and to make a complaint about the incident, which concerned the reputation of the prosecutrix and the honour of the entire family. In such cases, after giving very cool thought and considering all pros and cons arising out of an unfortunate incident, a complaint of sexual offence is generally lodged either by the victim or by any members of her family. Indeed, this has been the consistent view of this Court as has been held in State of Punjab v. Gurmit Singh.

In Manendra Prasad Tiwari (supra):-

“21. At the cost of repetition, we state that the impugned order of the High Court is utterly incomprehensible. We have yet to come across a case where the High Court has thought fit to discharge an accused charged with the offence of rape on the ground of delay in the registration of the FIR.

22. The law is well settled that although it is open to a High Court entertaining a petition under Section 482 of the CrPC or a revision application under Section 397 of the CrPC to quash the charges framed by the trial court, yet the same cannot be done by weighing the correctness or sufficiency of the evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of a charge can be done only at the stage of trial. To put it more succinctly, at the stage of charge the Court is to examine the materials only with a view to be satisfied that prima facie case of commission of offence alleged has been made out against the accused person.

23. It is also well settled that when the petition is filed by the accused under Section 482 CrPC or a revision Petition under Section 397 read with Section 401 of the CrPC seeking for the quashing of charge framed

against him, the Court should not interfere with the order unless there are strong reasons to hold that in the interest of justice and to avoid abuse of the process of the Court a charge framed against the accused needs to be quashed. Such an order can be passed only in exceptional cases and on rare occasions. It is to be kept in mind that once the trial court has framed a charge against an accused the trial must proceed without unnecessary interference by a superior court and the entire evidence from the prosecution side should be placed on record. Any attempt by an accused for quashing of a charge before the entire prosecution evidence has come on record should not be entertained sans exceptional cases.”

14. Further submits that accused applicant no. 1 is a public servant and the opposite party-victim is aspirants of PCS examination. She was taking guidance from the accused applicant no. 1 but the applicant has committed rape on the victim and shot indecent videos and photographs to blackmail her. The several act of rape on victim was due to blackmailing her to viral the video. Further submits that the accused no. 1 has after exploiting the victim through indecent videos and photographs has transferred those obscene videos to his cousin brother, who has started blackmailing the victim. It is then that the victim has protested and lodged the FIR. Further submits that there is no consent of victim for the sexual intercourse, on the contrary, she was subjected to continuous fear of injury and her consent was subjected to that fear. Hence, it cannot be considered that the accused applicant entered into sexual intercourse with the victim on her consent, which has been obtained on fear of getting the videos viral. On this point of argument, learned counsel has relied on the judgment of co-ordinate Bench of this Court in ***Raghav Kumar Vs. State of U.P. and another*** passed in ***Application U/S 482 No. 9501 of 2019 (Paragraph Nos. 20, 22 & 23)***. The relevant paragraphs are quoted underneath:-

*“20. In ***Pramod Suryabhan Pawar (supra)***, while dealing with the consent for the offence under Sections 375, 376 I.P.C. the Apex Court has observed as under:*

“18. To summarise the legal position that emerges from the above cases, 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."

22. Thus, in the light of the judgements of the aforesaid position of law, if the facts of the instant case are examined, we will find that though the applicant and the opposite party no.2 were friends, the opposite party no.2 had never agreed for any relationship with the applicant other than the friendship and that is apparent from the fact that initially the opposite party no.2 has rejected the proposal of marriage with the applicant. However, she was continuously in talking terms with the applicant. As per the allegations in the F.I.R., which are supported in her 161 Cr.P.C. statement as well as in her 164 Cr.P.C. statement, the applicant herein has taken opposite party no.2 to his house on the pretext of illness and hospitalization of his mother where she has been given tea which was intoxicated and after consuming the said tea the opposite party no.2 became unconscious and she was sexually assaulted without her consent and nude pictures of the opposite party no.2 were taken, thereafter, she was blackmailed to give consent to the relationship. Therefore, for the initial incident as alleged in the F.I.R. there was no consent on the part of the opposite party no.2 herein. Therefore, the offence of rape is *prima facie* constituted against the applicant, however, the subsequent relationship of the applicant with the opposite party no.2 was initially under threat perception created by the applicant and his family members and subsequently a promise of marriage was also stated to have been given by the applicant, which was accepted by the opposite party no.2 under the threat perceptions created by the applicant and his family members. However subsequently, they are stated to have been in consensual relationship for sufficiently a long period of time and applicant and his family member have refused to marry the opposite party no.2, the instant F.I.R. has been lodged and the fact that they were in continuous physical relationship is sufficiently established during the investigation and even by the photographs annexed as Annexure '21' in the instant application, which has also been found established during the investigation from the examination of the hotel staff where they used to stay.

CONCLUSION

23. Therefore, in the considered opinion of this Court since the initial relationship was established by the applicant with an element of cheating, threat etc., against the will of the opposite party no.2, *prima facie* an offence under Section 376 I.P.C. is made out against the applicant. Though, the subsequent relationship, which appears to be a consensual relationship under the promise of marriage, however, such consent is also stated to be given by the opposite party no.2 initially under the threat perception created by the applicant herein. Therefore, in the considered opinion of this Court the judgements relied upon by the applicant in **Shivashankar (supra)**, **Pramod Suryabhan Pawar (supra)** and **Jiyaullah (supra)** are of no help to the applicant, in view of the initial act committed against the will of the opposite party no.2. Therefore, this Court does not find any good reason to quash the proceedings as prayed by the applicant, in view thereof, the instant application is accordingly **dismissed**.

15. This Court has taken into consideration, rival submissions made by the parties and perused the record.

16. The point of concern before this Court, on the point of quashing of charge sheet, cognizance taking order and the proceeding of the criminal case is whether there is *prima facie* case of repeated rape of victim by accused applicant no. 1 and disrobing the modesty of victim by accused applicant no. 2 which required to be tried or the trial of the case would lead to prejudice cause to the applicants and would be an abuse of process of law.

17. If the contents of the FIR, statements under Sections 180 & 183 BNSS of the victim is *prima facie* taken into consideration, following points have been culled out from the bare of perusal on the same:

17.1 The victim is a married woman having children, who was married to an army man in the year 2006 and her children are aged about 13 & 12 years;

17.2 The victim was preparing for Uttar Pradesh Public Service Commission examination in the year 2022, due to which she started meeting accused no. 1 Neeraj Kumar for guidance, who has already cleared the examination. There is nothing on record to show that the victim is U.P. Public Service Commission exam aspirant and when she has filled the form and which attempt she is going to take. This is an important fact not disclosed, but necessary because victim is a married woman and meeting with accused only for the purpose of qualifying the examination and prosecution case starts with this fact;

17.3 The victim has entered into friendship with Mamta, sister of accused applicant no. 1 through facebook and started the intimacy with her and met the applicant, though Mamta was already married and the applicant, being her brother was residing at his parental home;

17.4 The victim started meeting accused applicant no. 1 in his house as well as outside;

17.5 On 07.08.2022 accused applicant Neeraj Kumar has called the victim at Rajrani Hotel to celebrate his birthday. In the FIR, it is stated that the accused applicant has forcefully raped her and taken out her indecent videos and photographs, whereas, in her statement under Section 183 BNSS, she has stated that she entered the hotel room, she was tired and took the water kept in the room and after taking water she felt dizziness, then the accused applicant no. 1 had entered the room and raped her. She was not shown the video shot by the accused applicant no. 1. This shows that the victim was not having specific knowledge about the video shot by the accused applicant no. 1 but remain apprehensive of getting that video viral;

17.6 It is on the basis of this unseen video that the victim was consistently raped by accused applicant no. 1 at different hotels on 14.08.2022, 27.10.2022 and 18.11.2023 on the threat perception of making that video viral;

17.7 The said video, which was shot on 07.08.2022, was then transferred to accused applicant no. 2 sometime before 19.05.2025 and on 19.05.2024 accused applicant no. 2 has called the victim on her mobile and threatened to make the video viral, or she may agree to sexual favour, which she has refused;

17.8 It is thereafter that the video has been sent to the family members and husband of victim. When this video was sent to the husband or the family member and which of the family members is not disclosed either in the FIR or in the statement of victim. The father of victim has refused to have received any such video, whereas the husband of victim has stated that he received the video but deleted the same, without disclosing that when he received the video;

17.9 Despite the video sent to the family members and husband of victim, the FIR was lodged with delay on 01.12.2024.

18. The contents of FIR and the statements of victim is being considered in the preceding paragraphs. If the facts alleged is considered to be true,

the test is whether it can stand trial ? It is an admitted fact that the victim is a married woman having two children. The rape for the first time was allegedly committed by the accused on 07.08.2022 when the victim was called to celebrate birthday in a hotel, whereby victim herself has took water kept in the hotel room and stated that she felt dizziness and was subjected to rape. The victim is an educated married lady and when subjected to rape, why she has not reported the rape, soon thereafter or intimated to her husband. Subsequent fact is that she was subjected to rape on specific dates in hotel three times in the year 2022 and once in the month of November 2023. There was ample time to report the incident, but she was subjected to blackmail for the video or photo, which she has not seen.

19. The sexual intercourse was consented or forceful sexual act is to be considered in the light of other alleged facts stated by the victim herself. She has stated specific dates when the accused applicant no. 1 has called the victim to the hotel and she under fear of getting her video viral always admit to the notice of applicant no. 1, without ensuring that the accused applicant is having any video or not. The victim herself has stated that she has not seen the video on 07.08.2022. This is hard to believe that a married woman was consistently subject to sexual intercourse at the hotel under the fear that her video be made viral by the accused applicant no. 1, who himself is a public servant. Hon'ble the Supreme Court in ***Prashant Vs. State (NCT of Delhi)*** reported in **(2025) 5 SCC 764**, while considering the sexual intercourse between the parties for a long period as forceful sexual act, found that it is inconceivable that the parties could maintain a prolonged physical relations in absence of voluntary consent. The relevant paragraph nos. 17 & 18 are reiterated underneath:-

“17. In the present case, the issue that had to be addressed by the High Court was whether, assuming all the allegations in the FIR are correct as they stand, an offence punishable under Sections 376 and 506 IPC were made out. A bare perusal of the FIR reveals that the appellant and the complainant first came in contact in the year 2017 and established a relationship thereafter. The parties met multiple times at various places during the years 2017 and 2019, including at parks and their respective houses. Although the complainant stated that the appellant had a forceful sexual

relationship with her, neither did she stop meeting the appellant thereafter, nor did she file a criminal complaint during the said period.

18. It is inconceivable that the complainant would continue to meet the appellant or maintain a prolonged association or physical relationship with him in the absence of voluntary consent on her part. Moreover, it would have been improbable for the appellant to ascertain the complainant's residential address, as mentioned in the FIR unless such information had been voluntarily provided by the complainant herself."

20. In the case of ***Rajnish Singh @ Soni Vs. State of U.P. and another*** reported in ***(2025) 4 SCC 197***, Hon'ble the Supreme Court has again taken to consideration the sexual act between the parties, who are highly qualified, to be under any forceful act and consider that where the complainant kept quite about the sexual abuse meted out her for a prolonged period shall only be considered as consenting.

21. In the present case the victim is a married woman who has stated to be pursuing the Provincial Civil Services examination and to achieve success in the competitive exams she came in contact with applicant no. 1, but there is nothing on record to show that she is really an aspirant of competitive exams. The victim herself has stated that she met applicant no. 1 at his residence and even outside. She came to attend the birthday of accused applicant no. 1 at hotel and subsequently she under duress of getting the video viral, which she has never seen, succumbed to the alleged pressure. The record is silent about the transfer of any indecent video or photographs of victim either to her husband or to family members. There is no CCTV footage of hotel. All these facts shows that the victim is a consenting party, whose consent has neither been obtained for the fear of death of her children nor on blackmailing her with indecent video and photographs.

22. The accused applicant no. 2 has also been roped in this case. There is no evidence even against the accused applicant no. 2 that he has ever transferred any video or photo of victim or used it for the purpose of blackmailing the victim.

23. Before parting with, it would be appropriate to mention that the accused applicant has annexed the whatsapp chatting between the accused applicant no. 1 and victim and mentioned it in paragraph 17 of

the application, which is replied in paragraph 10 of the counter affidavit in a way that chatting is frequent but only for the purpose of guidance. These chats on the face of it reveals intimate communications other than guidance for study.

24. The application moved under Section 528 BNSS has merit and is **allowed**.

25. Consequently, the Charge Sheet No. 70/2025 dated 12.02.2025, the cognizance taking order dated 28.02.2025 and the entire proceedings of Criminal Case No. 1686/2025 (State Vs. Neeraj and another) arising out of Case Crime No. 883/2024, for offence under Section 376(2)(n), 323 & 506 IPC and Section 67 of Information Technology (Amendment) Act, Police Station- Izzatnagar, District- Bareilly against applicant no. 1 and Sections 354(d) & 506 IPC and Section 67 of Information Technology (Amendment) Act against applicant no. 2, are hereby **quashed**.

(Avnish Saxena, J.)

Date:- 16.02.2026.
Sharad/-