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2026:AHC:39442

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. 45399 of 2025

Vipin Kumar And 3
Others

.....Applicant(s)

Versus

State of U.P. and
Another

.....Opposite Party(s)

Counsel for Applicant(s)	: Mohd. Imran, Syed Safdar Ali Kazmi
Counsel for Opposite Party(s)	: Lalit Kumar Pandey, Sheshadri Trivedi, G.A.

Court No. - 53

HON'BLE AVNISH SAXENA, J.

1. Heard, Shri Syed Safdar Ali Kazmi, learned counsel for the accused-applicant; Shri Sheshadri Trivedi, learned counsel for the opposite party no. 2; and Ms. Seema Shukla, learned A.G.A. for State.

2. The present application under Section 528 BNSS has been moved by four accused-applicants with a prayer to quash the charge sheet dated 22.07.2025, the summoning order dated 26.08.2025 and the proceeding of Case No. 554 of 2025 (State Vs. Vipin Kumar and others) before the court of Additional Chief Judicial Magistrate, Deoband, Saharanpur arose out of Case Crime No. 312 of 2025, under Sections 69, 115(2),

352, 351(3) of BNS. The main allegations of sexual intercourse on false promise of marriage is leveled against the accused applicant no. 1, the other accused who are wife, sister and brother-in-law of applicant no. 1 have been charge sheeted for the offence of voluntary causing hurt, intentional insult and aggravated criminal intimidation along with applicant no. 1

3. The FIR is lodged by opposite party no. 2 on 22.05.2025 against the above four accused applicants with the allegation that the victim (opposite party no. 2) came in contact with accused applicant no. 1 through facebook and since May 2018 was continuously entering into sexual intercourse on false promise of marriage. Four times the victim became pregnant and all the time she was aborted, she was again pregnant for the fifth time. Whenever she asked for marriage, the applicant no. 1 managed to escape the reply. Hearing the pregnancy of the victim, the accused applicant no. 1 has started putting pressure on her to abort the child but she refused. The accused applicant has refused to marry her and threatens her to kill, voluntary hurt and hurl abuses. The first applicant's wife, sister and brother-in-law, then started threatening to kill her, offered her money and pressurised her family for compromise on a heavy amount. It is further revealed from the FIR that applicant no. 1 is also having her indecent photographs and videos and he used to blackmail her. On 24.12.2024, the applicant no. 1 has called the victim in a hotel and entered into sexual intercourse, on which she became pregnant fifth time. It is also disclosed that the accused applicant no. 1 did the same act with other girls. On 11.05.2025 the applicant no. 1 has taken the victim to a Doctor for abortion.

4. The victim in her statement under Section 180 BNSS has reiterated the same incident as narrated in the FIR. She further stated that she is 26 years of age, did her graduation (Bachelor of Arts), the course of GNM (General Nursing and Midwifery) and was six months pregnant at the time of recording her statement.

5. The victim thereafter gave her statement under Section 183 BNSS wherein she has again reiterated the averments made in the FIR and further stated that the applicant no. 1 and she were friends through facebook, she was called by applicant no. 1, after 56 months of their friendship in a hotel at Saharanpur, where the accused applicant no. 1 has entered into sexual intercourse against her consent by alluring that they belong to the same caste, knew each other for quite sometime and assured her that he will not do any wrong to her. The victim was not having any idea when the accused applicant no. 1 had shot her video and photos while entering into sexual intercourse and therefore started blackmailing her for subsequent sex and abortion. He has also sent video to her mobile phone. Only sometime back she came to know that the applicant no. 1 is married having two children. When his wife had called her for entering into compromise, then she came to know that applicant no. 2 belong to her village.

6. Victim's father has stated in his statement under Section 180 BNSS that the victim was not knowing that the accused applicant is the husband of applicant no. 2 Priti, who belong to the same village. He further stated that the accused are pressurizing the victim and family to enter into compromise.

7. On these allegations the accused applicants have come up with the application to quash the entire proceedings on the ground that the relation between the two was consensual in nature. It is the contention of learned counsel for applicants that there is no deceitful means applied by the accused applicant no. 1 to enter into sexual intercourse with the opposite party no. 2. He further submits that there is no false promise of marriage given by the accused applicant no. 1 to the victim, who has attended the marriage of accused applicant no. 1 and applicant no. 2 in the year 2016 along with her family and knew that the accused applicant is married, despite that she has entered into sexual intercourse with applicant no. 1 just to fetch the financial support from the accused

applicant no. 1. The FIR was registered, when this financial support was refused by the applicant no. 1. He submits that during her medical examination, the victim has specifically stated before the Doctor that she knew three years back that the accused applicant no. 1 is a married man. He further admits that the child born out of the illegitimate relation between the accused applicant no. 1 and victim shall be taken care of and the right of child will be safeguarded. Further submits that the FIR is highly delayed the victim is educated lady, she knew the pros and cons of her conduct of entering into sexual relations with the applicant no. 1. In support of his contention, learned counsel has relied on the judgment passed in *Amol Bhagwan Nehul Vs. State of Maharashtra and another*¹; *Mahesh Damu Khare Vs. State of Maharashtra*²; and *Uday Vs. State of Karnataka*³.

8. Learned A.G.A. for State and learned counsel for opposite party no. 2 submit that there is ample material on record to show that the accused applicant no. 1, who is already married, but has given a promise to the victim to enter into marriage, who has been in contact with the victim since long through facebook. The accused applicant no. 1 is married and he knew that his promise to marry is deceitful from the beginning. The accused applicant has called the victim to a hotel where he has assured her of marriage, procured her consent and entered into sexual intercourse with her. The accused applicant himself is in hotel business and therefore, he has shot the video and photos of the victim while in intimate acts and blackmailed her, because he knew that he is a married man and he cannot fulfill the promise of marriage. Therefore, in order to blackmail the victim, he has recorded the videos and photos surreptitiously fixing the camera in the hotel room. Further submits that it is an excuse projected by the accused applicant that the victim knew prior to entering into relation with applicant no. 1 that he is married.

1 AIROnline 2025 SC 404

2 AIROnline 2024 SC 785

3 AIR 2003 SC 1639

Further submits that the allegations levelled by the applicants that they have given financial assistance to the victim and when that financial assistance was demanded back, the FIR is lodged. This allegation is not a part of case diary. Further submits that the accused applicant no. 1 is absconding and did not appear to the court with clean hands, as he is not appearing before the trial court. Further submits that Section 114A of the Indian Evidence Act 1872, a presumption as to absence of consent in certain prosecution for rape, as the accused applicant no. 1 has repeatedly raped the victim. Hence submits that the application is devoid of merit and is liable to be dismissed. In substantiation of his arguments learned counsel for opposite party no. 2 has relied on the judgment in ***Yedla Srinivasa Rao Vs. State of Andhra Pradesh***⁴ (Paragraph No. 15 to 17).

“[15] In this connection reference may be made to the amendment made in the Indian Evidence Act. Section 114 A was introduced and the presumption has been raised as to the absence of consent in certain prosecutions for rape. Section 114-A reads as under:

Section 114 A- Presumption as to the absence of consent in certain prosecutions for rape.- In a prosecution for rape under Cl. (a) or Cl.(b) or Cl.(c) or Cl. (d) or Cl. (e) or Cl. (g) of sub-section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the Court shall presume that she did not consent.”

[16] If sexual intercourse has been committed by the accused and if it is proved that it was without the consent of the prosecutrix and she states in her evidence before the court that she did not consent, the court shall presume that she did not consent. Presumption has been introduced by the legislature in the Evidence Act looking to atrocities committed against women and in the instant case as per the statement of PW, she resisted and she did not give consent to the accused at the first instance and he committed the rape on her. The accused gave her assurance that he would marry her and continued to satisfy his lust till she became pregnant and it became clear that the accused did not wish to marry her.

4 2006 LawSuit (SC) 814

[17] In the present case in view of the facts as mentioned above we are satisfied that the consent which had been obtained by the accused was not a voluntary one which was given by her under misconception of fact that the accused would marry her but this is not a consent in law. This is more evident from the testimony of PW1 as well as PW6 who was functioning as Panchayat where the accused admitted that he had committed sexual intercourse and promised to marry her but he absconded despite the promise made before the Panchayat. That shows that the accused had no intention to marry her right from the beginning and committed sexual intercourse totally under the misconception of fact by prosecutrix that he would marry her. Therefore, we are satisfied that the conviction and sentence awarded to the appellant is correct and no case is made out for our interference. The appeals are dismissed.”

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

10. Point of concern in the present application is whether *prima facie* the allegations levelled by the victim on the applicant accused is sufficient to proceed with the trial or continuance of the trial would amount to gross abuse of process of law?

11. Following facts culled out from the bare reading of FIR, statement of victim recorded under Sections 180 and 183 BNSS and the record of the case;

11.1 The victim came in contact with the accused through a social media app;

11.2 The accused applicant is already married;

11.3 The victim was called in a hotel in the year 2018 and entered into sexual intercourse with her on false promise of marriage.

11.4 The victim was pregnant at the time of lodging of the FIR and gave birth to a baby girl on 01.10.2025, in the medical certificate, the name of father is record as the name of applicant no. 1.

11.5 It is admitted by the accused applicant that the child is born of the victim from accused applicant no. 1;

11.6 The victim was repeatedly subjected to sexual intercourse on false promise of marriage;

11.7 There is continuous pressure on victim and her family for entering into compromise.

12. The charge sheet is submitted against the accused applicant no. 1 for the offence of sexual intercourse on false promise of marriage and for criminal intimidation, voluntary causing hurt on other applicants.

13. This Court while deciding the case of ***Kuldeep Verma Vs. State of U.P. and another⁵*** (authored by Avnish Saxena, J.) has dealt with the new Section 69 of Bhartiya Nyaya Sanhita, 2023. The relevant paragraph nos. 15, 16 and 21 are reiterated underneath:

*“15. Section 69 of Bhartiya Nyaya Sanhita, 2023 provides that “Whoever, by **deceitful means** or by **making promise to marry a woman without any intention of fulfilling the same**, has **sexual intercourse with her**, such sexual intercourse not amounting to the offence of rape, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.”*

16. The provision contained in Section 69 of B.N.S. is a new induction in penal law, wherein sexual intercourse with a woman, by deceitful means including false promise of marriage is not ‘Rape’, but is made punishable. Prior to the enactment the courts interpret the conduct of parties in view of the provisions of Section 375 I.P.C. (Rape) coupled with the provision of Section 90 I.P.C (Consent known to be given under fear or misconception). The explanation provided under Section 69 B.N.S. of ‘Deceitful means’ “shall include the false promise of employment or promotion, inducement, or marrying after suppressing identity.

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*21. Even otherwise Section 69 B.N.S. provides for sexual intercourse by employing deceitful means and false promise of marriage as one of the deceitful means. In the case of **Pramod Suryabhan Pawar Vs. State of Maharashtra, (2019) 9 SCC 608**, Hon’ble the Supreme Court has drawn a clear distinction between ‘false promise of marriage, which is given on*

understanding by the maker that it will be broken' and 'a breach of promise which is made in good faith but subsequently not fulfilled'. It is former which out rightly attracts penal provision."

14. Learned counsel for applicants has relied on three judgments of Hon'ble the Supreme Court. The case of ***Amol Bhagwan Nehul (supra)*** is not applicable in the present case because the fact of the case is that the allegation of rape on false promise of marriage continued for more than one year leveled by a woman having a child, obtained Khulanama, not a formal divorce, from her erstwhile husband and the allegation is levelled on a student, who was residing next door with three other men. It is in this backdrop that Hon'ble the Supreme Court in paragraph 11 has quashed the proceedings of the criminal case. The relevant paragraph no. 11 is reiterated underneath:-

11. Taking into consideration that the Appellant is just 25 years of age, and has a lifetime ahead of him, it would be in the interest of justice that he does not suffer an impending trial and, therefore, the proceedings emanating from C.R. No. 490/2023 dt. 31.07.2023 are quashed at this stage itself.

15. The case of ***Mahesh Damu Khare (supra)*** is also not applicable in the present set of facts because in that case the victim knew that accused was having two wives, while she was working in his house. Hence, Hon'ble the Supreme Court has observed that the sexual intercourse on false promise of marriage cannot be considered as rape on deceitful means. Paragraph No. 26 and 27 of the judgment relied by learned counsel for applicant is reiterated underneath:-

"26. In the present case, the nature of relationship between the appellant and the complainant can be characterised by the following attributes:

(i) The appellant and the complainant were acquainted with each other since 2008. The complainant herself admits that the appellant has been in physical relationship since then till 2017 without protest in spite of alleging that the appellant had done so without her consent.

(ii) The physical relationship was going on routinely. But the complainant in her complaint states that after she got a rented room in Shirvane, Nerul Sector 1, Navi Mumbai, in December, 2010, the appellant used to come every day and had sexual intercourse everyday, though without her consent and by giving false promise of marriage.

(iii) The complainant does not appear to be a naive and gullible woman who was susceptible to deceit while maintaining physical relationship with the appellant and the allegation of false promise surfaced only when the appellant refused to provide further financial and other assistance.

(iv) The conduct of the complainant clearly shows that she is a mature person clearly capable of understanding the consequences of her acts and she was fully aware of the kind of illicit relationship she was maintaining with a married person.

(v) The complainant was fully aware that the appellant was already married and had two wives, though one of them was not keeping well.

27. Thus, from the above it appears that it is more of an extra-marital affair during the aforesaid period without any insistence by the complainant for getting married to the appellant. The fact that the complainant continued to have a physical relationship for a long time without any insistence on marriage would indicate the unlikelihood of any such promise made by the appellant for marrying her and it rather indicates that the relationship was a consensual one.”

16. In the same way the case of **Uday (surpa)** is also not applicable in the present case, as in that case the accused and victim were neighbours and used to meet each other regularly. Once the accused has proposed her for marriage, on which the victim has refused, as she belongs to different caste. It is thereafter that the allegation of rape on false promise of marriage has been levelled by the victim. The relevant paragraph 21 relied by learned counsel for applicant is reiterated underneath:-

“21. It, therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this

view, but we must add that there is no strait jacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

17. In the present case the accused applicant is a married man and came in contact with the victim through social media app. Called the victim to a hotel where the accused applicant no. 1 had entered in sexual intercourse with the victim. It is the case of victim that she was not knowing that the accused applicant no. 1 was married. She also did not know whether the accused applicant no. 1 is the husband of a girl of her village. The prior knowledge of victim that applicant no. 1 was married at the time when she entered into sexual intercourse with him is the matter of trial, because the record is clear and explicit on the point that the victim was not knowing about the marital status of applicant no. 1. Moreover, the accused applicant no. 1 while entering into sexual intercourse with the victim knew that he is a married man and his false promise of marriage to the victim will be broken, therefore, the allegation of deceit is from the very beginning of entering into sexual intercourse. The point of consent of sexual intercourse, knowing the marriage of applicant no. 1, is the matter of trial and the allegation of criminal intimidation levelled on other co-accused, applicant nos. 2 to 4 is also apparent and explicit on record and subject matter of trial.

18. The scope of ambit of the powers of the High Court invoking under Section 482 CrPC or 528 BNSS are very wide, but should be exercised with circumspection and in rarest of rare and appropriate cases. This power do not confer arbitrary jurisdiction to act according to whims and

caprice and is used to prevent the abuse of process of law and for procuring the ends of justice. This preposition of law is enunciated in the cases of *Kurukshetra University Vs. State of Haryana*⁶ and *the State of Haryana Vs. Bhajan Lal*⁷. In the case of *Som Mittal Vs. Government of Karnataka*⁸, Hon'ble the Supreme Court has given an expression of 'rarest of rare case', while describing the scope of Section 482 CrPC. This view is consistently maintained by Hon'ble the Supreme Court till the present day, which is settled by 'en' number of judgments, latest are *Naresh Potteries Vs. Aarti Industries*⁹ and *Punit Beriwal Vs. State (NCT) of Delhi*¹⁰.

19. Therefore, the application under Section 528 BNSS is devoid of merit and is **dismissed**.

(Avnish Saxena, J.)

Date:- 23.02.2026

Sharad/-

6 (1977) 4 SCC 451

7 1992 Supp(1) SCC 335

8 (2008) 3 SCC 574

9 2025 SCC OnLine SC 18

10 2025 SCC OnLine SC 983