



HIGH COURT OF JUDICATURE AT ALLAHABAD
APPLICATION U/S 528 BNSS No. - 26852 of 2025

Rahul SinghApplicants(s)

Versus

State of U.P. andOpposite Party(s)
Another

Counsel for Petitioners(s) : Manvendra Singh
Counsel for Respondent(s) : Devendra Singh, G.A.

A.F.R.
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Court No. - 89

HON'BLE AVNISH SAXENA, J.

1. Heard Sri Manvendra Singh, learned counsel for the applicant, Sri Devendra Singh, learned counsel for the opposite party no.2 and Sri Shashi Kant Tiwari, learned AGA for the State.
2. By means of the present application under Section 528 BNSS the accused/applicant seeks interference of this Court to quash the charge sheet dated 29.09.2024, cognizance order dated 11.11.2024, taken by the court of Additional Chief Judicial Magistrate, Court No.1, Fatehpur and the proceedings of Sessions Trial No. 550 of 2025 (State Vs. Rahul Singh) arose out of Case Crime No. 158 of 2024 for the offence under Sections 376, 313, 323, 506 IPC, P.S. Kishanpur, District Fatehpur, pending in the court of Additional Sessions Judge/F.T.C., Court No.1, Fatehpur.
3. The prosecution case evolved through the FIR dated 19.08.2024, registered at Police Station Kishanpur, District Fatehpur at 22:08 Hrs. against the five named persons, namely, Rahul Singh (applicant),

Narendra Singh, Raju, Munna and Vikas through an application under Section 156(3) Cr.P.C. The main allegation of rape on false promise of marriage is on accused/applicant. The other co-accused were assigned the role of forcefully administering the medicine for getting aborted the foetus, voluntary causing hurt, criminal intimidation and committing the crime with common object. It is alleged in the FIR that the victim (opposite party no.2) was a widow having three children. To nurture her family she has started a Tea Stall (Kiosk) at Vijaypur. Two years back, she came in contact with accused/applicant, who used to visit the kiosk. With time the accused/applicant has inquired about her marital status and the liability of three children upon her, consequently, tendered his sympathy and help with the assurance that he being unmarried would like to marry her and help her children. The victim being a hapless lady believed the accused/applicant and entered into sexual intercourse on the assurance of the accused/applicant that he will marry her. This relation was continued for nearly two years, during which period she became pregnant. On 17.06.2024 at 10:00 p.m., the allegation is that all the accused/applicants entered her house intimated that the accused/applicant is already married having two children. She has to forget him and could be compensated in money. She was offered to take the medicine for abortion, which she has refused, then the accused/applicant and other accused had forcibly administered the medicine for aborting the foetus, consequently, she suffered abortion. She was beaten with kicks and fists and criminally intimidated not to lodge any FIR, otherwise she and her children would be thrown in 'Jamuna River'. She has reached the police station next morning but the police has not lodged any FIR, which led her to move the Magistrate Court for lodging of the FIR, invoking Section 156(3)Cr.P.C./175(3)BNSS. After lodging of the FIR, the investigation has been carried out. Her statements under Sections 161 and 164 Cr.P.C. have been recorded. The Investigating Officer has submitted the police report finding sufficient material against the accused/applicant for the offence under Section 376, 313, 323 and 506 IPC, whereas not charge

sheeted the other co-accused, namely, Narendra Singh, Raju, Munna and Vikas.

4. Learned counsel for the accused/applicant submits that it is the case of rape on false promise of marriage by an elderly lady, who is widow having three children. There is no medical corroboration of the incident of rape. There is no specific date, time and place mentioned, where the victim was subjected to rape on false promise of marriage. Further submits that an imaginary date i.e. 17.06.2024 is carved out by the victim to build up a story of criminal intimidation and forcefully administration of medicine for abortion as well as voluntary causing of hurt, though it has no medical corroboration. The victim in her statement under Section 161 Cr.P.C. has not even named the doctor or pharmacy from where she was prescribed the medicine, when she was suffering from pain of abortion. Further submits that the accused/applicant is already married, which is known to the victim. The relation between the two, as is reflected from the prosecution case, is consensual in nature. Further submits that the landlord of the victim has categorically stated that the accused/applicant did not come to the tenanted accommodation, where the victim resided on 17.06.2024. Further submits that the accused/applicant is of a reputed family and has been falsely implicated by the victim.

5. Learned counsel for the victim (opposite party no.2) and learned AGA for the State have stated that there is allegation of rape on false promise of marriage. The cheating on the part of accused/applicant is clear and explicit from the material on record that the accused/applicant has won over the confidence of the victim by stating that he is unmarried and would like to marry her. The consent of the victim has been obtained by misrepresenting by the accused/applicant that he is unmarried. The victim has not hidden her identity that she is a widow having three children, but the accused/applicant has hidden his identity. Further submits that this is a matter of trial, whether the consent of the victim was obtained by deceitful means or the victim was in know of the fact that the accused/applicant is married. Further submits that there might

not be the medical corroboration of rape because the rape was consensual in nature and not forceful, which is obtained by playing fraud. Further submits that the charge has been framed and the statement of victim has been recorded as prosecution witness-1. Further submits that the trial has proceeded and the accused/applicant has never resorted to the provision of discharge. Hence submits that the application is devoid of merit and liable to be dismissed.

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

7. The present case revolves around committing of rape on a widow, whose consent has been obtained under misconception of fact that the accused/applicant was not married man and he would marry the victim. There is no point in reiterating Section 375, 376 read with Section 90 of IPC, which deals with sexual intercourse when rape is obtained under misconception of fact. Hon'ble Supreme Court in the case of ***Pramod Suryabhan Pawar Vs. State of Maharashtra and another***¹ has made a clear distinction between the two propositions, where the promise to marry is bad from its very inception and where the promise to marry was subsequently could not justify into marriage. The relevant paragraph 18 is reiterated underneath:-

“18. To summarise the legal position that emerges from 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.”

8. The prosecution case is plain and simple that the victim was a widow with three children and was running a kiosk, where the accused/applicant used to visit. It is during these visits that the accused/applicant has obtained personal details of the victim and assured her of marriage.

¹ (2019) 9 SCC 608

Though the accused/applicant was fully aware that he is giving false assurance to the victim for marriage as he was already married. Therefore, his assurance to the woman is false from the very beginning.

9. The victim in her counter affidavit has annexed her deposition, which was recorded on 08.09.2025. She was also being cross examined by the accused, which was continued at the time of filing of counter affidavit.

10. Prima facie, the consent of the victim was obtained for committing rape on false promise of marriage. The awareness of the victim about the marriage of accused, is a question to be tried.

11. 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*² (1977) 4 SCC 451 and *the State of Haryana Vs. Bhajan Lal*³. In the case of *Som Mittal Vs. Government of Karnataka*⁴, 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*⁵ and *Punit Beriwalla Vs. State (NCT) of Delhi*⁶.

12. In view of the above, the Application under Section 528 BNSS is devoid of merit and accordingly *dismissed*.

(Avnish Saxena,J.)

March 11, 2026
Abhishek Sri/

2 (1977) 4 SCC 451
3 1992 Supp (1) SCC 335
4 (2008) 3 SCC 574
5 2025 SCC OnLine SC 18
6 2025 SCC OnLine SC 983