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Reserved on 19.01.2026
Delivered on 16.03.2026
Uploaded on 16.03.2026



2026:AHC:52051

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. 15904 of 2025

Ajay Saini

.....Applicant(s)

Versus

State of U.P. and
Another

.....Opposite Party(s)

Counsel for Applicant(s) : Vinod Singh

Counsel for Opposite Party(s) : G.A., Surendra Nath Tripathi

Court No. - 78

HON'BLE AVNISH SAXENA, J.

1. Heard, Shri Vinod Singh, learned counsel for the accused-applicant; Shri Surendra Nath Tripathi, learned counsel for the opposite party no. 2; and Shri Anuj Kumar, learned A.G.A. for State.

2. The present application under Section 528 BNSS has been moved by accused-applicant with a prayer to quash the Charge Sheet No. 213 of 2024 dated 25.12.2024, cognizance taking order dated 23.01.2025 and the proceedings of Case No. 82 of 2025 (State Vs. Ajay Saini and others), Case Crime No. 221 of 2024 for offence under Sections 376,

328, 504, 506, 323 IPC, P.S.- Kotwali, District- Rampur, pending in the court of Additional Chief Judicial Magistrate-1, Rampur.

3. The accused applicant is the main accused in the FIR lodged by opposite party no. 2, the victim on 03.12.2024 at 17:51 hours, P.S.- Kotwali, Rampur against three accused namely Ajay Saini (applicant), his father Charan Saini and brother Ravi Saini. It is alleged in the FIR that the victim after completing her GNM (General Nursing and Midwifery) course from Neelavedi College, Shahzad Nagar in the year 2019, was in search of a job. It during this period that she came in contact with the accused applicant, who was a running Pradhanmantri Jan Aushadhi Medical Store at Rajdware, the accused has allured the victim for a job in private hospital situated at Moradabad and taking her to Moradabad where the victim was taken to hotel room and given a cold drink with stupefied substance. The victim became unconscious and the accused applicant has committed rape on her. On regaining consciousness she has opposed the act of accused, on which the accused has assured her of marriage. For continuously four years the accused applicant has committed rape of victim on false promise of marriage. Some days prior to the lodging of the FIR, the victim came to know that the accused has engaged somewhere else. Victim has intimated the act of accused to her family members. The family members of victim went to meet the family members of accused at their residence, where Charan Saini, the father of the accused and Ravi Saini, the brother of accused hurled abuses and threatened to kill them and forced them out from their residence. The investigation has been carried out. The statement of victim is recorded under Sections 180 BNSS and 164 CrPC (as mentioned). After getting sufficient material the Investigating Officer has submitted charge sheet against the accused applicant for offence under Sections 376, 323, 504, 506, 328 IPC, whereas the other two

accused were charge sheeted for offence under Sections 323, 504, 506 IPC.

4. It is the contention of learned counsel for accused applicant that a false and frivolous case has been lodged by the victim for rape on false promise of marriage. There is a delay of four years in lodging the FIR. The substance of FIR is broken relations. The FIR is lodged only when the victim came to know that accused applicant is going to marry somewhere else. There is no date, time and place of incident where the alleged rape was committed for the first time. The version of victim kept on changing in her averment made in FIR and in her statements given to the Investigating Officer under Section 180 BNSS and to the Magistrate while recording the statement under Section 164 CrPC. The Investigating Officer has not taken into consideration that the entire statement is bereft of particulars. In the FIR the victim has stated that she was taken to a hotel room whereas in her statement under Section 180 BNSS she stated that she has taken cold drink in the restaurant, which contain stupefied substance. In her statement under Section 164 CrPC she has stated that she has taken the meals in the restaurant and became unconscious, from where she was taken to the hotel room. Further submits that the continuance of the criminal proceedings against the accused would tantamount to miscarriage of justice. Further submits that the application is liable to be allowed. Learned counsel has relied on the case of *Samadhan S/o Sitaram Manmothe Vs. State of Maharashtra and another*¹.

5. Learned counsel for victim and learned AGA for State have submitted that the accused applicant has continuously exploited the victim for four years. The matter pertains to rape which occurred in the year 2019 when the accused applicant has taken the victim to Moradabad for getting her a job in a private hospital. There the victim was not interviewed in any

1 2025 SCC OnLine SC 2528

hospital but was taken to the hotel where she was administered some stupefied substance in cold drink or food and subjected to rape. The victim on regaining consciousness had opposed the act of accused. The accused then assured her of marriage, which was false assurance from the very beginning. Even on false assurance of marriage the victim was continuously subjected to rape for four years. The FIR is lodged when the victim came to know that the accused is going to marry some other girl and has spoiled her life on false assurance of marriage. The victim and family then approached the family members of the accused applicant, where they were abused and threatened. The Investigating Officer has found sufficient material against the accused applicant and his family members for submission of charge sheet. Further submits that the application is misconceived and liable to be dismissed.

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

7. The point of consideration in the present application is whether the material on record collected by the Investigating Officer during the investigation, including the statement of victim, whether pointing to prima facie case of rape or continuance of proceeding tantamount to be an abuse of process of law and is the rarest of rare case wherein the Court should apply its inherent jurisdiction for procuring the ends of justice and quash the proceedings.

8. The scope and 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 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 Beriwal Vs. State (NCT) of Delhi*⁶.

9. To ascertain, whether the present case falling within the category of rarest of rare case, it would be expedient to consider the contents of the FIR, the statement of victim recorded by the Investigation Officer and the Magistrate and the material on record. But prior to start the *prima facie* appreciation of material, two paragraphs of the counter affidavit filed by the victim, particularly paragraph 7 and 8, which is also the crux of the matter are reiterated underneath:-

“.....

7. That the content of paragraph no. 7 & 8 of the affidavit need no comments, it is matter of record. However it is submitted that the opposite party no. 2 has completed G.N.M. Course in 2019, she meet to Ajay Saini who running Jan Ausadhi Medical Store in Rajwara Rampur, he carried to opposite party no. 2 to Moradabad and he carried to opposite party no. 2 in the Hotel and he mixed intoxicating substance in cold drink and made him drink him and forcibly committed rape with her, when she objected, then applicant said to her that he will marry, pretending marriage he continuously committed rape. Some time ago he wanted to marriage on other lady, when she complaint then they abusing her.

8. That the content of paragraph no. 9 of the affidavit need no comments, it is matter of records. However it is submitted that on the assurance of the applicant she always made relation with applicant due to this no any injury was found on the internal or external part of body, because she is major.

2 (1997) 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

10. The plain reading of FIR reveals that the initial incident is of the year 2019. There is no particulars about the date, time and place of incident. The allegation is that the victim has completed the GNM course and was in search of a job. She came in contact with the accused applicant who was running Pradhanmantri Jan Aushadhi Medical Store. The entire prosecution case is silent as to how the victim came in contact with the accused applicant and how she has believed that the accused applicant will get her a job in a hospital at Moradabad. The allegation is that accused applicant has taken the victim to Moradabad for her interview at the hospital. There is nothing to disclose as to what happened in the interviews and in which hospital she was taken for the interview. On the contrary there was a description that the victim was taken to a hotel room and administered with the cold drink having stupefied substance. This hotel room mentioned in the FIR is changed to restaurant-cum-hotel in her statement under Sections 180 BNSS and 183 BNSS (Section 164 CrPC). The name of the hotel is not disclosed either in the FIR or in the statement under Section 180 BNSS, but in the statement under Section 164 CrPC the area of the restaurant is mentioned as near railway station Buddha Bazar. The statement of victim further kept on changing regarding the cold drink or food in which the stupefied substance was mixed. In the statement under Section 180 BNSS and in the FIR it was mixed with cold drink, whereas in the statement under Section 164 CrPC it was in the food which was offered at the restaurant the stupefied substance was mixed. The prosecution case is further silent about the food, victim ate or the cold drink she has consumed and whether the stupefied substance could be mixed in the food which is offered in the restaurant. The allegation in the FIR is about the hotel room, where stupefied substance was administered, but in her statements under Sections 180 BNSS and 164 CrPC, she has stated to have consumed the

stupefied substance at the restaurant and later on she was taken to the hotel room of the same restaurant. Further allegation is committing of rape by the accused applicant while the victim was unconscious, but when she regained consciousness, she felt that she has been raped, the accused has tendered apology and promised her to marry. The victim has not lodged any complaint for the act of the accused of committing rape at that point of time.

11. The subsequent allegation is continued committing of rape on false promise of marriage by the accused from 2019 till she came to know that accused applicant is going to marry another girl. There is no detail and particulars where the victim was continuously being raped on false promise of marriage. The date, time and place of such occurrence is silent. The prosecution case reveals only bald allegation.

12. The reason for lodging of FIR on 03.12.2024 is mentioned in the FIR that some days back the victim came to know that the accused applicant is entering into marriage with any other girl and then she along with her family members reached the residence of accused applicant on 18.08.2024, where she was threatened along with her family members by the father and brother of accused applicant.

13. The victim is an educated person and was in relation with the accused applicant since last four years.

14. Hon'ble the Supreme Court in the case of ***Ravish Singh Rana Vs. State of Uttarakhand***⁷ (relevant paragraph 14 & 15) and ***Prashant Vs. NCT of Delhi***⁸ (relevant paragraph 20) has made observation that the two able minded adults, if maintained a long term physical relations, then a presumption would arise that they have voluntarily chosen the consensual relationship and subsequent non fulfillment of promise of

7 2025 SCC OnLine SC 1055

8 (2025) 5 SCC 764

marriage would not attract any offence. The relevant paragraphs are reiterated underneath:-

Ravish Singh Rana (supra)

“14. In the instant case also, we find that the relationship between the appellant and the second respondent (the informant) was spread over two years. Further, they not only admit of having physical relations with each other but also of living together in a rented accommodation as a live-in couple. In our view, if two able-minded adults reside together as a live-in couple for more than a couple of years and cohabit with each other, a presumption would arise that they voluntarily chose that kind of a relationship fully aware of its consequences. Therefore, the allegation that such relationship was entered because there was a promise of marriage is in the circumstances unworthy of acceptance, particularly, when there is no allegation that such physical relationship would not have been established had there been no promise to marry.

15. Moreover, in a long drawn live-in relationship, occasions may arise where parties in that relationship express their desire or wish to formalize the same by a seal of marriage, but that expression of desire, or wish, by itself would not be indicative of relationship being a consequence of that expression of desire or wish. A decade or two earlier, live-in relationships might not have been common. But now more and more women are financially independent and have the capacity to take conscious decision of charting their life on their own terms. This financial freedom, inter alia, has led to proliferation of such live-in relationships. Therefore, when a matter of this nature comes to a court, it must not adopt a pedantic approach rather the Court may, based on the length of such relationship and conduct of the parties, presume implied consent of the parties to be in such a relationship regardless of their desire or a wish to convert it into a marital bond.”

Prashant (supra)

“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 the present case would amount to a gross abuse of the process of law. Therefore, no purpose would be served by continuing the prosecution.”

15. In the case of ***Mahesh Damu Khare Vs. State of Maharashtra***⁹ (relevant paragraphs 27 & 28) Hon’ble the Supreme Court has made observation that where physical relationship is maintained for a prolonged period knowingly by the woman, which cannot be said with certainty that the physical relation was purely because of alleged promise of marriage. A woman may have reasons to have physical relationship other than promise of marriage, like, the personal liking for the male partner.

16. Learned counsel for applicant has relied on the judgment of ***Samadhan S/o Sitaram Manmothe Vs. State of Marashtra and another (supra)*** and drawn the attention of this Court towards paragraphs 28 and 29. The same are reiterated underneath:-

*“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.

28. Thus, in a situation where physical relationship is maintained for a prolonged period knowingly by the woman, it cannot be said

9 (2024) 11 SCC 398

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

17. The *prima facie* facts of the case discussed here-in-above including the legal propositions, this Court found that the present case stands on the footing of rarest of rare case to invoke the inherent jurisdiction for quashing the criminal proceedings, as continuing with criminal proceedings would be in futility and gross misuse of criminal jurisdiction. Hence, the application under Section 528 BNSS is having merit and liable to be allowed.

18. The application is **allowed**.

19. The Charge Sheet No. 213 of 2024 dated 25.12.2024, cognizance taking order dated 23.01.2025 and the proceedings of Case No. 82 of 2025 (State Vs. Ajay Saini and others), Case Crime No. 221 of 2024 for offence under Sections 376, 328, 504, 506, 323 IPC, P.S.- Kotwali,

NA528BNSS No. 15904 of 2025

District- Rampur, pending in the court of Additional Chief Judicial Magistrate-1, Rampur, are hereby **quashed** qua the applicant.

(Avnish Saxena, J.)

Date:- 16.03.2026

Sharad/-