

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE  
FIR/ORDER) NO. 7256 of 2026**

**FOR APPROVAL AND SIGNATURE:**

**HONOURABLE MRS. JUSTICE M. K. THAKKER**

Approved for Reporting	Yes	No
	✓	

**KUNAL RAMESHBHAI KALYANI**  
Versus  
**STATE OF GUJARAT & ANR.**

Appearance:

MR VIRAT G POPAT(3710) for the Applicant(s) No. 1

MR RONAK RAVAL, APP for the Respondent(s) No. 1

**CORAM:HONOURABLE MRS. JUSTICE M. K. THAKKER**

**Date : 08/05/2026**

**JUDGMENT**

1. The present application is filed under Section 528 of the BNSS, 2023, for quashing the FIR registered with Sayajiganj Police Station, Vadodara City, dated 20.05.2025 for the offence punishable under Sections 69 of BNS Act being I-CR No.11196030250292 of 2025.

2. Heard learned advocate Mr. Virat Popat for the applicant and learned APP Mr. Ronak Raval for the respondent - State. Learned advocate Mr. Popat submitted that as per the allegations made in the FIR, the applicant came into contact

with the first informant through Facebook on 11.11.2022, and then after they started conversation with each other. He submitted that as per the allegations the applicant enticed the complainant with promise of marriage and invited her to Vadodara. The first informant went to Vadodara Railway Station on 12.02.2024, and the applicant took her in the hotel namely Hotel Sunday, Sayajiganj, in room no.538, where they stayed together, and under the pretext of marriage indulged into physical relations. It is submitted that as per the allegations, the applicant had assured to get married with the complainant in the month of December 2024, and later in January 2025, the applicant refused to marry with the complainant as his mother did not accept their relationship. It is submitted that the applicant is the permanent resident of Zambia, and during the period when the applicant was in contact with the complainant he was also in contact with the mother of the complainant, and has provided the financial assistance by transferring the amount of Rs.40,000/-. It is submitted that the applicant has also sent the mobile phones and clothes to the complainant from Mumbai amounting to Rs.32,000/- as well as was in contact with the maternal aunt of the complainant. The said aspect clearly demonstrates that the relationship between the applicant and the complainant was cordial, voluntary and genuine in nature, and applicant had never extended any false promises or induced the complainant as alleged in the FIR. It is submitted that the alleged incident has taken place during the 12.02.2024 to 01.01.2025, and the FIR came to be lodged after delay of approximately five months from the date of alleged incident which creates serious doubts about the veracity and genuineness of the allegations

made against the applicant. It is submitted that even if the allegations made in the FIR are accepted to be true, no prima-facie cognizable case is made out leveling the charge under Section 69 of the BNS Act. It is submitted that merely an attempt and false case is foisted by the complainant, and the complainant and the applicant are belonging to different communities, and the complainant and the applicant both were adult were indulged into physical relations, in that background, it cannot be said that ingredients of Section 69 of the BNS Act is satisfied. It is submitted that even otherwise also allegations levelled against the applicant are so absurd and improbable on which no prudent person can ever reach to a conclusion that any offence is made out. In that background, it is prayed to quash the impugned FIR, and allow the present application. Learned advocate Mr. Popat has also relied upon the following decisions in support of his submissions.

- (i) *In the case of Mahesh Damu Khare Vs. The State of Maharashtra & Anr. neutral citation 2024 INSC 897*
- (ii) *In the case of Pramod Suryabhan Pawar Vs. State of Maharashtra and another reported in (2019) 9 SCC 608*
- (iii) *In the case of Anurag Soni Vs. State of Chhattisgarh reported in (2019) 13 SCC*
- (iv) *In the case of Naim Ahamed Vs. State (NCT of Delhi) reported in 2023 LiveLaw (SC) 66*

3. Per contra, learned advocate APP Mr. Ronak Raval for respondent - State submitted that the applicant had not cooperated with the investigation, and at present, investigation is at large. In that background, interference at

this stage would be uncalled for.

4. Having considered the submissions made by the learned advocates for the respective parties and referring the allegations made in the FIR which is reproduced hereinbelow:

*"On the date 11 November, 2022, I had come into contact with Krunal Rameshbhai Kalyani, residing at 501, Sai Vedanta, behind Jai Hind College, Chopra Court, Ulhasnagar, Kalyan, Mumbai, Maharashtra, through Facebook, and we used to converse with each other through Facebook; thereafter, a friendship developed between us, and the said Krunal Rameshbhai Kalyani had communicated with me regarding marrying me, and the said Krunal had called me for the first time at Vadodara, and prior thereto, neither Krunal nor I had ever met each other in person, and therefore, I had come to meet Krunal on 12 February, 2024 at Vadodara Railway Station, and the said Krunal had met me near Sindh Restaurant at Vadodara in person, and the said Krunal Rameshbhai Kalyani had taken me to Sunday Hotel situated at Sayajigunj, and he had booked Room No. 538 in the said hotel, and the said Krunal had taken me to the hotel room and kept me with him from 12/02/2024 to 14/02/2024, and he had stated that he would marry me by December 2024 and on that pretext he had repeatedly established physical relations with me; thereafter, I had returned to Ahmedabad, and the said Krunal did not marry me in December 2024, and in January 2025, Krunal informed me that his mother was refusing for his marriage with me and therefore he would not marry me, and by stating so he refused to marry me; nevertheless, I repeatedly contacted Krunal through mobile and WhatsApp chats and also went to his residence at Mumbai and requested Krunal to marry me, but the said Krunal refused to marry*

*me, and therefore, at the relevant time, I had submitted an application for inquiry in this regard, and today I have come to lodge this complaint in this matter."*

5. It is true that the period of offence stated in column no.3 starting from 12.02.2024 to 01.01.2025, and the FIR came to be lodged on 20.05.2025. However, the explanation offered in the FIR is that after the applicant had refused to marry with the complainant, she went to Mumbai, had sent WhatsApp messages, and when all efforts which are made by the complainant went in vain, there after, she lodged the complaint. As per the settled law, for quashing the FIR, delay cannot be considered to be a sole ground. If the allegations made in the FIR would be considered then it emerges that after they both i.e. the applicant and the complainant came into contact through Facebook, the applicant called the complainant on 12.02.2024 at Vadodara and taken her to the Hotel Sunday, where the applicant had already booked a room being No.538. They both were stayed in the said Hotel from 12.02.2024 to 14.02.2024, and by promising the complainant to marry her in the month of December 2024, the applicant indulged into sexual relations with the complainant. At this stage, it would be appropriate to refer Section 69 of the BNS Act for which the charge levelled against the applicant.

***Section 69: Sexual intercourse by employing deceitful means etc.***

*Whoever, by deceitful means or by making promise to marry a woman without any intention of fulfilling the same, and 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.*

*Explanation: "deceitful means" shall include the false promise of employment or promotion, inducement or marrying after suppressing identity.*

**Classification of Offence:** Cognizable - Non-bailable - Triable by Court of Session - Punishment: Imprisonment which may extend to 10 years and fine - Non-compoundable.

Section 69 of the BNS Act has come into force with effect from 01.07.2024. Above Section provides that whoever by deceitful means or by making a 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 10 years and shall also be liable to fine. The explanation provided under Section 69 of BNS suggest that deceitful includes the false promise of employment or promotion, inducement, or marrying after suppressing identity. Though charge against the present applicant is not under Section 63 of BNS which provides for rape, however, it would be appropriate to refer Section 120 of the Bharatiya Sakshya Adhinyam, 2023 which provides presumption as to absence of consent in certain prosecution for rape. The presumption provides that 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 such woman states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent. It is true that as per the

decision rendered by the Apex Court which was relied upon by the learned advocate for the applicant, the Apex Court has drawn clear distinction between false promise of marriage which is given on understanding by maker that it would be broken and breach of promise which is made in good faith, but subsequently not fulfilled. It is the former which outrightly attracts the penal provision. It is not the case of the applicant that some ceremonies were performed or due to the circumstances which were beyond the control of the applicant, he was unable to marry the victim though he actually wanted to marry.

6. This Court has referred the decision rendered by the Apex Court in the case of **Deepak Gulati Vs. State of Haryana** reported in **(2013) 7 SCC 675**. The relevant paragraphs are reproduced hereinbelow:

*"21. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be a case*

*where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of misrepresentation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.*

24. *Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim. There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The "failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance." Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her."*

7. As per the recital of the FIR, the complainant was kept in the room from 12.02.2022 to 14.02.2024, and the promise to marry with her in the month of December 2024, the applicant indulged into physical relations. Subsequently, it was informed that the mother of the applicant is not agreed with the

relations the applicant denied to marry with the victim. Whether this act or the explanation can suggest that the applicant really wanted to marry with the victim or had malafide motives? It emerges from the allegations that only to satisfy his lust the false promise of marriage was given to the complainant though he had no intention to marry with her. Merely giving the explanation that mother is not agreed for the marriage cannot be considered to be bonafide reason or the circumstances which is beyond the control of the applicant. It is the applicant who before indulging into the relations could have taken the sense of the mother, however, denying subsequently smokes of malafide motive of the applicant. The investigation is at large, the applicant is staying at Zambia, did not cooperate with the investigation. Further, the judgments relied upon by the learned advocate Mr. Popat for the applicant are on different facts, and therefore, they all are distinguishable, and would not render any help in getting favourable order. In that background, interference at this stage would amount to abuse of process of law which may result into failure of justice. This Court has also referred the decision rendered by the Apex Court in the case of **State of Haryana Vs. Bhajanlal & Ors** reported in **AIR 1992 SC 604**, wherein it is held that the scope of ambit of the powers of the High Court invoking under Section 482 of Cr.P.C. or 528 of BNSs are very wide, but should be exercised with such circumspection and in the rarest of the rare and appropriate cases. The powers do not confer arbitrary jurisdiction to act according to whims and caprices and is used to prevent the abuse of process of law and for procuring the ends of justice. The power has to be exercised under the expression of rarest of the rare case. This

Court do not find any reasons to exercise the power provided under the law under Section 528 of the BNSS Act. Resultantly, the present application is dismissed being devoid of merits.

AMIT ITALIAN

**(M. K. THAKKER,J)**

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