

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

917 BAIL APPLICATION NO. 778 OF 2021

**SURESH SARDAR CHAVAN
VERSUS
THE STATE OF MAHARASHTRA**

Shri. Joydeep Chatterji, Advocate for the applicant
Shri. V. M. Kagne, APP for the respondent/State
Shri. V. P. Raje, Advocate for respondent No. 2.

**CORAM : M. G. SEWLIKAR, J.
DATED : 13th OCTOBER, 2021**

PER COURT :-

1. This is an application under Section 439 of the Code of Criminal Procedure for releasing the applicant on bail in connection with CR No. 437 of 2020 registered with Dhule Taluka Police Station, Dist. Dhule under Sections 376(3), 305, 354(D)(1), 511 of the Indian Penal Code and under Sections 4 and 12 of the POCSO Act.

2. Prosecution case in brief is that applicant is the son of the brother of the informant. The deceased was the daughter of the informant. Thus, the deceased and the applicant were paternal cousins. Witness Golu alias Yogesh is

the real brother of the deceased. It is alleged in the FIR that the parents of the deceased and Golu alias Yogesh had been to Pune for cutting sugarcane. The applicant was in love with the deceased and he wanted the same response from the deceased. The deceased refused to respond to the advances of the applicant. The deceased had made it known to informant about the advances being made by the applicant. Despite that the applicant did not mend his ways. On 14th December, 2020 at 3.30 p.m. the informant had sent Golu alias Yogesh for bringing tiffin. At 4.00 p.m. Golu came back and told him that the applicant had been to the house of the informant and was threatening the deceased to respond to his advances. The deceased refused to do so they being paternal cousins. The applicant ran away when the informant went home. The deceased had said to the informant that she wanted to commit suicide because of the harassment of the applicant. On 15th December, 2020 at 7.00 a.m. Golu alias Yogesh came to the shop and informed the applicant that the deceased had consumed poison and attempted suicide. The deceased was admitted in the hospital. On 17th

December, 2020 informant lodged the FIR.

3. Heard Shri. Chatterji, learned counsel for the applicant, Shri. Kagne, learned APP for the respondent/State and Shri. Raje, learned counsel for respondent No. 2.

4. Learned counsel Shri. Chatterji submits that in the FIR there is no mention of sexual intercourse between the applicant and the deceased. For the first time in supplementary statement recorded on 1st December, 2020 it has come on record that the deceased was seen by Golu alias Yogesh in compromising position with the applicant and that the deceased was crying. He further submits that medical evidence shows that hymen was not ruptured it was intact. He submits that considering the evidence on record applicant is entitled to be released on bail. Learned counsel Shri. Chatterji submits that the applicant will stay out of the village if released on bail.

5. Learned APP and Shri. Raje learned counsel for

the informant submit that the applicant is the paternal cousin of the deceased. He made advances towards the deceased. But the deceased did not respond saying that both of them are cousins. The applicant still persisted with his advances. Both of them submit that the deceased had expressed her predicament and wanted to end her life. They submit that the victim was 17 years and 2 months old at the time of incident. They submit that medical officer has opined that sexual violence cannot be ruled out. They submit that because of the continuous pestering by the applicant the deceased committed suicide.

6. It is not disputed that the applicant and the deceased are paternal cousins. Statement of Golu shows that he had seen the applicant and the deceased in compromising position and the deceased was crying. Golu is a child witness of 12 years of age. The cause of suicide as per the prosecution case is forceful sexual intercourse by the applicant. However, this fact does not find place in the FIR. The main cause of the death of suicide does not find place in

the FIR. There are statements of witnesses i.e. Arvind Parshuram Jadhav and Jitendra Jadhav who have stated that the deceased attempted suicide as the deceased was seen in compromising position with the applicant by Golu. From their statements it appears that the deceased committed suicide as she felt embarrassed when the deceased and the applicant were seen in compromising position by Golu. Offence is punishable with imprisonment for life or for 10 years of imprisonment. Applicant is 20 years of age. He will be available for trial. He has roots in the society. Having regard to the age of the applicant it will be appropriate if the applicant is released on bail on stringent conditions. Hence the order.

ORDER

1. Application is allowed.
2. Applicant be released on bail on his furnishing PR bond of Rs. 50,000/- (Rupees Fifty Thousand only) with one solvent surety in the like amount in connection with CR No. 437 of 2020 under Sections 376(3), 305, 354(D)(1), 511 of the Indian Penal Code and under Sections 4 and 12 of the

POCSO Act registered with Dhule Taluka Police Station, Dist. Dhule and on condition that he shall not enter in the radius of 10 K.M. of the village till conclusion of the trial except for attending the Court for the dates fixed in the trial.

3. Application is disposed of.

4. It is clarified that the observations made in the above order are restricted to the decision of this application only and the trial Court shall not get influenced by the same and can come to its independent conclusion during trial.

[M. G. SEWLIKAR, J.]

ssp