

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

972 CRIMINAL APPEAL NO.356 OF 2021

Rushikesh s/o. Narayan Koli
@ Rishikesh s/o. Narayan Patil .. APPELLANT

VERSUS

The State of Maharashtra
and another. ..RESPONDENTS

WITH

CRIMINAL APPEAL NO.405 OF 2021

Akshay Govinda Chopde .. APPELLANT

VERSUS

State of Maharashtra
and another. ..RESPONDENTS

...

Mr.M.R.Bhokarikar, Advocate for the appellant in Criminal Appeal No.356 of 2021.

Mr.R.P.Adgaonkar, Advocate holding for Mr.S.S.Chitre and Mr.V.B.Patil, Advocates for the appellant in Criminal Appeal No.405 of 2021.

Mr.R.V.Dasalkar, APP for the respondent – State.

Mr.V.P. Narwade and Mr.M.V.Narwade, Advocates for respondent no.2.

...

**CORAM : V. K. JADHAV AND
SHRIKANT D. KULKARNI, JJ.**

DATE : 21.10.2021

PER COURT :

1] Appellants in both these Appeals are seeking regular bail in connection with Crime No.38/2021 registered with Jamner Police Station, Jamner, District Jalgaon, for the offences punishable under Sections 305, 306, 312, 313, 376 (1) (i) of IPC, Sections 4, 8, 11 (4) and 12 of the Protection of Children from Sexual Offences Act, 2012 and Section 3 (1) (r) (s) (w) (i) (ii), 3 (2) (5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Their applications for bail came to be rejected by the Additional Sessions Judge, Jalgaon, by two separate orders dated 06.07.2021 and 12.05.2021 passed below Exh.3 in Special POCSO Case No.57/2021 and below Exh.1 in Criminal B.A.No.284 of 2021 respectively.

2] In terms of provisions of Section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellants have preferred these Appeals.

3] On 08.02.2021 at about 11.15 a.m. dead body of deceased Seema was found in hanging position to the roof of the house. It has been alleged that she had committed suicide

by hanging herself to the roof with the help of *Odhani*. It has been alleged that the present appellants have abetted said commission of crime and they have also committed rape on deceased Seema and in consequence thereof she had conceived. Deceased Seema had, therefore, committed suicide.

4] Learned counsel for both the appellants submit that the investigation is over and the charge sheet has been submitted. Both the appellants are in jail since February, 2021. There are no antecedents. The appellant, namely, Rushikesh was working in a private company at Pune at the relevant time whereas the appellant, namely, Akshay was also doing labour work at the relevant time.

5] Learned counsel for the appellants submit that it has been stated in the complaint itself that deceased Seema had written in her school note book with red ink that she loves appellant Rushikesh and also further written that appellant Rushikesh does not know as to how much she loves him and if he tries to forget her. Further it has been alleged in the complaint that deceased Seema had written name of the appellant Akshay in blue ink on her palm. Learned counsel submit that merely on the basis of pregnancy noted in the postmortem examination, charge under Section 376 has been leveled against both the appellants. Learned counsel submit that the Chemical Analyzer, who has conducted DNA

examination, has opined that no opinion as to who is the biological father of the Tissue Pieces (Product of Conception) which is yet to be developed in the foetus. Learned counsel submits that it is the case of the prosecution that due to harassment extended to deceased Seema by the present appellants, she had committed suicide. Learned counsel appearing for both the appellants submit that there is no evidence that the appellants at any point of time harassed deceased Seema.

6] Learned counsel for respondent no.2 submits that deceased Seema was 15 years of age at the time of her death. Both the appellants had developed illicit sexual relations with her and in consequence thereof deceased Seema became pregnant. Deceased Seema had committed suicide on account of said harassment and thus there is *prima facie* case against the appellants for abetting deceased Seema to commit suicide.

7] Learned APP submits that *prima facie* there is strong case against both the appellants. Even though the expert could not come to a definite conclusion about DNA profile as the tissue pieces (Product of Conception) were not developed into foetus, however, pregnancy of deceased Seema was noted in the postmortem examination. Deceased Seema had also written names of both the appellants in her note book and on her palm respectively. Deceased Seema had committed suicide on account of the harassment extended to

her by both the appellants. Therefore, the appellants may not be released on bail.

8] We have carefully gone through the allegations made in the complaint and also perused the charge sheet. It appears that deceased Seema had committed suicide in her own house by hanging herself to the iron pipe of the roof with the help of *Odhani*. It has been alleged in the complaint and it is also shown to have been revealed during the course of investigation that deceased Seema had committed suicide on account of the harassment extended by both the appellants. However, it has been stated in the complaint itself and it has also been revealed during investigation i.e. after recording statement of the mother and the other relatives of deceased Seema that deceased Seema had written name of the appellant Rushikesh in her note book in red ink and also written that appellant Rushikesh does not know how far she loves him. She had also written that if appellant Rushikesh tries to forget her. It is also stated in the complaint that deceased Seema had written name of appellant Akshay in blue ink on her palm. We find no other evidence in the entire charge sheet that both the appellants have subjected deceased Seema to harassment to such extent that she was constrained to end her life. Apart from that, so far as the allegations about commission of rape are concerned, charge has been levelled against the appellants only on the basis of the finding recorded in the postmortem report about pregnancy of

deceased Seema. However, the DNA report does not match. It is, however, for the trial Court to consider the said DNA report in the light of the evidence of DNA expert so also other evidence on record. As both the appellants are in jail since February 2021 and there are no antecedents, we are inclined to release both appellants on bail with certain conditions. Hence, we proceed to pass the following order :

ORDER

I] Criminal Appeal No.356 of 2021 [Rushikesh s/o. Narayan Koli @ Rishikesh s/o. Narayan Patil Vs. State of Maharashtra and another] and Criminal Appeal No. 405 of 2021 [Akshay Govinda Chopde Vs. State of Maharashtra and another] are hereby allowed.

II] The appellant, namely, Rushikesh s/o. Narayan Koli @ Rishikesh s/o. Narayan Patil and Akshay Govinda Chopde, in connection with Crime No.38/2021 registered with Jamner Police Station, Jamner, District Jalgaon, for the offences punishable under Sections 305, 306, 312, 313, 376 (1) (i) of IPC, Sections 4, 8, 11 (4) and 12 of the Protection of Children from Sexual Offences Act, 2012 and Section 3 (1) (r) (s) (w) (i) (ii), 3 (2) (5) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, be released on bail on furnishing P.B. of Rs.20,000/- each with one surety

each of the like amount on the condition that the appellants shall not tamper the prosecution evidence in any manner.

II] Both the Criminal Appeals are accordingly disposed of.

[SHRIKANT D. KULKARNI, J.]

[V. K. JADHAV, J.]

DDC