

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

BAIL APPLICATION NO. 907 OF 2022

Amol @ Balu Subhash Deshmukh	... Applicant
Versus	
The State of Maharashtra and another	... Respondents

WITH BAIL APPLICATION NO. 674 OF 2022

Pravin Dattatray Salke	... Applicant
Versus	
The State of Maharashtra and another	... Respondents

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Mr. N. B. Narwade, Advocate for the applicants
Mr. N. T. Bhagat, APP for respondent No.1 – State
Mr. G. D. Jain, Advocate (Appointed) for respondent No.2

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CORAM : R. G. AVACHAT, J.

DATED : 21st JULY, 2022

PER COURT :-

Both the applications are for bail under Section 439 of the Code of Criminal Procedure. The applicants have been arrested in connection with Crime No.0776/2021, registered with Parner Police Station, District Ahmednagar, for the offences punishable under Sections 302, 376, 376-A r/w 34 of the Indian Penal Code and under Sections 4, 8 and 17 of the Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. Both these applications are taken up together since they arise from one and the same crime.

3. Heard.

Perused the First Information Report (FIR) and the related police papers.

The FIR has been lodged by the father of the victim on 21.10.2021. It is the case of rape with murder of a 16 year old daughter of the informant. The informant resides at village Barshilemala, Jawla, Taluka Parner, District Ahmednagar. He is a labour by profession. The victim was 10th standard student of a school at Jawla. She has a younger brother by name Prasad. He was 4th standard student at the relevant time. The informant had previously married. His first wife has, however, been separated from him. The victim was the daughter of the informant of his first marriage. The informant, thereafter, married one Jyoti. She too works as agricultural labour.

4. The victim had attended school on 18.10.2021. On 19.10.2021 and 20.10.2021, there were holidays on account of Eid

and Kojagiri Pournima. Since those were Corona pandemic days, the victim had school on alternate days. On 20.10.2021, the informant's wife Jyoti had been to the field of one Jaisingh Salke and the informant had been to the village Jawla in search for work. He, there got the work of loading a transport vehicle with onions. The informant came to his field to feed his cattle. Prasad contacted the informant on his cell-phone. It was a call made from a neighbour's (Geeta Ubale) cell-phone. He informed that the victim was lying unconscious on bed. The informant immediately came home. He found legging of the victim to have been taken down upto her knees. There were bruises on her left cheek. He also noticed a dark mark on her throat. The informant, therefore, immediately, contacted his friend Amol (applicant in BA/907/2022). He came there. One Pradip Somwanshi also came. The victim was motionless. She was first taken to Dr. Gangre's hospital at village Jawla. Then, she was taken to Dr. Adhav's hospital. On his directions, the victim was taken to Primary Health Centre at Parner. The doctor there, declared her dead before admission. The informant lodged the FIR alleging therein that some unknown person killed his daughter by smothering and compressing of her throat.

5. It was revealed that the victim had been raped. The informant's son Prasad had seen both the applicants hurriedly proceeding on their motorbike from the front yard of his house at the material time on the fateful day. It was also found during investigation that the applicant Amol has illicit relationship with the informant's wife. Both the applicants would frequently visit the informant's residence. It is also found during the investigation that the informant's wife would give money to the deceased for being paid to the applicant Amol. The victim knew the relationship between the applicant Amol and Jyoti. The victim was first sexually ravished and then was killed by the applicants. The applicants, therefore, came to be arrested. They are proceeded against by filing a charge-sheet.

6. Heard. The learned Advocate for the applicants would submit that it is a case based on circumstantial evidence. The applicant Amol is the friend of the informant. In response to his call, the applicant Amol immediately came informant's home. He accompanied the informant to take the victim to the hospital. The conduct of the applicant is consistent with his innocence. It is only on the basis of the statement of Prasad, the applicants have been

roped in. Prasad gave more than two statements. In his first statement, he did not speak anything against the applicants herein. It is only in his statement dated 14.12.2021, he stated to have had seen both the applicants hurriedly proceeding on their motorbike from the front yard of his residence. The learned Advocate also invited this Court's attention to DNA report, which rules out involvement of the applicants herein. He, therefore, urged for grant of bail to both the applicants.

7. The learned APP and the learned Advocate representing the informant would, on the other hand, submit that it is a very serious offence. A chain of circumstances points towards involvement of the applicants in the alleged crime. They, therefore, urged for rejection of the application.

8. Considered the submissions advanced. Perused the FIR and the papers of investigation. The case is based on circumstantial evidence. The applicant Amol was the friend of the informant. He is said to have illicit relationship with the informant's wife. The applicant Pravin has also acquaintance with the informant. Both the applicants use to visit the informant's residence. The informant and his wife Pooja would work as agricultural labours. The victim was a

10th standard student. Her younger brother Prasad was in 4th standard. On the given day, Prasad came home to find the victim lying motionless on bed. He, therefore, informed the informant. The informant came home. He contacted his friend Amol (applicant). He immediately came and accompanied the informant to take the victim to the hospital. The learned Advocate for the applicants, was therefore, justified in contending that the applicant Amol's conduct is consistent with his innocence. In the first statement dated 01.11.2021, Prasad did not state to have had seen the applicants hurriedly proceeded on motorbike from the front yard of his residence. He (Prasad), in his statement dated 14.12.2021 i.e. about 50 days after the alleged incident, gave a statement to have had seen the applicant Amol and one unknown person proceeding on motorbike from the front yard of his house. The description of the motorbike matched with that of the applicant Amol. Amol was also named in the statement. The pillion rider on the motorbike was identified as applicant Pravin. This is the only incriminating material against the applicants herein.

9. Blood sample of the victim and that of the applicants and 2-3 other suspects were obtained for DNA profiling. The DNA

reports have been received. The reports are favorable to the applicants herein. The DNA report matched with one Kisan Labde. It is informed that the CDR report does indicate Kisan Labde to have been in contact with the deceased. He is not accused in this case.

10. True, CA report relating to nail clippings of the applicant Pravin matched with the nail clippings of the deceased. The nail clippings report of three whose surname is Salke, have also been matched. According to the learned Advocate, since the informant and these Salkes are from one and the same clan, the nail clipping reports matched. The learned Advocate would submit that those who are not accused in the case, their such reports have also matched with the nail clipping report of the deceased.

11. True, the offence is serious one. It is very unfortunate that the victim who was 15-16 years of age had met with such an unfortunate incident. The material collected during the investigation of the crime, which has been referred to hereinabove leads this Court to grant the applicants, bail. Hence, following order:

ORDER

- (i) The Bail Applications are allowed.

(ii) The applicants be released on bail in connection with Crime No.0776/2021, registered with Parner Police Station, District Ahmednagar, for the offences punishable under Sections 302, 376, 376-A r/w 34 of the Indian Penal Code and under Sections 4, 8 and 17 of the POCSO Act, on their executing P. R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) each with surety bond each of the like amount.

(iii) The applicants shall not tamper with the prosecution evidence.

[R. G. AVACHAT, J.]

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