

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

CRIMINAL APPEAL NO. 530 OF 2021

1. Saibai Popat Vaykar
2. Hirabai Tulashiram Vaykar **...Appellants.**

Versus

The State of Maharashtra and Anr. **....Respondents.**

...

Mr. V.D. Sapkal, Senior Counsel i/b. Mr. S.R Sapkal, Advocate for appellants.

Mr. S.J. Salgare, APP for respondent/State.

Mr. A.P Lohade, Advocate for respondent No. 2.

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WITH

CRIMINAL APPEAL NO. 531 OF 2021

Tulsiram @ Raju S/o. Popat Vaykar **...Appellant.**

Versus

The State of Maharashtra and Anr. **....Respondents.**

...

Mr. V.D. Sapkal, Senior Counsel i/b. Mr. S.R Sapkal, Advocate for appellant.

Mr. S.J. Salgare, APP for respondent/State.

Mr. A.P Lohade, Advocate for respondent No. 2.

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**CORAM : V.K. JADHAV &
SANDIPKUMAR C. MORE, JJ.**

DATED : 18/01/2022

PER COURT :

. Learned Senior Counsel Mr. V.D. Sapkal submits that the appellant in Criminal Appeal No. 531/2021 came to be arrested during pendency of this Criminal Appeal. Thus, the said Criminal Appeal has become infructuous. Criminal Appeal No. 531/2021 is accordingly disposed of.

2. In Criminal Appeal No. 530/2021 the appellants/original accused in connection with Crime No. 594/2021 registered with Shrirampur City Police Station, Taluka Shrirampur, District Ahmednagar for the offences under sections 376(2)(n), 313, 420, 417, 323, 504, 506 r/w. 34 of Indian Penal Code (for short 'I.P.C.') and under sections 3(1)(r)(s), 3(1)(w), 3(2)(s), 3(2)(v)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 are seeking anticipatory bail. Their application with similar prayer in Criminal Bail Application No. 205/2021 came to be rejected by Additional Sessions Judge, Shrirampur vide order dated 12.10.2021. In terms of provisions of section 14-A (2) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act this appeal has been preferred against the order of Additional Sessions Judge, Shrirampur passed in Criminal Bail Application No. 205/2021 as detailed above.

3. Mr. V.D. Sapkal, learned Senior Counsel for the appellants submits that on the basis of complaint lodged by respondent No. 2/informant aforesaid crime came to be registered. So far as co-accused Tulshiram Popat Vaykar is concerned, the allegations about the commission of rape have been made against him only. It has been alleged in the complaint that the said co-accused Tulshiram Vaykar has given false promise of marriage to respondent No.2/informant and committed the sexual intercourse with her under the said false promise of marriage. This was going on since 2019. It has been further alleged in the complaint that since 2021 the said co-accused Tulshiram Vaykar has started avoiding respondent No. 2/informant. Even then on 14.8.2021 co-accused Tulshiram Vaykar had been to the flat of respondent No. 2/informant and committed rape on her against her will.

4. Mr. V.D. Sapkal, learned Senior Counsel submits that so far as the appellants before the Court are concerned, appellant No. 1 is mother of co-accused Tulshiram Vaykar and appellant No. 2 is the wife of co-accused Tulshiram Vaykar. It has been alleged in the complaint that on 3.9.2021 the respondent No. 2/informant at about 12.30 noon went to their house and at that time, the appellants and the co-accused

Tulshiram Vaykar were present in the house and they have abused her by referring her caste and further extended beating to her. The learned Senior Counsel submits that the allegations are general in nature without any individual allegations. It has been simply alleged in the complaint that co-accused Tulshiram Vaykar and the appellants before the Court have abused the respondent No. 2 by referring her caste. The learned Senior Counsel further submits that the incident allegedly has taken place in the house and thus, the said abuses as alleged are not within the public view. The learned Senior Counsel submits that in order to settle the score with co-accused Tulshiram Vaykar, respondent No. 2/informant has arrayed all the family members in connection with the present crime.

5. The learned counsel for respondent No. 2 submits that the names of the applicants are mentioned in the F.I.R. with the specific role attributed to each of them. The learned counsel submits that the said co-accused Tulshiram Vaykar is the Police Constable and he has misused his position and power. The learned counsel submits that in the given set of allegations, the custodial interrogation of the present appellants is required. There is strong *prima facie* case against appellants. They have abused the respondent No. 2/informant by referring her caste. Both the appellants are not entitled for anticipatory

bail. The learned Additional Sessions Judge has rightly rejected their application. There is no substance in the appeal and thus, the appeal is liable to be dismissed.

6. The learned APP submits that the chargesheet is yet not submitted in connection with the present crime. *Prima facie* there is evidence against both the appellants. The appeal may be dismissed.

7. We have carefully gone through the contents of the complaint, so also perused the investigation papers. It appears that the allegations about the commission of rape have been made against co-accused Tulshiram Vaykar. It has been alleged in the complaint that by giving false promise of marriage, he has performed sexual intercourse with respondent No. 2 from time to time and thereafter, he has not followed his promise of marriage. So far as the present appellants are concerned, the incident allegedly occurred on 3.9.2021 is only quoted in the complaint. It appears that the respondent No. 2/informant on her own went to the house of said co-accused Tulshiram Vaykar and at that time, these appellants were present there. The incident has allegedly taken place in the house of co-accused Tulshiram Vaykar and appellants. *Prima facie*, it appears that the incident of giving abuses to the respondent No. 2/informant by referring her caste was not

occurred within the public view. However, it is for the Trial Court to consider the same on its own merits during the course of trial. Furthermore, though there are allegations about abuses by referring the caste of respondent No.2, however, the allegations have been made against all accused including co-accused Tulshiram Vaykar. Appellant No. 1 is mother whereas appellant No. 2 is wife of said co-accused Tulshiram Vaykar. Thus, the possibility cannot be ruled out that in order to settle the score with co-accused Tulshiram Vaykar, his family members have been also implicated in connection with the crime. In the given set of allegations, the custodial interrogation of both the appellants is not required. Furthermore, it also appears from the investigation papers that the investigation is over for all the practical purposes and only formality of filing chargesheet is remained. In view of the same, we are inclined to allow the appeal. Hence, the following order.

ORDER

- (I) Criminal Appeal No. 530/2021 is allowed.
- (II) In the event of arrest of appellant No. 1 – Saibai Popat Vaykar and appellant No. 2 Hirabai Tulashiram Vaykar in connection with Crime No. 594/2021 registered with Shrirampur City Police Station, Taluka Shrirampur, District

Ahmednagar for the offences under sections 376(2)(n), 313, 420, 417, 323, 504, 506 r/w. 34 of I.P.C. and under sections 3(1)(r)(s), 3(1)(w), 3(2)(s), 3(2)(v)(a) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, they be released on furnishing personal bond of Rs.15,000/- each, with one surety of the like amount on the following conditions:-

- a) The appellants shall not tamper with the prosecution evidence in any manner and they shall make themselves available as and when required by the Investigating Officer for carrying out investigation, if any.

(III) Criminal Appeal No. 530/2021 is accordingly disposed of.

[SANDIPKUMAR C. MORE, J.]

[V.K. JADHAV, J.]

ssc/