

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

**CRIMINAL APPLICATION NO.3411 OF 2022 IN
CRIMINAL APPEAL NO.727 OF 2022**

1. Rameshwar Chudaman Jodiwale
2. Mukesh Chudaman Jodiwale **... APPLICANTS**

VERSUS

The State of Maharashtra **... RESPONDENT**

.....
Mr. Joydeep Chatterji, Advocate for applicants
Mr. R.V. Dasalkar, A.P.P. for respondent – State, assisted by
Ms Ashwini R. Mate, Advocate for original complainant
.....

WITH

**CRIMINAL APPLICATION NO.3527 OF 2022 IN
CRIMINAL APPLICATION NO.3411 OF 2022 IN
CRIMINAL APPEAL NO.727 OF 2022**

Rakhi w/o Manoj Jodiwale **... APPLICANT**

VERSUS

The State of Maharashtra & ors. **... RESPONDENTS**

.....
Ms Ashwini R. Mate, Advocate for applicant
Mr. R.V. Dasalkar, A.P.P. for respondent No.1 – State
Mr. Joydeep Chatterji, Advocate for respondents No.2 & 3
.....

WITH

**CRIMINAL APPLICATION NO.3436 OF 2022 IN
CRIMINAL APPEAL NO.758 OF 2022**

Nitu w/o Rameshwar Jodiwale **... APPLICANT**

VERSUS

The State of Maharashtra

... **RESPONDENT**

.....

Mr. N.S. Ghanekar, Advocate for applicant
Mr. R.V. Dasalkar, A.P.P. for respondent – State, assisted by
Ms Ashwini R. Mate, Advocate for original complainant

.....

WITH

CRIMINAL APPLICATION NO.3529 OF 2022 IN
CRIMINAL APPLICATION NO.3436 OF 2022 IN
CRIMINAL APPEAL NO.758 OF 2022

Rakhi w/o Manoj Jodiwale

... **APPLICANT**

VERSUS

The State of Maharashtra & anr.

... **RESPONDENTS**

.....

Ms Ashwini R. Mate, Advocate for applicant
Mr. R.V. Dasalkar, A.P.P. for respondent No.1 – State
Mr. N.S. Ghanekar, Advocate for respondent No.2

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**CORAM : R. G. AVACHAT, AND
R. M. JOSHI, JJ.**

DATED : 18th OCTOBER, 2022.

ORDER :

Heard. Criminal Applications No.3527/2022 and
3529/2022 are allowed. The original complainant is permitted
to assist learned A.P.P. in the respective Criminal Applications.

2. Both these applications are being decided by this
common order since they arise from the appeals preferred
against the order of conviction and consequential sentences.

The applicants hereby seek suspension of execution of substantive sentences of imprisonment. The applicants Rameshwar and Mukesh (in Criminal Application No.3411/2022) have been convicted for the offence punishable under Section 302 r/w 34, 364 r/w 34 and 120-B r/w Section 302 of the Indian Penal Code and, therefore, sentenced to suffer imprisonment for life on each count with fine.

While the applicant Nitu (in Criminal Application No.3436/2022) has been convicted for the offence punishable under Section 120-B read with Section 302 of the Indian Penal Code and, therefore, sentenced to suffer imprisonment for life with fine.

3. Mr. Ghanekar, learned counsel for the applicant in Criminal Application No.3436/2022 submits that, the applicant Nitu is a woman. She was on bail pending trial. She has been convicted for conspiracy to commit murder. According to learned counsel, except the Call Data Record (CDR) of phone calls between her and her husband, and the incident of her quarrel with the informant, there is nothing against her. The learned counsel ultimately urged for allowing the application.

4. So far as regards the applicants Rameshwar and Mukesh in Criminal Application No.3411/2022 are concerned, learned counsel Mr. Chatterji would submit that, the case was based on circumstantial evidence. A disclosure statement made by applicant Rameshwar has been used against his brother – applicant Mukesh. The same is inadmissible in law. What has been recovered pursuant to the disclosure statement by applicant Rameshwar, were the clothes of himself and applicant Mukesh, which were allegedly on their person on the given day. Although the clothes found to have some stains of human blood, the C.A. reports in that regard are inconclusive. As such, there is nothing to indicate that clothes of these applicants had blood stains of the blood group of the deceased. The F.I.R. was lodged against unknown person. A mere fact that the civil suit is pending, would not constitute the motive to eliminate a three year old child. According to learned counsel, the applicants have been in jail for over six years. It will take time for the appeals to come up for hearing by their turn. The learned counsel ultimately urged for allowing the application.

5. The learned A.P.P. and the learned counsel for the informant would, on the other hand, submit that, the trial

Court has given well reasoned order. The applicants have killed a three year old member of their family. Both the learned counsel urged for rejection of the applications. They would even submit that, hearing of the appeals could be expedited.

6. Considered the submissions advanced. Perused the impugned judgment and the evidence relied on. True, the case is based on circumstantial evidence. The applicants Rameshwar and Mukesh were not on bail pending trial. The F.I.R. was lodged by a wife of their real brother. It is not in dispute that the informant filed a civil suit against the applicants herein for partition and separate possession of a joint family property. She along with her husband and children has shifted to Aurangabad on account of having been harassed by the applicants and other joint family members. She has even filed a prosecution under Section 498-A of the Indian Penal Code. The applicants and the informant belong to "Ahir Gavali" community. On 1/5/2016, there was a mass marriage ceremony of this community members. Her brother and sister were to get married in the mass marriage ceremony. The informant was blessed with a minor son and daughter as well. The marriage ceremonies were to be held

at Guru Ganesh Bhavan Jain School, Jalna. The informant along with her family members had, therefore, come from Aurangabad to Jalna. She had come to the marriage place on the previous day itself. Saksham, a three year old child of the informant was with her. While the informant was busy in some marriage related work, Saksham went missing. A search was, therefore, made for him, but in vain. The informant, therefore, lodged a report, alleging some unknown person to have kidnapped her minor child. A crime, therefore, came to be registered. The dead body of Saksham was found on the following day. Section 302 of the Indian Penal Code, therefore, came to be invoked. CCTV footage facility was available at Guru Ganesh Bhavan Jain School, Jalna. The investigating officer obtained the CCTV footage to find convict- Pawan (original accused No.8) to have lifted Saksham and took him away. Pawan, therefore, came to be arrested. The informant suspected involvement of the applicant and other family members in kidnapping and committing murder of her minor child. She, therefore, gave a supplementary statement indicting them.

7. The applicant Nitu is wife of applicant Rameshwar. She was all along present at marriage place, when the offence

took place at some other place. She has not been attributed with any overt act. She was on bail pending trial. The trial Court has convicted her on the basis of number of phone calls between her and her husband, at immediate before and post proximity of the time of incident. Admittedly, conversation between the two could not be intercepted or obtained. In our view, the CDR of the calls between applicant Nitu and her husband, and the alleged incident of quarrel between her and the informant, may fall short to ultimately uphold her conviction for the offence of conspiracy to commit murder. We are, therefore, inclined to grant her application.

8. So far as regards other applicants – Rameshwar and Mukesh are concerned, it is reiterated that, original accused No.8 Pawan was seen in CCTV footage, taking away the child (deceased) with him. On his arrest, he made a disclosure statement, pursuant to which blood stained clothes on his person and the motorcycle used in commission of the offence came to be recovered. During his disclosure statement, he named the present applicants Rameshwar and Mukesh, at whose behest he kidnapped Saksham. It is true that, disclosure of the names of the co-accused (applicants), during disclosure statement made by Pawan, may not be

admissible. The fact is, however, that, the applicant Rameshwar made a disclosure statement, pursuant to which clothes of himself and that of applicant Mukesh came to be seized. The C.A. reports indicate those clothes had human blood stains on them. True, the C.A. reports are inconclusive as regards the blood group. Admittedly, all was not well between the informant and the applicants. A civil suit has admittedly been filed by the informant against the applicants for partition and separate possession of family properties. The applicants had, therefore, strong motive to commit the offence. There is evidence to indicate that, all the applicants had come to Jalna for attending mass marriage ceremony since there was a marriage of cousin of applicant Nitu as well. Cell phone tower location for the relevant time of the applicants Rameshwar and Mukesh indicate to be at or around the scene of offence. No submissions have been advanced by the learned counsel as regards the tower location.

9. The applicants may have a good case. After having gone through the impugned judgment and the evidence for the prosecution, we are not inclined to suspend the sentences of imprisonment of the applicants Rameshwar and Mukesh for the present. Criminal Application

No.3411/2022 is, therefore, dismissed.

10. We expedite the hearing of Criminal Appeals No.727/2022 and 758/2022.

11. If the appeals could not be heard for one or the other reason within a reasonable time, the applicants Rameshwar and Mukesh are at liberty to move application under Section 389 of the Code of Criminal Procedure again.

12. Criminal Application No.3436/2022 is allowed. Pending the appeal, the substantive sentence of imprisonment imposed by learned Additional Sessions Judge, Jalna in Sessions Case No.107/2016 by order dated 20/9/2022, as against the applicant Nitu w/o Rameshwar Jodiwale is suspended and the applicant Nitu w/o Rameshwar Jodiwale be released on bail on her executing P.R. bond in the sum of Rs.15,000/- (Rupees fifteen thousand) with one surety in the like amount.

(R. M. JOSHI, J.)

(R. G. AVACHAT, J.)

fmp/-