



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

930 CRIMINAL APPEAL NO. 217 OF 2026

RUSHIKESH TULSHIRAM CHAVAN

....Appellant

VERSUS

THE STATE OF MAHARASHTRA AND OTHERS

.....Respondent

Mr. R. P. Mote, Advocate for the Appellant

Mr. S. N. Morampalle, APP for the Respondents/State

Mr. S. M. Nannaware, Advocate for the Respondent No. 2

AND

931 CRIMINAL APPEAL NO. 256 OF 2026

KIRAN LAXMAN RATHOD

....Appellant

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER

.....Respondent

Mr. P. C. Bhagure, Advocate for the Appellant

Mr. V. M. Chate, APP for the Respondents /State

Mr. S. M. Nannaware, Advocate for the Respondent No. 2

AND

CRIMINAL APPEAL NO. 267 OF 2026

GHANSHYAM BHAULAL RATHOD

.....Appellant

VERSUS

THE STATE OF MAHARASHTRA AND ANOTHER.....Respondent

Mr. N. S. Ghanekar, Advocate for the Appellant

Mr. V. M. Chate, APP for the Respondents

Mr. S. M. Nannaware, Advocate for the Respondent No. 2

CORAM : ABHAY J. MANTRI, J.

DATE : 05th MAY, 2026

PER COURT :

1. The Appellants, being dissatisfied with the orders dated 04.03.2026 and 02.04.2026 passed below Exhibits 5, 16 and 20 in Special Case No. 71/2026, have preferred these Appeals for releasing them on bail in connection with the Crime bearing No. 221 of 2025 dated 18-12-2025 registered with the Vedant Nagar Police Station, Dist. Chhatrapati Sambhajinagar for commission of the offences punishable under Sections 70(1) of the Bhartiya Nyaya Sanhita (for short, '**BNS**') and Sections 3(1)(r), (s), and (w), 3(2)(v) of the Scheduled Caste and Scheduled Tribes [Prevention of Atrocities] Act (for short '**SC & ST Act**').

2. Heard the learned Advocates for the respective parties and learned APP for the State and perused the record as well as a copy of the charge-sheet.

3. On 18-12-2025, the victim lodged the report against these Appellants alleging that all the Appellants, constituting a group and acting in furtherance of common intention, have committed rape on her against her will and wish between 11.00 pm and 03.00 am on the intervening night of 17-12-2025 to 18-12-2025 in the Great Punjab Hotel, near Railway Station, Chhatrapati Sambhajinagar.

Based on her report, the offence was registered against the Appellants.

4. Pursuant to the registration of the offences, the Appellants were arrested on 18-12-2025. Accordingly, they have filed Applications for releasing them on bail. The learned Special Judge [SC & ST Act], Aurangabad, after considering the material on record, rejected the Applications vide orders dated 04-03-2026 and 02-04-2026, passed below Exhs. 5, 16, and 20 in Special Case No. 71/2026, respectively. Being dissatisfied with the said orders, the Appellants have preferred these Appeals.

5. The thrust of the argument of the learned Advocates for the Appellants is that the report as well as the record itself indicates that the relationship between the informant/victim and the Appellants was consensual and therefore, the amount was transferred to her online through Sachin Rathod. The learned Advocates for the Appellants further argued that there was no hue and cry during the alleged incident. Also, the transcription of the CCTV footage appears to be contrary to the victim's statement. The victim is a Nurse.

6. It is further canvassed that even though it is alleged that she was under the influence of liquor, it cannot be said that she was in an unconscious state; in fact, she was in a conscious state. They took me through the medical report, FIR, statement of one Pradeep

Khetre, Bhimrao More-Manager of the hotel and Santosh Shinde, Sachin Rathod & Kartikey Madhekar. They submitted that medical papers do not show that the victim has sustained any injury on her genital organ. They submitted that there are no criminal antecedents against the Appellants. Lastly, they contended that the investigation is completed. The charge-sheet has been filed; therefore, it would not be appropriate to detain the Appellants behind the bar till the conclusion of the trial. As such, they urged for their release on bail.

7. On the contrary, learned APP and the learned Advocate for the victim strenuously opposed these Appeals on the ground that the Appellants have admitted their presence on the spot. The statement of the victim corroborated with the police papers, which itself indicates that the Appellants have committed rape on her. The learned APP has drawn my attention to section 63(v) of the BNS Act and submitted that, as per the mandate in the section, the consent of the victim is immaterial if she was under intoxication. Then he drew my attention to the medical papers, particularly column No. 15. They further submitted that the complaint lodged by the victim as well as her narration before the Medical Officer are in consonance. There is no variance, and therefore, prima facie ingredients of Section 70 of the BNS Act are attracted in the present crime, wherein the punishment is prescribed for twenty years. The offence is serious in

nature. Therefore, they urged for dismissal of the Appeals.

8. Having heard the learned Advocates for the respective parties and have gone through the record and charge-sheet, at the outset it appears that the victim is a Nurse and working with a reputed hospital at Chhatrapati Sambhajanagar. Though in the FIR she has alleged that the Appellants have forcibly committed sexual intercourse with her against her wish and will, however, prima facie it does not appear from the rest part of the FIR as well as other case papers. It is pertinent to note that according to the prosecution, the incident occurred in Room No. 205 of the hotel. She stated that instead of going into Room No. 105, she accidentally went into Room No. 205 where the Appellants were consuming liquor. It does not appear from her complaint itself that she has resisted them or made any hue and cry to rescue herself from their clutches. Had it been the fact that they have committed sexual assault on her, then certainly she would have resisted the same and made hue and cry.

9. Moreover, on the day of the incident, she wore the jeans pants, and that has to be taken into consideration. It does not prima facie appear from the FIR that she resisted the Appellants at any point of time. On the contrary, prima facie her statement along with the statement of Sachin indicates that the sexual relationship was not against her wish and will. Besides, the statement of the Manager of

the Hotel Bhimrao does not indicate that on the day of the incident she had stated to him that the Appellants had committed rape on her. On the contrary, he stated that the victim, under the influence of liquor, came down and caught hold of the neck of the room boy, Pradeep, and abused him, and then she left the hotel. Had it been the case that any incident had taken place as alleged by her, she certainly would have informed the Manager of the Hotel, as the said incident occurred in his hotel. But she did not state anything to the Manager.

10. In addition, perusal of the transcription of the CCTV footage in clause-3 indicates that at 23.37.49 the victim herself approached Room No. 205 and knocked on its door and thereafter, she went away from the door of the said room with a smiling face. Then one of the Appellant/Accused was seen making a gesture toward her, and she was seen entering into Room No. 205 with a smile at 23.38.42. After 02.50 am., She came out of the room and was speaking to the Appellants, Rushikesh and Kiran. All of this conduct by the victim appears to be inconsistent with the allegations in her complaint.

11. The most important document, i.e., the Medico Legal Examination report about the sexual violence. On perusal of the same, it appears that the victim does not have any injuries on her genital region. No fresh hymen tear was found. No injury was found

near the genital organ. The Doctor reserved the final opinion but vaguely observed that sexual violence cannot be ruled out. While narrating the incident to the Medical Officer, she has not stated the names of the Appellants but only stated that three unknown persons raped her. Said history was recorded on 18-12-2025 at 05.30 pm when she lodged the report at 09.00 am. But she did not state the names of the persons who committed the sexual assault on her. Except for minor abrasion and contusion on her knee and fingers, no grievous injuries were found on her person.

12. It further appears from the record that the victim had consumed liquor. However, prima facie, it does not appear from the complaint as well as the case papers on record that she was unconscious or unable to understand the consequences of her consent to attract ingredients of Section 63(v) of the BNS Act. So also, prima facie, on perusal of the complaint with statements of the witnesses, it does not appear that sexual intercourse was committed against her will or wish to attract the provision of Section 63 or 70 of the BNS Act. Therefore, I do not find substance in the contention of the learned APP and the learned Advocate for the victim in that regard. On the contrary, as per the contention of the learned Advocate for the Appellants, preventive found on the spot and medical evidence on record does not indicate that the Appellants have raped her against

her will and wish. It further appears that there are no criminal antecedents brought on record against the Appellants. One of the Appellants is pursuing education, another Appellant is employed at ICICI Bank, and the third Appellant is employed in private service.

13. Apart from that, the investigation is completed, and the charge-sheet is filed. Therefore, in my opinion, though the offence is of a serious nature, in my view, in the absence of prima facie material it would not be appropriate to detain the Appellants behind bars as the Trial will take its own time. However, to dispel the apprehension of the prosecution, stringent conditions can be imposed on the Appellants while releasing them on bail.

14. As a result, **these Criminal Appeals are allowed as prayed.**

15. Accordingly, the Appellants be released on bail in connection with Crime bearing No. 221 of 2025 registered with the Vedant Nagar Police Station, Dist. Chhatrapati Sambhajinagar for commission of the offences punishable under Sections 70(1) of the Bhartiya Nyaya Sanhita and Sections 3(1)(r), (s), and (w), 3(2)(v) of the Scheduled Caste and Scheduled Tribes [Prevention of Atrocities] Act, on furnishing PB and SB of Rs. **2 lakh [Rupees Two Lakh only]** each with one or more solvent sureties in the like amount, on the following terms and conditions:

i] The Appellants shall not tamper with the prosecution evidence in any manner till the conclusion of the trial.

ii] The Appellants shall not leave India without prior permission of the court till the conclusion of the trial.

iii] The Appellants shall not enter into the vicinity where the victim is residing till the conclusion of the trial.

iv] The Appellants shall furnish the contact details and residential address to the I. O./Police Station and the concerned Court, and shall keep the information updated, in case of any change.

16. Observations made in the above order are prima facie in nature and the learned trial Court shall not be influenced by the said observations during the trial.

[ABHAY J. MANTRI, J.]