

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

**CRIMINAL APPLICATION NO. 2844 OF 2015
IN
CRIMINAL APPEAL NO. 448 OF 2015**

Rajendra S/o Jankiram Bhope,
Age : 48 Years, Occu. : Labourer,
R/o Saptarshi Mala, Kopergaon,
Tq. Kopergaon, Dist. Ahmednagar. .. Applicant

Versus

The State of Maharashtra .. Respondent

Shri Abasaheb D. Shinde, Advocate for the Applicant.
Shri M. M. Nerlikar, A.P.P. for the Respondent/State.

**CORAM : S. V. GANGAPURWALA AND
V. K. JADHAV, JJ.
DATE : 14TH DECEMBER, 2015.**

PER COURT :

. The present applicant is prosecuted and convicted for the offences punishable U/Sec. 376(2) of the Indian Penal Code and U/Sec. 3(A) and 4 of the Protection of Children from Sexual Offence Act, 2012 and sentenced to suffer imprisonment for remainder of the accused's natural life and to pay fine of Rs. 1,000/- and in default to suffer two months simple imprisonment.

2. Mr. Shinde, the learned counsel for the applicant submits that, prosecutrix is not examined. No medical evidence is led before the Court. Only on the basis of D.N.A. report conviction is awarded. According to the learned counsel, even the mother of the victim has not supported the prosecution case. There is absolutely no evidence.

3. The learned Assistant Public Prosecutor submits that, the D.N.A. report conclusively establishes that the accused is the biological father of the infant. The Court has taken circumstances apart from the D.N.A. report also and has rightly awarded conviction.

4. It is a fact that, prosecutrix is not examined. No medical evidence has been led before the Court. The D.N.A. report is simply filed, no person is examined in support of that. The Sessions Court has observed as under :

"Here in this case, the prosecution have proved their case from probability to possibility and more than 50% of certainty. In that event accused will not get benefit of doubt."

5. Of course the whole evidence will have to be reappreciated at the time of final hearing of the appeal. The observations made in para 47 of the judgment does not appear to be in tune with the

criminal jurisprudence.

6. Considering the above, the substantive sentence awarded vide judgment and order dated 13.05.2015 in Special Case No. 21 of 2014 by the Additional Sessions Judge, Kopergaon to the applicant for the offences punishable U/Sec. 376(2) of the I. P. Code and U/Sec. 3(A) and 4 of the Protection of Children from Sexual Offence Act, 2012 is suspended pending the hearing and final disposal of appeal. The applicant is released on bail on his furnishing P.R. bond of Rs. 20,000/- with one surety of like amount. The criminal application is disposed of.

[V. K. JADHAV, J.]

[S. V. GANGAPURWALA, J.]

bsb/Dec. 15