

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

**Criminal Application No.6904 of 2014
And
Criminal Application No.6416 of 2014**

Momin Mazhar @ Babbu Momin Majed. .. **Applicant.**

Versus

The State of Maharashtra. .. **Respondent.**

Shri. S.S. Kazi, Advocate, for applicant.

Shri. M.M. Nerlikar, Additional Public Prosecutor, for
respondent in Criminal Application No.6904/2014.

Shri. R.P. Phatke, Additional Public Prosecutor, for
respondent in Criminal Application No.6416/2014

CORAM: T.V. NALAWADE, J.

DATE : 6th JANUARY 2015

ORDER:

1) Both the applications are filed for bail. The first application is filed for bail in Crime No.17/2014 registered in Peth Beed Police Station for offence punishable under section 376A of the Indian Penal Code and under the Protection of Children from Sexual Offences Act, 2012. The second application is filed in Crime No.155/2013

registered in Dharur Police Station for offences punishable under sections 302, 201, 34 of the Indian Penal Code. It is submitted that in both the cases charge sheets are filed against the applicant. This Court has perused the record like papers of investigation which include DNA report.

2) Allegations are made against the present applicant that he raped the prosecutrix from the first case who was aged about 17 years. They were residing in the same building. The prosecutrix became pregnant. When the mother of the prosecutrix realised that the prosecutrix was pregnant, she made inquiry with the prosecutrix and the prosecutrix disclosed name of the present applicant. Mother of the prosecutrix requested the applicant to marry the prosecutrix but he refused to do so. Then the prosecutrix gave birth to a female child. When the child was aged about 3 days the applicant was again called to the house of the prosecutrix by her mother. Again request was made to marry the prosecutrix but the accused became angry. He denied the paternity and he killed the child by smothering. The dead body was disposed of by

the prosecutrix, her brother and mother by throwing it at a place situated at distance from the residential place.

3) When the dead body of the child was found, police officer gave report. The post mortem report shows that the death took place due to asphyxia due to smothering. The police made inquiry and it was found that the applicant, the prosecutrix, her mother and brother are involved in the commission of offence. Crime was registered for offence of rape against the present applicant and in respect of murder of the child crime was registered against both the present applicant and the mother of the child.

4) Learned counsel for the applicant submitted that there is virtually no evidence against the applicant to prove the offence of murder. He submitted that considering the circumstances in which the relationship was established, inference of consent can be drawn in the case. Both these submissions are not acceptable. He submitted that in the hospital the age of the prosecutrix was shown as 19 years. However, on radiological

examination the age was given as between 12 and 14 years. In the FIR the age is shown as 17 years. In view of these circumstances there is no question of using the defence of consent.

5) DNA report shows that the applicant is the father of the child. In view of this circumstance, provision of sections 106 and 114 of the Evidence Act can be used against the applicant. Further there may be evidence of direct nature if the prosecution takes some steps to collect direct evidence against the applicant for murder and that can be done even during trial. The applicant has committed a heinous offence. In view of these circumstances, this Court holds that in both the applications bail cannot be granted to the applicant. Both the applications stand rejected.

Sd/-
(T.V. NALAWADE, J.)

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