

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

BAIL APPLICATION NO. 429 OF 2016

Popat Vitthal Shitole

..Applicant

v/s.

The State of Maharashtra .

..Respondents

Mr. Priyal Sarda for the Applicant.

Mrs. A.A.Mane, APP for the Respondent/State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED : APRIL 20, 2016.

(IN CHAMBER)

P.C.

1. This is an application for bail filed by the aforesaid applicant who is an accused in Sessions Case No.119 of 2015, which arises from C.R.No.46 of 2015 registered by Shirur Police Station, Pune for the offences under Section 376, 354, 504, 506, 507, 509 of IPC and under Section 4, 6, 8, 10 of Protection of Children From Sexual Offences Act, 2012.

2. Heard learned Counsel for the applicant and the learned APP for the State. I have perused the record. At the outset it may be mentioned that the previous bail application being Criminal Bail

Application No.1635 of 2015 was dismissed by this Court by order dated 17.11.2015 mainly on the ground that the allegations leveled against the applicant prima facie disclose offence under Section 376 IPC as well as the provisions of POCSO Act.

3. The learned Counsel for the applicant has submitted that subsequent to the said order, the applicant has received the DNA report which exonerates the applicant. The learned Counsel for the applicant submits that in the light of the changed circumstances, the applicant is entitled for bail.

4. The records prima facie reveal that the victim who is a minor girl stated to be of 15 years and 6 months of age, had lodged FIR dated 10.2.2015 alleging that the applicant herein who is her paternal uncle had sexually abused her sometime in the month of May 2014 and several times thereafter. Somewhere in the month of February 2015, when her mother had taken her to a tailor, her maternal aunt suspected that the victim was pregnant. They took her to a doctor and the doctor opined that she was 7 months pregnant. Upon enquiries, the victim informed her parents that the applicant herein had sexually abused her. Pursuant to the said FIR

the aforesaid crime was registered and upon completion of investigation the charge-sheet has been filed against the applicant for the aforesaid offences.

5. Subsequently, the victim delivered a baby boy. The DNA test was conducted. The copy of the report which is placed on record and marked "X" for identification reveals that the applicant herein is not the biological father of the child born to the victim girl. The DNA report prima facie exonerates the applicant.

6. In the light of the said report which has been received subsequent to the previous order, in my considered view, the applicant is entitled for bail. Hence the application is allowed on the following terms and conditions:

- i) The applicant is ordered to be released on bail bond of Rs.30,000/- (Rupees Thirty Thousand Only) with one or two solvent sureties in the like amount to the satisfaction of the Special Judge, Pune.
- ii) The applicant shall not visit Ganesh Nagar Kavathe Yamai Village till the evidence of the victim and her family members is recorded.

- iii) The applicant shall report to Shirur Police Station on every first Monday of the month till the conclusion of the trial.
- iv) The applicant shall not interfere with the victim or other witnesses and shall not tamper with the evidence in any manner.

(ANUJA PRABHUDESSAI, J.)