

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL BAIL APPLICATION NO. 896 OF 2016

Pratap Baban Bhosure

.....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Pavan S. Patil Advocate for Applicant.

Mr. Vinod Chate APP for the State.

CORAM : SMT. SADHANA S. JADHAV, J.

DATED : AUGUST 24, 2016.

PC :

1) Heard. This is an application under section 439 of the Code of Criminal Procedure, 1973. Applicant herein is arrested on 19/05/2015 in crime no. 154 of 2015 registered at Shikrapur Police Station for offence punishable under section 376 (2) of the Indian Penal Code. Investigation is completed and charge-sheet is filed on 12/08/2015.

2) It appears from the records that the prosecutrix was carrying pregnancy of 3 months at the time of registration of the F.I.R. She was subjected to clinical examination. The samples were taken and were sent for chemical analysis. The result of the analysis (D.N.A. Report) would clearly show that the blood sample of the foetus match with the blood sample of the present

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Applicant.

3) The learned counsel for the Applicant submits that the rape survivor was more than 18 years of age and had consented. According to the learned counsel, it appears to be consensual sex, however, subsequently the F.I.R. was lodged and it was made to appear that it was against the will of the rape survivor.

4) As far as consent is concerned, it is to be appreciated on the basis of the substantive evidence, recorded at the time of the trial and hence, Applicant does not deserve to be enlarged on bail under section 439 of the Code of Criminal Procedure, 1973 at this stage. However, the learned Sessions Judge Pune, seized with the matter is requested to make an endeavour to conclude the recording of evidence, in the present case, as far as possible, within 9 months from the date of the framing of the charge and shall also consider the aspect of the consent at the time of trial. The learned Sessions Judge shall not be influenced by the observations made herein above or the rejection of the present Application.

5) Application stands rejected.

(SMT. SADHANA S. JADHAV, J.)