

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

CRIMINAL APPEAL No.514 OF 2018

Raju Vitthal Shriram @ Dhangar

... Appellant

Vs.

The State of Maharashtra

... Respondent

Mr.Nitesh Mohite h/f Mr.Jaydeep Mane for the Appellant

Ms.S.S. Kaushik, APP, for the Respondent – State

**CORAM: Mr.S.S. SHINDE &
Mrs.MRIDULA BHATKAR, JJ.**

DATED: SEPTEMBER 19, 2018

P.C.:

1. This criminal appeal is directed against the order dated 8.2.218 passed by the learned Additional Sessions Judge, Pandharpur in Criminal Appeal No.564 of 2017. The applicant/accused is prosecuted for the offences punishable under sections 373, 376(2)(i) of the Indian Penal Cod, under sections 3(1)(w)(i)(ii), 3(2)(5), 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and also under sections 4, 8, 12, 17 and 42 of the Protection of Children from Sexual Offences Act, in C.R. No.253 of 2017 registered at Karkam

police station. The offence was registered on 25.10.2017 by the mother of the prosecutrix.

2. The facts of the case in brief are that the victim, who claimed to be 14 years old, was staying with her family at Karkamb, District Solapur. She belongs to the scheduled caste, namely, 'Chamar'. In the month of August, 2017 approximately, she became friendly with the applicant/accused, who was working as a labourer in the field of the neighbour. It is the case of the prosecution that the applicant/accused expressed his love towards her and he forcibly had sexual intercourse with her on four times. She thereafter had conceived in the month of October, 2017. When the complaint was given by her mother, at that time, the victim was pregnant of 2 months. She was then taken to Civil hospital, Solapur by her parents and the fetus was aborted. The fluid and placenta were preserved for DNA examination. The police carried out investigation and chargesheet is filed and thereafter, the applicant/accused moved application for bail u/s 439 of Code of Criminal Procedure before the trial Court, however, it was rejected.

3. Learned Counsel for the applicant/accused has submitted that there is variance in the statements of the victim and also other

persons. He has submitted that the applicant is 27 years old innocent person and no such incident of sexual intercourse has taken place. The learned Counsel has submitted that the report of DNA, which was awaited, is now received.

4. The learned Prosecutor while opposing this application, has produced a sealed packet received of the DNA report, from the Regional Forensic Science Laboratory, Pune. She submitted that the prosecutrix is now married and residing with her husband in some other village.

5. We opened the said report dated 7.9.2018 which discloses that the reference to the C.A. was made on 29.11.2017. A packet of placenta, the fluid and fetus was sent for DNA examination to the C.A. and the result after conducting the examination, is as follows:

“(i) xxx is **concluded** to be biological mother of the fetus of xxx.

(ii) Raju Vitthal Shriram @ Dhangar (applicant/accused) is **excluded** to be biological father of the fetus of xxx.”

6. The analysis started on 15.7.2018 and it was completed on 1.9.2018. Though the offence is registered under the Scheduled

Castes and the Scheduled Tribes (Prevention of Atrocities) Act and under the Protection of Children from Sexual Offences Act, after taking into account the report of the DNA examination by the CA, that the applicant is excluded to be the biological father of the fetus of the victim xxx, we are of the view that *prima facie*, the applicant/accused is entitled to bail and hence, granted bail as under:

- i) The applicant/accused Raju Vitthal Shriram @ Dhangar, be released on bail upon furnishing P.R. bond in the sum of Rs.30,000/- with one or two solvent sureties in the like amount;
- ii) The applicant/accused shall not meet or pressurise the prosecutrix or her family members;
- iii) The applicant/accused shall not abscond or jump bail;
- iv) The applicant/accused shall attend on all the Court dates.

7. The observations made herein are *prima facie* in nature and are confined to the adjudication of the present appeal only.

8. Appeal is disposed of on the above terms.

(MRIDULA BHATKAR, J.)

(S.S. SHINDE, J.)