

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

BAIL APPLICATION NO. 1080 OF 2018

Abasaheb Vitthal Sutar

....Applicant

V/s.

The State of Maharashtra

....Respondent

Mr. Ganesh T. Jadhav for the applicant.

Mr. S.H. Yadav, APP for the State.

Mr. M.K. Aawale, PSI, Umbraj Police Station, present.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED: 05th OCTOBER, 2018.

P.C.:

. This is an application under Section 439 of Criminal Procedure Code filed by the aforesaid applicant, who is facing trial in Sessions Case No.73/2017 pending on the file of Additional Sessions Judge, Karad. The said case arises from C.R.No.259/2017 registered at Umbraj Police Station, Dist. Satara for offences punishable under sections 376, 506 of the Indian Penal Code and section 6 of Protection of Children from Sexual Offences (POCSO) Act, 2012.

2. Heard Mr. Ganesh T. Jadhav, learned counsel for the applicant. He submits that the applicant has been falsely implicated due to the

property dispute between the applicant and the father of the prosecutrix. He has further submitted that the DNA report is favourable to the applicant and hence, the applicant is entitled for bail. He has relied upon the decision of this Court in *John Maneul Felsha D'Souza v/s. State of Maharashtra 2005 ALL MR (Cri) 3073*. He submits that the applicant is in custody since 15/09/2017 and that his presence is no longer required for the purpose of investigation.

3. Mr. S.H. Yadav, learned APP submits that the statement of the prosecutrix who is a minor *prima facie* proves the involvement of the applicant in committing a serious crime. He submits that the statement of the prosecutrix cannot be discarded at this stage on the basis of DNA test report. In support of this contention, he has relied upon the decision of this Court in *Harishankar Awadh Shukla @ Raj Shukla v/s. The State of Maharashtra in Criminal Bail Application No.1342 of 2017*. Learned APP submits that in the event the applicant is released on bail, there is every possibility of the applicant pressurizing the victim and thus interfering with the administration of justice.

4. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

5. The material on record *prima facie* indicates that the applicant is the paternal uncle of the father of the prosecutrix, who at the relevant time was below 18 years of age. The prosecutrix has stated that on 08/07/2017, at about 02:15 p.m., while she was at a hill called Samajik Vanikaran, with her goats for grazing, the applicant came near her, he embraced her and thereafter had forcible sexual intercourse with her. The prosecutrix had stated that the applicant had threatened to cause her death if she were to disclose the incident to anyone. She had stated that the applicant had again subjected her to rape on two to three occasions. The prosecutrix claims that about three days prior to lodging of the first information report, her paternal aunt had taken her to a Doctor. The Doctor conducted pregnancy test and informed that the prosecutrix was pregnant. On being questioned, the prosecutrix informed her father and grand mother that the applicant had raped her. Based on the said information, the father of the prosecutrix lodged the first information report against the applicant for committing rape on his minor daughter.

6. It is to be noted that in the present case, DNA test was conducted by the Assistant Chemical Analyser to Government, Regional Forensic Science Laboratory, Pune. A perusal of the said DNA report *prima facie*

reveals that the applicant herein has been excluded to be a biological father of the fetus, stated to be product of conception of the prosecutrix. The DNA test report *prima facie* casts a doubt on the version of the prosecutrix.

7. In the case of *John Maneul Felsha D'Souza (supra)*, the Single Judge of this Court has held that the DNA test is stated to be scientifically accurate and that the report of DNA test cannot be ignored. Whereas, in *Harishankar Awadh Shukla (supra)*, the Single Judge of this Court had declined to grant bail despite the fact that the DNA report was negative. In the said judgment, the learned Single Judge of this Court has observed that the investigation in the said case was faulty. It was observed that the Investigation Officer in the said case had investigated the case in a biased manner without following the rules and procedure prescribed under the POCSO Act during the investigation. The learned Single Judge has also observed that apart from the statement of the victim, there was other material and statements of the witnesses which *prima facie* proves the involvement of the applicant in commission of an offence.

8. In the instant case, the victim was about 16 years of age, she had

not disclosed the incident to her parents for a period of over two months. It was only after it was detected that she was pregnant, she had reported that she was raped by the paternal uncle of her father. There is no other material to corroborate the statement of the prosecutrix. The DNA report does not support the case of the prosecutrix. Unlike in the case of *Harishankar Awadh Shukla*, the investigation in the present case was not conducted in a biased or casual manner. Hence, the facts of the present case are distinguishable from the case of *Harishankar (supra)*.

9. It is true that section 29 of the POCSO Act provides that when a person is prosecuted for committing, abetting or attempting to commit any offence under section 3, 5, 7 and 9 of the Act, the Court shall presume that the person has committed the offence for which he is tried, unless the contrary is proved. In the instant case, the DNA report which is stated to be scientifically accurate, prima facie rebuts this presumption and makes the version of prosecutrix doubtful.

10. Considering the above facts and circumstances, in my considered view, the applicant is entitled for bail. Hence, Bail Application is allowed on following terms and conditions :-

(a) The applicant who is arrested in C.R.No.259/2017 registered at Umbraj Police Station, Dist. Satara is ordered to be released on bail on furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand) with one or two solvent sureties in the like amount.

(b) The applicant shall not enter the Village Tali Bambawade, Taluka Patan, District Satara falling in the jurisdiction of Saspade, Borgaon Post, till conclusion of the trial.

(c) The applicant shall not directly or indirectly influence, pressurize the victim or interfere with her or any other witness in any manner.

(d) The applicant shall furnish his residential address and contact details to the Investigation Officer as well as to the concerned Court.

(e) The applicant shall not change his residential address without prior intimation to the Investigation Officer and to the concerned Court.

(SMT. ANUJA PRABHUDESSAI, J.)