

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.728 OF 2017
IN
CRIMINAL APPEAL NO.192 OF 2018**

DEVIDAS BABURAO NANAWARE)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA)...RESPONDENT

Mr.Pramod G. Kathane a/w. Mr.K.M.Kodani, Advocate for the Applicant.

Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 19th OCTOBER 2018

P.C. :

1 This is an application for suspension of sentence and releasing the applicant/accused on bail, during the pendency of the appeal filed by him. The applicant/accused is convicted of offences punishable under Sections 376(1), 376(1)(n) and 506 of

the Indian Penal Code as well as under Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act). For the offence punishable under Section 376(1), 376(1)(n) of the Indian Penal Code as well as for the offence punishable under Section 4 of the POCSO Act, the applicant/accused is sentenced to suffer rigorous imprisonment for 11 years on each count. For the offence punishable under Section 506 of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for 1 year. For the offence punishable under Section 6 of the POCSO Act, he is sentenced to suffer rigorous imprisonment for 11 years.

2 Heard the learned counsel appearing for the applicant/accused. He argued that there is material variance and improvement in the statement under Section 161 as well as under Section 164 of the Code of Criminal Procedure of the victim of the crime in question. He further argued that report of DNA test is not supporting the case of prosecution, and therefore, the applicant/accused is entitled for bail. The learned APP opposed the application.

3 I have considered the submissions so advanced and perused the material placed on record including record of deposition of prosecution witnesses so also the defence witnesses.

4 The victim of the crime in question is examined as PW1. Her date of birth, as per record maintained under Registration of Births and Deaths Act, 1969, is 9th July 2003, and as such, at the time of the alleged incident, she was 12 years of age.

5 Evidence of the PW1/victim child shows that the applicant/accused had committed penetrative sexual assault on her, time and again. Her evidence as well evidence of her mother shows that because of repeated penetrative sexual assaults, the PW1/victim child became pregnant, and thereafter, she disclosed the incident. That is how, report came to be lodged by her mother – PW2 Vaishali. There is no need of corroboration to the version of the victim of sexual assault. In the case in hand, after aborting the foetus, product of conception so also samples of blood of the

applicant/accused as well as the PW1/victim child were sent for DNA examination. Evidence of PW5 Dr.Rohidas Mundhe shows that because of small quantity of the product, it was not possible to ascertain whether DNA of the product of the conception matched with the DNA of the applicant/accused. However, evidence of the PW1/victim child is pointing finger of accusation against the applicant/accused. There is nothing on record to infer that the applicant/accused was falsely implicated in the crime in question.

6 Considering the nature of evidence and the nature of crime, no case for bail is made out.

7 The application is, therefore, rejected. Hearing of the appeal is expedited.

(A. M. BADAR, J.)