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

WRIT PETITION NO.3823 OF 2017

Trupti Jayesh Raut	...Petitioner
Versus	
The State of Maharashtra	...Respondent

Mr.V.J.Bhanushali, for the Petitioner.

Mr.H.J.Dedhia, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.

DATE : 25th JANUARY, 2018

P.C. :

1. Heard learned Counsel for the parties.
2. Rule. Rule is made returnable forthwith with the consent of the parties and is taken up for final disposal. Learned APP waives service on behalf of Respondent – State.
3. By this petition, the petitioner has impugned the order dated 29th July, 2017, passed by the learned Additional Sessions Judge, Greater Bombay, by which the application (Exhibit-29), preferred by the Investigating Officer seeking permission to take DNA profile of the accused

no.2's son was allowed.

4. Learned Counsel for the petitioner states that the impugned order is contrary to law and could not have been passed. He submitted that infact such an application filed by the prosecution itself was not maintainable and could not have been filed in the said proceedings. He submitted by the said order the petitioner's son's constitutional rights were violated. He relied on the Judgment of the Apex Court in the case of ***Bharatha Matha and Another v/s R.Vijaya Renganathan and Others*¹**, ***Bhabani Prasad Jena v/s Convenor Secretary, Orissa State Commission For Women and Another*²**; ***Selvi and Others v/s State of Karnataka*³**; ***Justice K.S.Puttaswamy (Retd.) and Another v/s Union of India and Ors, decided on 24th August, 2017 and State Through CBI v/s Dawood Ibrahim Kaskar and Others, decided on 7th May, 1997***, in support of his submission.

5. Learned APP fairly states that such an application could not have been filed and is unable to justify the impugned order.

1 (2010) 11 SCC 483

2 (2010) 8 SCC 633

3 (2010) 7 SCC 263

6. Perused the papers. The petitioner is facing prosecution for the alleged offences punishable under Sections 306, r/w 34 of the Indian Penal Code. According to the prosecution, the accused no.1 committed adultery by having sexual relations with accused no.2 (i.e. the petitioner), the wife of Jayesh Raut, pursuant to which, Jayesh Raut, committed suicide. According to the prosecution, the petitioner was having illicit relations with accused no.1 and was insisting Jayesh, her husband for a divorce. It is further alleged that due to the cruelty, both physical and mental, Jayesh committed suicide. It is further alleged by the prosecution, that during the life-time of Jayesh, the petitioner conceived a child from accused no.1, who is presently about 2 years of age. It appears that the accused no.1 had filed an application in the Court of Sessions seeking his discharge from the said case, when the Investigating Officer filed an application (Exhibit – 29) and sought permission for taking the DNA profile of the petitioner's son. The said application was resisted by the petitioner. It was also stated that the child was small and he should not be subjected to any DNA test and that the same violated their constitutional rights. The learned Additional Sessions Judge, after hearing the parties, was pleased to allow the application (Exhibit – 29) preferred by the prosecution and directed 'the

petitioner to make available her son to the Investigating Officer for the purpose of DNA test.' Admittedly, the petitioner and the accused no.1 (original accused no.1) have been charge-sheeted for the offences punishable under Sections 306, r/w 34 of the Indian Penal Code and the case is pending in the Court of Sessions. In the facts, the petitioner's minor son, could not have been directed to undergo a DNA test. The application filed by the Investigating Officer was clearly misconceived and as such ought not to have been entertained by the learned Judge, having regard to the facts of this case.

7. Accordingly the application is allowed. The impugned the order dated 29th July, 2017, passed by the learned Additional Sessions Judge, Greater Bombay, is quashed and set aside.

8. Rule is made absolute in above terms.

9. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.