

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO.55 OF 2019
IN
CRIMINAL APPEAL NO.41 OF 2019**

Rohan Harishchandra Shedge **...Applicant**

V/s.

The State of Maharashtra
(Through Mahad Town Police Station) **...Respondent**

Mr. Harshad Sathe, Advocate for the Applicant.
Mr. S.V. Gavand, APP for the Respondent/State

CORAM : A.M.BADAR, J.

DATED : 22nd JANUARY 2019

P.C. :

1. This is an application for suspension of sentence and releasing the applicant/accused on bail during pendency of the appeal filed by him.

2. The applicant/accused along with the co-accused is convicted for the offences punishable under Sections 376(2) of the Indian Penal Code as well as under Section 3 read with Section 4 of the Protection of Children From Sexual Offences Act, 2012. On the first count, he is sentenced to suffer rigorous imprisonment for

ten years and on the another count, he is sentenced to suffer rigorous imprisonment for seven years. Some fine is also imposed on the applicant/accused.

3. Heard the learned Counsel appearing for the applicant/accused. He argued that the alleged victim of the crime in question has not deposed about giving her statement before PW5/Jyoti Pathaniya. The learned Counsel further argued that all relevant witnesses have turn hostile to the prosecution and as such, there is no iota of evidence to infer guilt of the applicant/accused in the crime in question. It is further argued that the prosecution has not adduced any evidence regarding handling of the samples of the DNA and submitting them properly for forensic examination. In this view of the matter, DNA report which is not proved by the prosecution cannot be relied. The learned Counsel further argued that there is no evidence to prove age of the alleged victim, who herself has deposed that she was more than 18 years of age. The learned Counsel further argued that authors of the DNA report and birth certificates are not examined.

4. The learned APP opposed the application by drawing my attention to the evidence of PW9/Shankar Salunkhe, Investigating Officer and argued that this witness has deposed about extraction of samples and sending them for forensic examination. It is further argued that age of the victim is proved by the certificate at Exhibit 43.

5. I have considered the submissions so advanced and perused the material placed on record. The applicant/accused is the biological brother of the victim. The victim has turn hostile to the prosecution. However, report of the DNA shows that the applicant/accused is the biological father of the female child delivered by the victim.

6. So far as age of the victim is concerned, it appears that there is evidence in respect of the same in the form of the birth certificate issued by the Registrar under The Registration of Birth and Death Act, 1969. That apart, the prosecution has also adduced evidence in respect of the date of birth of the victim recorded at the school where she had taken admission. Evidence

on record shows that the victim was born on 10.04.1998 and it was found that she was running pregnancy of six months duration on 20.04.2013 and ultimately she delivered a female child on 25.05.2013. The applicant/accused is scientifically proved to be the biological father of that child. The certificate regarding age of the person issued under the provisions of The Registration of Birth and Death Act, 1969 is directly admissible under the provisions of Section 17 of the said Act. Similarly, report of DNA is directly admissible in evidence, it being an opinion of expert in the light of provisions of Section 293 of the Code of Criminal Procedure. Even otherwise, at this stage, meticulous examination of evidence of applicant/accused is not possible, nor marshaling of evidence is possible. Therefore, in view of judgment of the Hon'ble Apex Court in the matter of *Hemudan Nanbha Gadhvi Vs. State of Gujrat in Criminal Appeal No.913 of 2016 decided on 28.09.2018*, no case for grant of bail is made out, therefore the application is rejected. Hearing of the appeal is expedited.

(A.M.BADAR J.)