

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.617 OF 2019

Sambhaji @ Sandip Popat Shendkar ... **Appellant**
V/s.
The State of Maharashtra & Anr. ... **Respondents**

.....

Mr.Ghanasham S. Jadhav, Advocate for the Appellant.

Mr.V.B.Konde-Deshmukh, APP for the Respondent No.1/State.

Mr.Ganesh Bhujbal, Appointed Advocate for the Respondent No.2.

....

**CORAM : INDRAJIT MAHANTY &
 A.M.BADAR JJ.**

DATED : 7th JUNE 2019.

ORAL JUDGMENT :

1 Heard.

2 Admit.

3 Heard finally considering the fact that the appeal is challenging the rejection of application for bail filed by the appellant in Special (POCSO) Case No.118 of 2018 on 15/10/2018.

4 The learned Counsel for the appellant/accused vehemently argued that identity of the appellant/accused as

perpetrator of the crime in question is not established by the prosecution. He submitted that none of the prosecution witnesses have vouched about the fact that the appellant/accused had taken the victim female child and committed penetrative sexual assault on her. So far as the test identification parade is concerned, the learned Counsel appearing for the appellant/accused submitted that though the same was conducted on 02/07/2018, Memorandum thereof is signed by panch witness on 30/07/2018. The test identification parade was not conducted in consonance with the guidelines given by this Court in the Criminal Manual.

5 As against this, the learned Additional Public Prosecutor as well as Mr.Bhujbal, the learned Counsel appointed for representing the respondent No.2/victim at the cost of the State have vehemently opposed the appeal by contending that medical evidence is supporting the prosecution case and in the test identification parade, the victim female child identified the appellant/accused as a person, who had committed penetrative sexual assault on her.

6 We have considered the submission so advanced and also perused the charge-sheet.

7 Contention of the victim female child that she was subjected to the penetrative sexual assault is gaining corroboration from the report of her medical examination. So far as identity of the appellant/accused is concerned, the prosecution has conducted

the test identification parade on 02/07/2018. In that test identification parade, the victim female child has identified the appellant/accused as a person, who has committed penetrative sexual assault on her. Test identification parade is conducted on 02/07/2018. But one of the panch witness has signed it on 30/07/2018. That by itself, at this stage, is not sufficient to jettison the evidence regarding the identification of the appellant/accused. It is not pointed out as to why and for what reason, the appellant/accused would be falsely implicated in the crime in question that too by a female victim of 11 years of age. Considering the nature of offence and evidence available against the appellant/accused, no case of grant of bail is made out. The impugned Order is perfectly justified. Hence, the Order :

ORDER

- (i) The Appeal is dismissed.
- (ii) However, as the Special Case is of the year 2018 and keeping in mind the provisions of Protection of Children from Sexual Offences Act, 2012 in respect of expeditious trial, we direct the learned Special Judge to conclude the trial within a period of six months.
- (iii) Registry to inform this Order to the learned Special Judge for necessary action.
- (iv) The Appeal is accordingly disposed of.

(A.M.BADAR, J.)

(INDRAJIT MAHANTY, J.)