

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO. 269 OF 2019**

**IN**

**CRIMINAL APPEAL (ST) NO. 250 OF 2019**

Dilip Kacharu Salunke ... Applicant

Versus

The State of Maharashtra ... Respondent

Mr. Amit Mane for the applicant.

Mr.J.P.Yagnik, APP for the State.

**CORAM : B.P. DHARMADHIKARI &  
SMT.SWAPNA JOSHI, JJ.**

**DATE : JUNE 03, 2019**

**P.C.:**

Heard learned counsel for the applicant and leaned APP for the State.

2. The applicant/step father of the victim has been convicted under section 376(2)(i) of IPC and is sentenced to life imprisonment and to pay fine of Rs.10,000/- or in default to suffer further RI for two years.

3. In terms of section 42 of POCSO, trial court did not award separate punishment for the offence punishable under section 4 thereof.

4. Counsel for the applicant states that the date of birth of the victim has not been established, alleged pregnancy also is not established and obtaining DNA sample of applicant accused has also not been proved on record. He points out that the victim herself has in the court refused to blame the applicant in the matter.

5. Learned APP states that the victim was found 20 weeks pregnant, DNA test has identified the applicant accused who happens to be her step father as a culprit. The date of birth has been proved by examining the head master of the school.

6. The evidence shows that the DNA sample of the accused was procured and with it identity of the applicant as father of the foetus in the womb of the victim has been established. PSI has brought on record the necessary material. Similarly PW 4 Doctor has identified the victim. She examined her because of history of sexual assault and at the relevant time she was 20 weeks pregnant.

7. She also proved the certificate at Exh. 38 which reveal presence of pregnancy sustained with the repeated sexual activity.

8. The victim had lost her real father and then her mother re-married with the accused.

9. In this situation, the age of victim by itself cannot be decisive. No case is made out for release of the accused on bail. Application is therefore, rejected.

**(SMT. SWAPNA JOSHI, J.)**

**(B.P. DHARMADHIKARI, J.)**