

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPLICATION NO. 940 OF 2019
IN
CRIMINAL APPEAL NO. 540 OF 2019**

Allauddin Aasmohammad Mansuri ...Applicant
Versus
The State of Maharashtra & Anr. ...
Respondents

Arun Rajput- Advocate for the applicant.
Mrs. J. S. Lohakare- APP for the Respondent - State.

CORAM : DAMA SESHADRI NAIDU, J.

DATE : 16th JULY, 2019.

P.C. :

The appellant faced an allegation of raping a minor girl below the age of 16 years. He along with his wife was charged under Sections 376, 347, 368, 506, 366 (A), 34 of IPC, and Sections 4, 5, 6, 8 of POCSO Act, 2012.

The allegations reveal that the appellant's wife, who has already been enlarged on bail, asked the victim girl to come to her house. And when the victim girl entered the house, the appellant's wife locked the door from outside and left the place. Thereafter, the appellant physically violated the victim. In course of time, she has become pregnant as well.

2. After the trial, the learned Sessions Judge, Thane, in Spl. Case POCSO No.10 of 2014, through its judgment dated 08.03.2019, sentenced the appellant, among other things, to rigorous imprisonment of 10 years and fine as well.

3. Ever since the date of the judgment the appellant has been serving the sentence. Besides that, during the trial he had been on bail under strict conditions, though.

4. The appellant's counsel has strenuously contended that because of previous enmity between the families, the appellant and his wife have been implicated in a false crime. At any rate, he has drawn my attention to the DNA report of the aborted foetus. That report in fact has come negative: the DNA report rules out the appellant to be the biological father.

5. Under these circumstances, I reckon *prima facie* the appellants contentions are believable. Under these circumstances, I suspend the sentence and, as a result, enlarge the appellant on bail subject to these conditions:

ORDER

(i) Application is allowed.

(ii) Substantive sentence imposed on the applicant is suspended and he is directed to be released on bail on his executing P.R. Bond for Rs. 30,000/- and on his furnishing two sureties for the like amount by each, besides solvency for Rs. 50,000/-.

(iii) He should keep away from the jurisdiction of the New

Bombay, until, further orders.

(iv) Pending the appeal, the applicant should not contact the first informant, or any other witness, or victim or any member of the victim's family in any manner.

(v) The applicant's failure to abide by these conditions shall entail the prosecution to apply for cancellation of bail now granted to the applicant.

(vi) Application is accordingly disposed of.

[DAMA SESHADRI NAIDU, J.]