

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

CRIMINAL WRIT PETITION NO.4784 of 2018

Swapnali Gautam Tambe

...Petitioner

vs.

The State of Maharashtra and Ors.

...Respondents

Mr.Vikas Shivarkar a/w Mr. Balvendra Singh for the Petitioner.

Smt. A. S. Pai, APP for the Respondent-State.

**CORAM : B. P. DHARMADHIKARI &
REVATI MOHITE DERE, JJ.**

DATE : 07/01/2019.

P.C.:

. The matter was heard earlier on 14/12/2018 and adjourned today. The minor victim who has delivered a male child is now before this Court for quashing of prosecution. The contention is that the identity of accused could not be established and, therefore there are no chances of any conviction.

2. Learned counsel upon instructions also submits that in such matters, the welfare of newly born baby is paramount. As the petitioner is taking education and unemployed, she cannot accept the responsibility of that newly born baby and hence she has voluntarily delivered it to NGO. Learned counsel strenuously submits that in this situation as the status and future of newly born is still to be shaped, this court should quash the prosecution and save the newly born from any possible stigma.

3. Learned APP submits that during the course of investigation the petitioner has not given details and, therefore it is not possible for the respondent to identify the accused. She also adds that statement of victim

under section 164 of Cr.P.C. is also recorded.

4. We find that on 19/6/2018 when report was lodged, in victim's statement, there are some disclosures.

5. The newly born baby is handed over to NGO and the petitioner has disclosed her inability to support that baby.

6. The facts bring on record commission of offence not only under IPC but also under the provisions of POCSO Act. In this situation, we cannot, in this jurisdiction, accept the request of the petitioner. The petition is rejected.

(REVATI MOHITE DERE, J.)

(B. P. DHARMADHIKARI, J.)