

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

CRIMINAL APPEAL NO. 155/2020

(BHASKAR JAGDEO ATOLE (IN JAIL) **VERSUS** THE STATE OF MAHARASHTRA & OTHERS)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri K.P. Sadavarte, counsel for the appellant.
Shri A.M. Balpande, A.P.P. for the R-1.

CORAM : A.S. CHANDURKAR AND AMIT B. BORKAR, JJ.

DATE : JUNE 12, 2020.

Hearing was conducted through Video Conferencing and the learned counsel for the parties agreed that the audio and video quality was proper.

As per order dated 13.03.2020, the Superintendent of Police was directed to give intimation to the respondent no.2 regarding filing of the appeal.

Shri A.M. Balpande, learned Additional Public Prosecutor submits that such intimation has been duly given to the respondent no.2.

Accordingly, the appeal is taken up for hearing. **ADMIT.**
Heard finally.

Pursuant to First Information Report No.166 of 2019 dated 17.09.2019, the applicant has been arrested for the offence alleged to have been committed under Section 376 of the Indian Penal Code. According to the complainant, prior to about eight to ten months, she was working as a labourer in an agricultural field at Village Pala. She developed relations with the appellant. Ultimately, she conceived and thereafter delivered a male child. According to the complainant, in view of absence of her consent, offence under Section 376 of the Penal Code was committed.

The appellant has been arrested on 17.09.2019. In the meanwhile, charge-sheet has been filed on 13.11.2019. The learned counsel for the appellant submits that the respondent no.2 had impliedly consented for having relations with her. No grievance whatsoever was made for a considerable period and the first information report has been lodged only after delivering the child. He further submits that the respondent no.2 being aged about 36 years and in the light of the fact that no grievance was made by her at any earlier point of time, the appellant deserves to be enlarged on bail.

The learned Additional Public Prosecutor has opposed the application. According to him, as per the DNA report, the paternity of the child born is established and the same indicates that the appellant is the biological father. He further submits that since the respondent no.2 suffers from some disability, there is likelihood of the appellant misusing his liberty if he is enlarged on bail.

It is seen that the charge-sheet has been filed on 13.11.2019. Though the DNA report indicates prima-facie involvement of the appellant, it cannot be ignored that the first report has been lodged after delivering the child. We find that in these circumstances by imposing appropriate conditions, the appellant can be enlarged on bail.

Accordingly, the appellant is directed to be released on furnishing P.R. bond of Rs.20,000/- with one surety in like amount. The appellant shall not enter the limits of Tahsil Chikhli till the conclusion of the trial. He shall co-operate with the Sessions Court till disposal of the trial. He shall also not take any steps to contact the complainant or try to influence the witnesses. By clarifying that these observations are only for the purposes of deciding the present appeal, the same is allowed and disposed of.

The appellant be released on the basis of the uploaded copy of this order.

This order be communicated to the learned counsel appearing for the parties either on the email address or on WhatsApp or by such other mode, as is permissible in law.

(AMIT. B. BORKAR, J.)

(A.S. CHANDURKAR, J.)

APTE