

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

**INTERIM APPLICATION NO. 3264 OF 2022
WITH
INTERIM APPLICATION NO. 3263 OF 2022
IN
CRIMINAL APPEAL NO. 969 OF 2022**

Santosh Bhau Bangar

..Appellant

Versus

The State of Maharashtra & Anr.

..Respondents

Mr. R. S. Datar for Appellant.

Mr. S. R. Agarkar, APP for State/Respondent No.1.

CORAM : SARANG V. KOTWAL, J.

DATE : 3rd OCTOBER 2022

PC :

1. These are the applications for suspension of sentence and releasing the applicant on bail during pendency and final disposal of this Criminal Appeal No. 969 of 2022.

2. The Applicant was convicted by the Additional Sessions Judge, Kalyan vide his Judgment and order dated 30/08/2022 passed in Sessions Case No.230 of 2012. The applicant was convicted for commission of offence punishable U/s.376 of IPC and was sentenced to suffer R.I. for 10 years and to pay a fine of

Rs.20000/- and in default of payment of fine to suffer S.I. for one year. He was also convicted for commission of offence punishable U/s.506 of I.P.C. and was sentenced to suffer R.I. for two years and to pay a fine of Rs.5000/- and in default of payment of fine to suffer S.I. for three months. The substantive sentences were directed to run concurrently. Besides these sentences the applicant was directed to deposit amount of Rs.50000/- towards compensation for the victim U/s.357(3) of Cr.p.c. The applicant was in custody during trial from 13/05/2012 to 28/06/2013. For the rest of the period he was on bail during trial. After conviction he is taken in custody.

3. The prosecution case depends upon the deposition of the prosecutrix who is examined as PW-1.

4. Learned counsel for the applicant submitted that, the most important factor in this case is DNA report which rules out the possibility that the applicant was the biological father of the child delivered by the victim. He submitted that, this DNA report practically destroys the evidence of the prosecution. The applicant

was implicated falsely because of political rivalry in the village.

5. Shri. Agarkar, learned APP, on the other hand, submitted that, in this particular case, DNA report may not be the clinching evidence to throw light on the factors of the case. He submitted that the offence is serious.

6. I have considered these submissions and I have perused the evidence of the prosecutrix. Her date of birth was 27/04/1998. She has deposed that, she knew the accused and she used to visit his house when no one was in his house. She was aware that he was married. It is her case that, on two occasions, he established forcible physical relations with her; with the result she became pregnant. When she was 4 months into her pregnancy, her father came to know about it. She disclosed everything to her father and then this F.I.R. was lodged. The offence took place between November 2011 and April 2012.

7. During investigation, DNA report was collected to test whether the applicant was the biological father. The DNA report rules out that possibility. While it is true that, DNA report may not

be the only factor which would exonerate the applicant as there is a possibility that, besides the applicant some other person may also be involved. The prosecutrix has not come up with such a case and, therefore, there is reasonable doubt about her deposition. All these factors will have to be considered during final hearing. Shri. Agarkar is right in submitting that, DNA report may not exonerate the applicant totally. It is possible that he would have committed this act, but there could be involvement of some other person who could be the biological father of the child. Shri. Agarkar's submission merits consideration. But there is some doubt about her version as she was trying to protect some other person. The offence is old. Almost 12 years have passed. The applicant was on bail during trial and there are some arguable points raised on behalf of the applicant. Therefore, without making conclusive comments on the merits of the matter at this stage of consideration of bail, the applicant can be granted bail; particularly when he was on bail during trial and there are no allegations that he has misused that liberty.

8. Hence, the order:

O R D E R

- i) During pendency and final disposal of Criminal Appeal No.969 of 2022, the applicant is directed to be released on bail on his executing P.R.bond in the sum of Rs.30000/- with one or two sureties in the like amount.
- ii) It is made clear that, payment of fine and compensation amount is not stayed.
- iii) Both the applications are disposed of.

(SARANG V. KOTWAL, J.)