

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL APPEAL NO. 337 OF 2022

Shriram Kisan Bonde (In Jail)

vs.

State of Maharashtra and another

Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders.

Mr. S. A. Mohta, Advocate for appellant.
Mr. M. J. Khan, APP for respondent No.1 State.

**CORAM : MANISH PITALE AND
G.A.SANAP JJ.**

DATE : 05/08/2022

In this appeal, notice was issued on 24/05/2022. The appeal is accompanied by application for suspension of sentence.

2. The respondent State is represented through learned APP, while the respondent No.2 is served, but there is no representation on her behalf.

3. By this appeal, the appellant has challenged his conviction under Section 376(2)(n) and 506 of the Indian Penal Code and Section, 3 5(1) and 6 of the Protection of Children from Sexual Offences Act, 2012. Sentence of life imprisonment

has been imposed for conviction under the aforesaid offences.

4. **Admit.**

5. Call for Record and Proceedings.

CRIMINAL APPLICATION (APPA) NO. 402 OF 2022

This is an application seeking suspension of sentence pending appeal.

2. The learned counsel appearing for the applicant/appellant submitted that the applicant is 75 years old person. During the course of investigation, the DNA samples of the child allegedly born from the sexual intercourse between the applicant and the victim were sent for forensic examination. The report placed on record before the trial Court stated that the applicant was excluded as the biological father of the minor child.

3. According to the learned counsel for the applicant this was a crucial piece of evidence in favour of the applicant, because even as per the deposition of the prosecutrix she had become pregnant because of the alleged sexual assault committed by the applicant. It is further submitted

that the other evidence on record was also not in consonance with the prosecution case, for the reason that sufficient material was not placed on record to support the case of the prosecution that the prosecutrix was about 16 years old when the incident occurred.

4. The learned APP opposed the prayer in the present application and submitted that merely because DNA report was in the negative cannot be a ground for holding that the applicant has made out a prima facie in his favour or that he deserves to be enlarged on bail. It is submitted that the evidence of the prosecutrix was consistent and nothing of substance was brought out in the cross-examination.

5. We have considered the material on record. The negative DNA report is certainly a crucial factor in the present case. The case of the prosecution, in terms of the evidence given by the prosecutrix, was that she became pregnant because of the alleged sexual assault carried out by the applicant against her. The negative DNA report certainly has the effect of blunting the prosecution story to a large extent. Apart from this, we find that, prima facie, placing only the bonafide certificate on record to prove the age of the prosecutrix could not have been

the sole basis for ascertaining the claim that the prosecutrix was 16 years old at the time of incident. No person from the School which issued the said certificate was examined by the prosecution and this aspect indicates that the applicant/appellant may have a strong case in the accompanying appeal.

6. We are also conscious of the fact that the applicant is about 75 years old person and that therefore, the case for grant of bail is made out.

7. Accordingly, the application is allowed. The sentence imposed on the applicant shall remain suspended during the pendency of the appeal and since the applicant was taken into custody, he shall be released on bail on furnishing P.R.Bond of Rs.25000/- [Rupees Twenty Five Thousand only] and a surety in the like amount. The applicant shall not in any manner contact the prosecutrix or her family members during the period when he is enlarged on bail.

JUDGE

JUDGE

*Digitally signed by*RAVIKANT
CHANDRAKANT KOLHE
*Signing Date:*05.08.2022
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