

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

**947 CRIMINAL APPLICATION NO.1116 OF 2023
IN APEAL/250/2023**

Pralhad Vitthalrao Hajare

...Applicant

VERSUS

1. The State of Maharashtra

2. X -Victim

...Respondents

...

Advocate for Applicant : Ms. Ashwini A. Lomte h/f Mr.Salunke
Sudarshan J.

APP for Respondent-State : Mr.A.A.Jagatkar

Advocate for Respondent No. 2 : Ms.Suryawanshi Pratibha H.
(appointed)

...

CORAM : R. G. AVACHAT, J.

DATE : 20.04.2023.

PER COURT :

1. Heard.

2. This is an application for suspension of execution of substantive sentence of imprisonment.

3. The applicant has been convicted for the offences punishable under Sections 4 of the Protection of Children for Sexual Offences Act, Section 506 of the Indian Penal Code and

under Section 3 (1)(r)(s)(w) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.. The maximum term of imprisonment is 20 years. He is behind the bars for little over two years and one and half months.

4. It is the case of the prosecution that the applicant who is 33 years of age and father of two had sexual intercourse with the victim child many a time. The victim was thereby conceived. The victim then lodged the First Information Report (for short "FIR") while she was pregnant of four months. She underwent an abortion. Before thereto, the blood samples of three, i.e the applicant, victim and the fetus were obtained for the D.N.A. profiling. The D.N.A. report indicate that both applicant and the victim to be the biological parent of the fetus. So far as, as regards the age of the victim is concerned, her School Leaving Certificate has been relied on.

5. The learned APP and the learned Advocate appointed to represent the victim would submit that in the examination under Section 313 of the Code of Criminal Procedure, the applicant did not offer any explanation. His silence goes long

way to indicate his involvement in the crime in question. The School Leaving Certificate of the victim was adverted to besides evidence of the Headmistress of the School, on whose evidence the said document came to be admitted in evidence. Then the evidence of the Investigating Officer was relied to indicate that he made necessary correspondence for obtaining blood samples and get forwarded it to the C.A., through career. According to both learned APP and learned Advocate representing the victim, the D.N.A. report which is conclusive in nature implicates the applicant in crime and thus, the trial Court was very much justified in convicting him.

6. The FIR has been lodged by the victim herself. By the time, she lodged the FIR, she was pregnant of little over four months. Same suggest consensual relations. She attributed the applicant to be the author of her pregnancy. According to her, she was around 15 years of age at the relevant time. Admittedly, the mother of the victim did not give victim's date of birth to the police. The father also did not give the date of birth of victim. The School Leaving Certificate (Exh. 28) is relied on in proof of the victim's age. The said certificate indicates that

the girl named therein left the school while she was in first Standard. The victim in her evidence testified that she did not attend the School post 4th Standard. The Headmistress (PW-4) who was examined in proof of the School Leaving Certificate, admitted that she was not the Headmistress of the School when the girl named in the certificate was admitted to the school. She went on to state that the name of the father of the victim written as Tulshiram has been replaced by another name by Ranba. She also states that there is over writing in the date of birth in the School Leaving Certificate (Exh. 28).

7. When the victim herself stated to have not attended the school post the first Standard, it is just difficult to rely on her School leaving certificate indicating her to be drop out of 4th Standard. There is no other evidence in proof of the age of the victim.

8. So far as regards the D.N.A. report is concerned, attention of this Court has been adverted to the medical examination report of the victim, wherein, against Column No. 21, “head - Blood for DNA analysis (EDTA Vial)” it has been

observed “Not Collected”. That report is dated 08.03.2021. The The Medical Officers or the Technician, who had allegedly obtained blood samples of the applicant, victim and the fetus have not been examined. The evidence of the Investigating Officer indicates that he made necessary correspondence for obtaining the blood samples and forwarded the same through Police Constable (Career).

9. The learned Advocate for the applicant would submit that the expert, who did the DNA profiling, is not examined. It is not necessary to examine him as witness, provided there is evidence to indicate that the blood samples of the respective persons have been duly obtained, preserved and then sent to C.A. analysis.

10. The appeal is of this year. It will take time for the appeal to come up for hearing. The applicant is behind the bars for little over two years. He has a wife and two children to look after. In view of the same, the application is allowed in terms of the following order :

ORDER

- (a) The application is allowed.
- (b) Pending the appeal, the execution of substantive sentences of imprisonment imposed upon the applicant by the learned Special Judge, Parbhani, in Special Case (POCSO) No.54 of 2021, by the judgment and order dated 13.02.2023 to stand suspended. The applicant be released on bail on his executing P.R. bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand) with one surety each in the like amount. The application is allowed and disposed of.
- (c) The fees of learned Advocate appointed to represent respondent No. 2 is quantified for Rs. 8,000/- (Rs. Eight Thousand Only).

(R. G. AVACHAT)
JUDGE

mahajansb/