

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

26 BAIL APPLICATION NO.1800 OF 2022

SHAHEBAJ RIYAJALI SAYYED
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER

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Advocate for Applicant : Mr. Sonavane Narendra D.

APP for Respondents: Mr. K. S. Patil

Advocate for Respondent No.2 : Mr. M. L. Sangit

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**CORAM : S.G. MEHARE, J.
DATE : JANUARY 23,2023**

PER COURT :

1. Heard the learned counsel for the applicant, learned A.P.P for the respondent No.1-State and learned counsel for respondent No.2/ victim.

2. A twenty four year old applicant has been arraigned as an accused for the offence of sexual assault on the minor of fourteen years. She got pregnant from the accused. That pregnancy was terminated. DNA report proves the paternity of the applicant. The learned counsel for the applicant would submit that the victim is inconsistent as regards the allegations. There is inordinate delay in lodging the FIR. He never forced her for sex. It was consensual sex. The applicant has no antecedents. He is a labourer. Therefore, DNA

report would not come in the way for bail. He relied on the case of *Vishnu Sitaram Sarode Versus The State of Maharashtra 2021 DGLS(Bom.)2364*. He seeks bail.

3. The learned APP and learned counsel for the victim have strongly opposed the application. They would argue that, the case of the applicant of consensual sex is false. Though the words of victim were changing about the sex but not a single statement of hers reveals that it was consensual sex. The offence came to the light when it was found that she was pregenent, therefore, it would be difficult to say that FIR is delayed. In the case law relied upon by the applicant, there was no DNA report; hence the said case is distinguishable on facts. They, prayed for dismissal of the application.

4. When the medical examination of the victim was done, she was fourteen years old and five months pregnant. Her statement reveals that their affair was broken down since her parents were opposing. Further statement reveals that she did not consent for the sex. The applicant had promised her to marry and did sex with her. There appears no material discrepancy in her different statements. The DNA report corroborates her allegations. The offence is serious. The circumstances against the applicant are grave. Possibility of

tampering with the prosecution witnesses cannot be ruled out. For these reasons, the application stands dismissed.

(S. G. MEHARE)
JUDGE

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