

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

**CRIMINAL APPLICATION NO.3933 OF 2022
IN APEAL/888/2022 WITH APEAL/888/2022**

**KAILAS ASHROBA FUPATE
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER**

...

Mr. Sachin S. Deshmukh, Advocate for Applicant
Mr. V. S. Badakh, APP for Respondent No.1 – State
Mr. H. P. Jadhav, Advocate for Respondent No.2 (Appointed)

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CORAM : NITIN B. SURYAWANSHI, J.

DATE : 09th FEBRUARY, 2023

PER COURT :

1. By this application applicant seeks suspension of his substantive sentence of imprisonment during pendency of appeal which is already admitted.
2. Applicant is convicted for offence punishable under Section 376(2)(f) of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for 10 years and is directed to pay fine of Rs.5,000/-.
3. Heard learned advocate for applicant, learned Additional Public Prosecutor for State and learned advocate for victim/respondent No.2.
4. Though the victim/prosecutrix has not supported the

prosecution, the trial Court has convicted applicant by relying on the DNA test report and the statement of the victim recorded under Section 164 of Cr.P.C.

5. Learned advocate for applicant submits that the mandatory requirement of law is not followed at the time of taking DNA sample of applicant and therefore, the DNA report ought to have been discarded by the trial Court.

6. *Prima facie* there appears substantial compliance of the mandatory requirement. Trial Court has found sufficient evidence on record to convict the applicant though prosecutrix did not support the prosecution. At this stage detail appreciation of evidence is not necessary. It appears that the Sessions Court has rightly convicted the applicant. This Court is of the view that this is not a fit case for grant of bail.

7. Application is, therefore, rejected.

8. Fees of the learned advocate appointed to represent the victim/respondent No.2 is quantified at Rs.2,500/-. High Court Legal Services, Sub-Committee, Aurangabad, to pay the same within a period of four weeks.

(NITIN B. SURYAWANSHI, J.)