

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

**INTERIM APPLICATION NO.1040 OF 2022
IN
CRIMINAL APPEAL NO.314 OF 2022**

Appa Bapu Namdas Applicant
Versus
The State of Maharashtra & Anr. Respondents

Mr. Abhijit Kulkarni, Advocate i/b. D.D. and Abhijit Associates for the Applicant.

Smt. M.R. Tidke, APP for the Respondent No.1-State.

Mr. Surel S. Shah, Advocate (appointed) for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 3rd FEBRUARY, 2023

P.C. :

1. This is an application for bail pending final disposal of the Criminal Appeal preferred by the applicant which is already admitted.

2. The applicant was convicted for commission of the offence punishable under Sections 5(1)(n)(p) and 6 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as the 'POCSO Act') and was

sentenced to suffer RI for ten years and to pay fine of Rs.3,000/- and in default of payment of fine to suffer SI for one month. He was also convicted for commission of the offence punishable under Section 506 of IPC and was sentenced to suffer RI for three months and to pay fine of Rs.500/- and in default of payment of fine to suffer SI for one week. The substantive sentences were directed to run concurrently. The applicant is in custody since 3.6.2018 till today.

3. Heard Shri Abhijit Kulkarni, learned counsel for the applicant, Smt. M.R. Tidke, learned APP for the respondent No.1-State and Shri Surel Shah, learned appointed Advocate for the respondent No.2.

4. The prosecution case is that the applicant was a distant relative of the victim, who was 13 years of age at the time of incident. The prosecution case is that four months before 2.6.2018, the applicant committed rape on the victim by pointing knife and *koyta*. The act was repeated again, resulting in her pregnancy. The FIR was lodged and the

investigation was carried out. The samples for DNA testing were collected and it was revealed that the applicant was the natural father of the foetus of the victim. On the basis of this evidence, the applicant was convicted and sentenced, as mentioned earlier.

5. Learned counsel for the applicant submitted that the age of the victim is not proved. The certificate of the high-school was produced regarding her age but that was not enough. To prove her age, the prosecution has not produced the certificate from her first school. He further submitted that there is no connecting evidence to show that the samples were collected for DNA testing from the victim and the foetus. Therefore, even the DNA report cannot be used against the applicant.

6. Learned APP as well as learned counsel for the respondent No.2 relied heavily on the DNA report and the evidence of the victim herself.

7. I have considered all these submissions. I have also perused the victim's evidence where she has narrated

the incident. At this stage, there is no reason to disbelieve her. Apart from that Exhibit-49 shows that the samples for DNA testing were collected during investigation. The corresponding document Exhibit-49 is addressed by the investigating officer to the FSL, Pune. At this stage, therefore, there is sufficiently strong evidence against the applicant. And, therefore, bail cannot be granted to him. Hence, the application is rejected. However, since the applicant is in custody since 3.6.2018 and since the record and proceedings with paper books are already received, the appeal be added to the weekly final hearing board commencing from 20.3.2023.

(SARANG V. KOTWAL, J.)

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by
PRADIPKUMAR
PRAKASHRAO
DESHMANE
Date:
2023.02.06
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Deshmane (PS)