

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

**INTERIM APPLICATION NO.2192 OF 2023
IN
CRIMINAL APPEAL NO.687 OF 2023**

Saddam Husen Mahamad Kasim Shah Applicant

versus

The State of Maharashtra & Anr. Respondents

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- Mr. Balwant Salunkhe, Advocate for Applicant.
- Ms. Ranjana D. Humane, APP for the State/Respondent.
- Mr. Chintamani K. Bhangoji, Advocate for Respondent No.2.

**CORAM : SARANG V. KOTWAL, J.
DATE : 01st JULY, 2024**

P.C. :

1. This is an application for bail pending Appeal preferred by the Applicant. The Applicant was the accused in Special Case (POCSO) No.18/2022 before the Additional Sessions Judge, Sangli. Learned Judge vide his Judgment and Order dated 06/04/2023 convicted the Applicant for commission of offence punishable u/s 376(2)(n) of the Indian Penal Code and u/s 6 of Protection of Children from Sexual Offences Act, 2012. The Applicant was sentenced to suffer rigorous imprisonment for 25

years and to pay a fine of Rs.15,000/- and in default of payment of fine to suffer rigorous imprisonment for one year.

2. Heard Mr. Balwant Salunkhe, learned counsel for the Applicant, Mr. Chintamani K. Bhangoji, learned counsel for the Respondent No.2 and Ms. Ranjana D. Humane, learned APP for the State.

3. The Appeal is already admitted. The prosecution case is that the victim in this case was about 16 years of age. Her date of birth was 11/09/2005. Her birth certificate issued by the Municipal corporation is produced on record at Ex.P-14 by the Investigating Officer. Her age is not really challenged. The prosecution case is that the Applicant who was the husband of the victim's cousin, kept physical relations with her making her pregnant. She delivered a child. When her pregnancy was detected, the police were informed. She delivered a child. The DNA sample of the child, the victim and the Applicant were collected. It was clear that the victim and the Applicant were the biological parents of the child. During trial, the Doctor and the victim as well as the Investigating Officer were examined.

4. Learned counsel for the Applicant submitted that the Applicant was on bail during trial. He is closely related. He is falsely implicated. The victim has not supported the prosecution case. The sentence is harsh. Therefore, he should be released on bail.
5. Learned APP as well as learned counsel for Respondent No.2 submitted that there is clinching evidence against the Applicant though the victim has not supported the prosecution case. The DNA reports are on record. All the due procedures are followed by the police and therefore based on that, it was established that the Applicant had kept physical relations with the minor. Therefore, her consent is immaterial.
6. I have considered these submissions. While it is true that the victim has not supported the prosecution case, however, the Applicant and the victim were closely related. The important evidence in this case is the DNA report, which establishes that the victim and the Applicant are biological parents of the child.

This fact of keeping physical relations with the minor is established and proved against the present Applicant. In this view of the matter, no case for grant of bail is made out. The application is therefore rejected.

7. The Appeal be expedited.

(SARANG V. KOTWAL, J.)