

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

**INTERIM APPLICATION NO.3966 OF 2023
IN
CRIMINAL APPEAL NO.118 OF 2023**

Sandesh Suresh Gurav	..Applicant
Versus	
The State of Maharashtra & Anr.	..Respondents

Mr. D. D. Rananaware, for the Applicant.
Smt. M. R. Tidke, APP for the Respondent/State.
Smt. Vrishali Raje, Appointed Advocate for the Respondent No.2.

CORAM : SARANG V. KOTWAL, J.

DATE : 20th AUGUST, 2024

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1. The Applicant has preferred this Application for his release on bail pending disposal of his Appeal.

2. The Applicant was the accused before the Additional Sessions Judge, Ratnagiri in Special Case No.14 of 2021. The learned Judge vide his judgment and order dated 16th June, 2022, convicted the Applicant for commission of offences punishable under Sections 376(2)(j)(n), 376(3) and 506 of IPC and Sections 4, 5(j)(ii)(l), 6, 8 and 12 of the Prevention of Children From Sexual Offences Act, 2012 ("the POCSO Act"). The learned Judge sentenced him to suffer rigorous imprisonment for twenty years besides imposition of fine.

3. The prosecution case is that the victim's date of birth was 4th September, 2006. The Applicant was known to the victim as he used to work with her father. The Applicant used to visit her house. He had got married two years prior to the incident. In spite of his marriage, he continued to visit the victim's house and used to make obscene gestures. He used to tell the victim that he liked her and he wanted to marry her. He also used to threaten her that he would kill her parents and defame her. Because of these threats, she did not tell anybody or to her parents. It is her case that in the last week of September, 2020, the Applicant went to her house when nobody else was present in the house. He committed rape on her. He repeated that act in October, 2020. This happened on three to four occasions more. The victim got pregnant. After that the victim told the Applicant about it, but he again threatened her and told her not to disclose this incident to her parents. Ultimately, the victim lodged the FIR, resulting in the prosecution of the Applicant. Apart from the evidence of the victim, there is a DNA report which shows that the victim and the Applicant were the biological parents of the child born to the victim.

4. Learned counsel for the Applicant submitted that the date of birth of the victim is not properly proved by the prosecution and only a photocopy of the birth record was produced, which does not satisfy the requirement in law, as the original birth certificate itself was not produced on record. He submitted that the blood sample of the Applicant for DNA testing was taken in March, 2021.

The DNA testing was done after nine months. It cannot be a conclusive proof of the involvement of the Applicant. The manner in which the samples were taken and preserved is not above suspicion. The Applicant is in custody for two years and two months. Therefore, the Applicant be released on bail.

5. Learned APP as well as the learned counsel for the Respondent No.2 opposed these submissions. According to them, the age of the victim girl is properly proved, which was about 14 years at the time of the incident. They submitted that the PW-4/Gram Sevak had produced the original record before the Court and it was verified by the Court. There cannot be any dispute about the victim's age. They also relied on the DNA report.

6. I have considered these submissions.

7. The victim described the incident in consonance with the prosecution case. Her date of birth i.e. 4th September, 2006 is proved through the evidence of PW-4/Gram Sevak. He had brought the original birth record to the Court and based on that she had filed the birth report showing the date of birth of the victim. The DNA report is proved by PW-13, who was the Chemical Analyzer working with RFSL. The DNA report shows that the Applicant was the biological father of the female child of the victim. All these aspects are strongly incriminating against the present Applicant. The offence is serious. The sentence is for twenty years. Therefore, no

case for grant of bail pending the Appeal is made out.

8. The Application is rejected.

(SARANG V. KOTWAL, J.)