

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

BAIL APPLICATION NO. 1087 OF 2024

Dilip Motilal Tuddu	...	Applicant
Versus		
The State of Maharashtra & Anr.	...	Respondent

Mr. Sagayamary M. for the Applicant.
Mr. Tanveer G. Khan, APP for Respondent No.1-State.
Ms. Kanchan Pawar, through legal-aid, for Respondent No.2.
Mr. Bajrang K. Desai, Samta Nagar Police Station.

CORAM: MANISH PITALE, J.
DATE : 13th DECEMBER 2024

P.C. :

. This Court has heard the learned counsel for the applicant, the learned APP for the respondent-State and learned counsel appointed to appear on behalf of respondent No.2.

2. The applicant was arrested on 12th June 2019 in connection with FIR No. 247 of 2019 registered at Samta Nagar Police Station, Kandivali (East), Mumbai, for offences under Sections 376(2) and 506(2) of the Indian Penal Code, 1860 (IPC) and Sections 4 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act).

3. The allegation against the applicant is that he committed forcible sexual intercourse with the victim, who was minor at the relevant time. This resulted in a pregnancy and birth of a child,

who died within a couple of days.

4. The learned counsel for the applicant submits that initially FIR was registered against a third person on the statement given by the sister of the victim, but thereafter the applicant was implicated in the present case. It is submitted that there are number of inconsistencies in the material gathered by the Investigating Authority and that the applicant has a strong *prima facie* case in his favour. It is submitted that although, DNA report indicates that the applicant is the father of the child, but any final opinion on the said aspect of the matter would be reached upon completion of the trial. It is highlighted that the applicant has suffered incarceration for more than 5 and ½ years, having been arrested on 12th June 2019. Even charge has not been framed and therefore, this Court may consider enlarging the applicant on bail.

5. On the other hand, the learned APP submits that the statement of the victim in the present case, as also other evidence and particularly, the DNA report, is sufficient to indicate a strong *prima facie* case against the applicant. The charge-sheet shows only 16 witnesses proposed to be examined by the prosecution and therefore, the trial can be expedited.

6. The learned counsel appearing for respondent No.2 also vehemently opposed the present application. It was submitted that there is ample material to show the involvement of the applicant in the present case.

7. The material on record indeed shows that on a statement of the sister of the victim, an FIR appears to have been registered against a third person. But, this Court is concerned with the subject FIR in the context of which the victim has stated that it was the applicant who was responsible for committing forcible sexual intercourse upon her, sometime in November 2018. The material on record *prima facie* supports the claim of the informant. It is to be noted that in the supplementary statement, even the sister of the informant has stated that she named the third person under fear and confusion.

8. It is to be noted that in the present case, DNA report was sought from the competent laboratory. The report placed on record shows that the DNA test is found to be positive, thereby indicating that the applicant is the father of the child born to the victim. This indicates a strong *prima facie* case against the applicant. The documents on record also show that on the date of the incident, the victim was minor. No case is made out on merits for granting bail.

9. As regards the period of incarceration already undergone and the stage of the trial, appropriate directions can be issued.

10. In view of the above, the application is dismissed.

11. However, the concerned trial Court is directed to expedite the trial by framing the charge at the earliest and making an

endeavour to complete the trial within 9 months from today. This is in the backdrop of the fact that only 16 witnesses are cited in the charge-sheet and in practical terms, the prosecution would perhaps be examining fewer witnesses.

12. In the event, the trial is not completed within the aforesaid time period and the delay is not attributable to the applicant, liberty is reserved for the applicant to renew his prayer for bail.

MANISH PITALE, J.