



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

CRIMINAL APPEAL NO. 538 OF 2025

Jivan Bapu Patil

.. Appellant

Versus

The State Of Maharashtra And Another

.. Respondents

Mr. Dipesh D. Pande, Advocate for the Appellant.

Smt. Chaitali Choudhari-Kutti, APP for Respondent No. 1.

Mr. Yogesh Birajdar, Advocate for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATE : 12th AUGUST, 2025.

PER COURT :-

. This is second time appeal seeking regular bail by the appellant. This Court on earlier occasion has rejected his earlier appeal bearing Criminal Appeal No. 250/2024 by order dated 11.07.2024. However, this Court was pleased to allow the appellant to withdraw the appeal with liberty to file fresh appeal after receiving of DNA report. The appellant is facing the trial under Sections 376, 376 (N)(L), 506 of the Indian Penal Code and Sections 3(1)(r), 3(1)(s), 3(1)(w)(i)(ii) and 3(2)(va) of the SC and ST (Prevention of Atrocities) Act.

2. The learned advocate for the appellant submits that, now DNA report is received. It is clearly stated that in the DNA report that, the possibility of the present appellant being biological father of the foetus is ruled out. He thus submits that, once the DNA report is received, the allegation under Section 376 of the Indian Penal Code (for short "I.P.C.") against the appellant cannot be taken. The second ground is that since 18.07.2023 he is in jail. Till now the stage of the trial is only at the stage of framing of charge. His further ground is about the age of the appellant i.e 65 years. He thus submits that the appeal deserves to be allowed.

3. The learned A.P.P., from the record, submits that, there is other evidence in the form of statements under Sections 161 and 164 of the Code of Criminal Procedure. In the present case, the victim happens to be a specially abled child. Through interpreter her statement is also recorded which clearly implicates the present appellant. There are two more witnesses. One of them has actually seen the incident and on seeing the incident he went to inform the parents of the victim by telling other witness namely Karan to keep watch on the shop where the alleged incident happened. She prays for rejection of the appeal.

4. The learned advocate for respondent No. 2 submits that, merely DNA report is not matching with the accused itself cannot be a ground to release the accused on bail. He relies upon the order in the case of Vaibhav Bhanudas Ubale Vs. The State of Maharashtra in Criminal Bail Application No. 34/2020 (Bombay). In the said order it is held that, merely because DNA report does not support the prosecution that itself is not sufficient reason to release the person on bail when other material is available on record.

5. In the present case also, this Court finds that, there is ample material on record showing the involvement of the accused in the offence. The learned trial Judge has rightly considered the application and has passed the order. No interference is required.

6. With this, criminal appeal stands dismissed.

(KISHORE C. SANT, J.)

P.S.B.