

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

CRIMINAL APPLICATION NO.1613 OF 2024

The State of Maharashtra Applicant

V/s.

Sachin Sitaram Yadav Respondent

Mr.Shrikant V. Gavand, APP for the Applicant-State.

Mr.Anand Misha i/b Mr.Jitendra Gautam, Mr.Amit Dubey and
Ms.Poonam P., for the Respondent.

Mr.Lahane, API, Naupada Police Station.

Mr.Tate, API, Thanenagar Police Station.

CORAM : SHIVKUMAR DIGE, J.

DATE : 21st NOVEMBER 2024

P.C:-

. Heard learned APP for the Applicant-State and
learned counsel for the Respondent.

2. The learned counsel for the Respondent tendered
copy of the reply. It is taken on record.

3. The learned APP submits that, Crime No.825 of
2024 registered under Section 74, 75(1)(i) of the Bharatriya
Nyaya Sanhita and Section 8 and 12 of the Protection of Children
From Sexual Offence Act, 2012 ('POCSO' for short) against the

NILAM
SANTOSH
KAMBLE

Digitally signed
by NILAM
SANTOSH
KAMBLE
Date:
2024.11.25
14:03:41 +0530

Respondent. When Respondent was produced before the learned Special Judge with Application seeking police remand. The learned Special Judge has released the Respondent on bail without granting Police Custody on the ground that check list was not produced alongwith the remand Application. The learned APP further submitted that, when offence under sections of the POCSO Act, is registered against the Respondent. The reason's were mentioned for granting the custody but not considered. The learned Special Judge should have granted Police Custody of the Respondent. Hence, requested to allow the Application.

4. It is prosecution's case that, the victim was forcefully kissed by the Respondent. The victim is 11 years old. The Police arrested the Respondent and produced before the learned Special Judge.

5. The learned APP further submitted that, if this Court dispose of the Application by giving direction to the Investigating Officer to follow the Guidelines given by the Hon'ble Apex

Court in the case of *Arnesh Kumar V/s State of Bihar & Anr*¹ would suffice.

6. It is contention of the learned counsel for Respondent that, the maximum punishment of the offence registered against the Respondent is upto five years. The Investigating Officer has not followed the Guidelines given by the Hon'ble Apex Court in the case of *Arnesh Kumar (Supra)*. No check list was produced before the learned Special Judge, while seeking Police custody of the Respondent. The learned Special Judge has passed well reasoned order, no interference is required in it and requested to reject the Application.

7. I have heard both learned counsel. Perused impugned order passed by the learned Special Judge.

8. While passing the order, the learned Special Judge has observed that, the maximum punishment of the offence registered against the Respondent is of five years. No check list is produced on record, on that ground, the learned Special Judge has released the Respondent forthwith.

¹ (2014) 8 SCC 273

9. In my view, as per statement of the learned APP, the Investigating Officer is ready to follow the Guidelines given in case of *Arnesh Kumar (Supra)*. Considering his statement, I pass following order.

ORDER

- (i) The impugned order dated 12th October 2024 passed by the learned Special Judge, Thane in Remand Application dated 12th October 2024 in CR No.825 of 2024 registered with Thane Nagar Police Station is quashed and set aside.
- (ii) The Investigating Officer shall follow the Guidelines given by the Hon'ble Apex Court in the case of *Arnesh Kumar V/s State of Bihar & Anr.* Till then no action shall be taken against the Respondent.
- (iii) The Application is disposed of.

(SHIVKUMAR DIGE, J.)