

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.3211 OF 2025
IN
CRIMINAL APPEAL NO.790 OF 2025

Abdulmabood Ghoorali Shaikh Applicant

V/s.

State Of Maharashtra And Anr Respondents

Ms.Misbaah Solkar i/b Mr.Amin Solkrar, for the Applicant.

Mr.H.J. Dedhia, APP, for the Respondent-State.

Ms.Kirti Godbole, Appointed Advocate, for Respondent No.2.

CORAM : R.M. JOSHI, J.

DATE : 28th NOVEMBER 2025

P.C:-

. Heard both sides.

2. This Application is for suspension of substantive sentences and enlargement of the Appellant on bail by judgment and order dated 30th June 2025 passed by Additional Sessions Judge, Dindoshi in Special POSCO Case No.444 of 2022, whereby the Appellant is sentenced to suffer RI for 20 years with fine for the offences punishable under Section 6 the

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Protection of Children from Sexual Offences Act, 2012 ('POCSO' for short).

3. The learned counsel for the Applicant submits that, the victim as well as the informant have not supported the case of the prosecution. He argued that, though there is allegation against the Appellant of he putting finger in the private part of the victim girl then aged about 3 years, neither victim nor informant supported the said allegation before Trial Court.

4. It is his further submission that as admitted by the witnesses, the victim girl was suffering from genital warts and treated at Wadia Hospital. It is submitted that, the Medical Officer has accepted the fact that, the cream applied for the said deceased has side effects of burning and redness. It is argued that, the victim in clear terms has accepted the fact that her grand-mother used to apply the said cream to her private part and that for except for her no other person/male did it. It is his statement that in spite of there being no evidence, the learned Trial Court has convicted the Appellant solely on the basis of evidence of Dr.Kolhe which according to him indicates that,

there is possibility/chance of transmission on this disease from by skin to skin touch. He argued that, there is no material on record to indicate any skin to skin touch from the Appellant to his daughter. According to him the Appellant has fair chance of success in the Appeal, in view of the fact that none of the prosecution witnesses have supported the case of prosecution and medical evidence is not conclusive in order to convict him.

5. The learned counsel for the Informant who was representing the victim had recorded no objection for suspension of sentence. However, this Court was not satisfied with the said no objection and hence appointed counsel to represent the victim. The learned counsel for Respondent No.2 submits that the evidence on record more particularly cross-examination of the victim indicates that she was being tutor not to say anything adverse against her father i.e. accused. It is submitted that, she was given to understand into that if she does so her father would be released from jail. It is further argued that, the statement of the victim and informant under Section 164 of Cr.P.C. shows that there is substance in the

allegation against the Appellant of doing the alleged Act. It is submitted that, this further gets support from the medical evidence on record.

6. The learned APP also opposed the Application on amongst other contention on the ground that the offence is serious and having regard to provisions of the POCSO, the Appellant is not entitle for bail.

7. The case of the prosecution before the Trial Court is that, the Appellant who is the father of the victim used to insert his finger in her private part. There is further no dispute about the fact that, the victim was suffering from disease of genital warts and was being treated in Wadia Hospital for the period of one and half years. PW-5 Dr.Prabhu has accepted the fact that, she was being treated for the said disease and that the cream which was given for Application has side effect of redness and burning of skin. It thus appear that the victim was treated and as per her statement in the substantive evidence, the said medicine was applied only by her grand-mother and not by any other male. The hymen being torn would not lead to

conclusion that it has happened due to the act of putting finger in private part of victim by Accused.

8. The learned Trial Court seems to have recorded conviction of the victim on the basis of her statement made under Section 164 of the Cr.P.C. Such statement of the victim could not have been treated as substantive evidence. Thus, the only evidence remains for consideration is in the form of testimonies of Medical Officers.

9. In all five Medical Officers were examined. Though PW-8 Dr.Dalmia states about history being seen in the record of Wadia Hospital in respect of the fingering being done by the father, the person who recorded the said history has not been examined. Dr.Kolhe, PW-9 admits that, the disease is sexually transmittable disease and it can be transmitted to mother of the victim through her husband i.e. father of the victim. He also claims to be not hereditary disease. Dr.Kolhe however, claims that, there are chances of transmission of disease by skin to skin contact with victim by accused. Even the statement does not conclusively shows that the disease is

transmitted by skin to skin contact made by the Accused to victim. Needless to say that, even under the provisions of POCSO Act the burden on the prosecution to prove guilt of the Accused beyond reasonable doubt is not dispensed with.

10. In this case the victim as well as the Informant have not supported the case of the prosecution and only evidence remains medical evidence which does not indicate that, there was a conclusive proof of the transmission of the said disease to the victim by skin to skin contact made by the Accused with the alleged Act committed by him. Having regard to these facts the Appellant would have reasonable case for succeeding during the hearing of the Appeal. The Appeal is not likely to be taken up for short period of time. Consequently, the following order.

ORDER

- (i) The substantive sentence imposed against the Appellant-Accused by judgment and order 30th June 2025 passed by Additional Sessions Judge, Dindoshi in Special POSCO Case No.444 of

2022, stands suspended till the decision of the Appeal.

(ii) The Appellant-Abdulmabood Ghoorali Shaikh be enlarged on bail on furnishing PR Bond of Rs.15,000/- with one surety in the like amount.

(iii) Bail before the Trial Court.

11. Observations made are *prima facie* in nature and would not bind parties during final hearing.

(R.M. JOSHI, J.)