

Priya Soparkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO.2537 OF 2025

IN
CRIMINAL APPEAL NO.93 OF 2026

Bhimrao Mukinda Kamble ...Applicant
Versus
State of Maharashtra and anr. ...Respondents

Mr. Nitin Telgaonkar, for the Applicant.
Mr. A. R. Metkari, APP for the State.
Ms. Aishwarya Sharma (Appointed Advocate through Legal-aid),
for the Respondent No.2.

CORAM: R. M. JOSHI, J.

DATED: 30th JANUARY, 2026.

PC:-

1. This application is for suspension of sentence and enlargement of the Applicant on bail in connection with judgment and order dated 21st March, 2025 passed in Special Case (POCSO) No. 329 of 2018, whereby the Applicant came to be convicted for the offenses punishable under Section 376(3) and 504 of Indian Penal Code (IPC) and Section 4 of POCSO Act and was sentenced to suffer rigorous imprisonment of 20 years with fine.

2. Learned counsel for the Appellant/Applicant submits that the evidence is not sufficient to prove that it was the Appellant, who had committed the alleged sexual assault on the victim. In

this regard, he drew attention of the Court to the evidence of PW 1 who claims that the person who committed the sexual assault is Rahul Kamble, whereas the name of the present Appellant is Bhimrao Kamble. It is further submission that even victim, in her testimony, has stated about the act being committed by Rahul. It is further argued that though witness No.1 has handed over the Aadhar card of Rahul, the same is not placed on record before the Trial Court and which creates doubt about identity of accused. According to him, though the DNA report is positive, indicating the paternity of the Appellant, the same cannot become a proof of alleged rape committed by him. On the point of age of the victim, it is argued that the prosecution has failed to produce birth certificate on record, and that the age of the victim to be minor has not been established by giving legal evidence to support this submission, placed reliance on the judgment of the Hon'ble Supreme Court in case of *P. Yuva prakash Vs. State, reported in (2024) 17 Supreme Court Cases 684*, wherein it is held that for the purposes of deciding age of the victim under POCSO Act, the Courts have to take recourse to the steps indicated in Section 94 of Juvenile Justice Act. It is submission that the documents which are contemplated by Section 94 of the said Act are not placed before the Trial Court, nor the age of the victim has been determined on the basis of ossification test.

3. On these amongst other submissions, it is his contention that the Appellant is of young age and has already undergone six years period in jail. He also placed reliance on judgment of the Supreme Court in case of *Aasif alias Pasha Vs. State of U.P. and others, reported in 2025 SCC Online SC 164*, to submit that in case of

fixed term of sentence, Appellate Court should be liberal in disposition of justice.

4. Learned APP and learned counsel for the Respondent No. 2 opposed the Application.

5. There cannot be any dispute with regard to the position of law that in case, the Appellant is able to *prima facie* make out the case of any fair chance of success in the appeal, he deserves to be enlarged on bail. Here in this case, however, the contention of the Appellant in this regard is not supported by the material evidence led before the Trial Court. Though the dispute is sought to be made with regard to the name of the Appellant and his identity as perpetrator of crime, the victim in her substantive evidence before the Court explains that the accused was known by nickname of Ravi. It is further pertinent to note that no serious dispute was made with regard to the identity of the accused to be the perpetrator of the crime. Apart from this, there is the evidence of the victim, who categorically states about the Appellant entering the house in the fateful night and committed sexual intercourse with her. The said testimony gets support from DNA report Exhibit 57.

6. Thus, there is evidence to show that the victim was subjected to sexual intercourse and that the Appellant is the biological father of the fetus. It is pertinent to note that no case is sought to be made out by the Appellant before the Trial Court that there was love relationship between him and the victim and his defence is of total denial. In such circumstances, this Court finds no substance in

the contention that the DNA report would not support the case of forcible sexual intercourse being committed with the victim.

7. In so far as the age of the victim is concerned, the issues sought to be raised would be open for argument during the time of hearing of the appeal on merit. Suffice it to say that, offence under the provisions of Section 376 is apparently made out. In such circumstances, this is not a case for the enlargement of Appellant on bail at this stage. Hence, application stands dismissed.

8. However, Appeal stands, expedited.

(R. M. JOSHI, J.)