

Navnath Waghmare (RA.)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
INTERIM APPLICATION NO. 3858 OF 2025
IN
CRIMINAL APPEAL NO. 1035 OF 2025

Kartik Shankaran IyyerAppellant
Versus
The State of Maharashtra and Anr. ...Respondents

**Mr. Hrishikesh Mundargi a/w P. Chadha i/b Saurabh More and
Vaibhav Parab for the Appellant.**

Ms. Vilasini Balasubramanian, for the Respondent No.2

PSD Sunil Parab, Shivaji park police station, mumbai

Mr. Ashwin R. Kapadnis "B" panel council

CORAM: R. M. JOSHI, J.

Date: 24th February, 2026

PC:-

1. In Interim Application No. 3858 of 2025 in Criminal Appeal No. 1035 of 2025, a convict against whom charge has been proved for molesting 2 girls at a swimming pool, is seeking suspension of sentence and enlargement on bail by judgment and order dated 24th September, 2025 passed in Special Case No. 466 of 2020, he came to be convicted and

sentence to suffer rigorous imprisonment for 3 years with fine.

2. An incident occurred on 06th March, 2020 wherein two minor girls aged about 12 years were molested by a person by touching them inappropriately. During the trial of the said person i.e. Appellant/Accused, the prosecution led evidence of informant and two victims of the crime. Reliance is also placed on testimony of other witnesses who confirm the presence of the Appellant at the spot of the incident. On the basis of evidence led by the prosecution an order of conviction came to be recorded against him.

3. Learned counsel for the Appellant submits that there is a delay in First Information Report lodged in respect of the incident allegedly occurred on 06th March, 2020. It is his submission that having regard to the cross-examination of victim girls, it can be said that this is a case of mistaken of identity of the Appellant as perpetrator of the crime. It is his submission that as admitted by the witnesses, CCTV footage

though available, but the same is not produced before the Trial Court and which indicates that the best evidence available is withheld from the Trial Court. To support this submission he placed reliance of judgment of Hon'ble Supreme Court in the case of *TOMASO BRUNO AND ANOTHER VS. STATE OF UTTAR PRADESH (2015) 7 SCC 178*. It is his further submission that on the basis of evidence on record it cannot be said that the prosecution was able to prove the guilt of the Appellant beyond reasonable doubt. It is his submission that since the Appellant is handedover with short term sentence for 3 years and as the appeal is not likely to heard in short period of time, he is entitled to seek enlargement on bail. To support this submission he placed reliance of the judgment of Hon'ble Supreme Court in the case of *KIRAN KUMAR VS. STATE OF MP (2001) 9 SCC 211*. He also relied upon the order of the Supreme Court in the case of *NANHE LAL VERMA VS. STATE OF MADHYA PRADESH* to submit that for the purpose of suspension of sentence, it is

not necessary that the convict should undergo half of the sentence.

4. The Learned counsel for the APP and learned counsel for the Respondent No.2 opposed the said submission. It is their contention that unless Appellant proves that he has fair/ reasonable chance of success in appeal, no order of suspension of sentence could be passed. It is pointed out that the Appellant was in custody only for a period of 12 days. By referring to the evidence on record, it is submitted that the prosecution has proved that the victims were minor at the relevant time and the testimony of victims is free from doubt and unerringly shows complicity of the Appellant in the crime. It is submitted that having regard to the nature of evidence and offence proved against the Appellant and that he has been in the only for a period of 12 days, this is not a fit case for his enlargement on bail.

5. The law on the point of suspension of sentence and enlargement of bail of convict is fairly settled to show that in

order to seek such relief, the fact is required to *prima-facie* show that has fair chance of success in the appeal. Apart from this Court is required to consider nature and gravity of the offence.

6. *Prima-facie*, perusal of the evidence on record indicates that prosecution by placing reliance on birth certificate of the victims has proved that they were minor and hence covered by definition of child 2(d) of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO ACT'). Testimony of the victims and on the face of it inspire confidence. They have also identified the Appellant to be the perpetrator of the crime unerringly. It is pertinent to note that no enmity of whatsoever nature has been brought on record by the defence in order to hold that this could be a case of false implication. The contention of counsel for the Appellant with regard to the mistaken identity cannot be accepted at this stage for the reason that the victims have not only even immediately after occurrence of incident, identified Appellant before the Court but informed to the trainer/coaches at the

pool about the Appellant doing in the said acts. There is evidence on record to show that being identified by the victims girls, appellant was brought out of the pool by the trainers. Most importantly the Appellant himself never challenges his presence at the spot of the incident. Thus, in this case non-protection of CCTV footage may not result into discarding the case of the prosecution. Having regard to the afore-stated evidence on record, it cannot be said that appellant has made out a case *prima-facie* to show that he has fair chance of success in the Appeal. The Application therefore, deserves to be rejected.

7. Hence, the following order:

ORDER

- a. Interim Application no. 3858 of 2025 is dismissed.
- b. Appeal stands expedited.
- c. It is clarified that on the above observations are *prima-facie* in nature and would not bind the parties at the time of hearing of the appeal finally.

(R. M. JOSHI, J.)