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

**CRIMINAL BAIL APPLICATION NO.422 OF 2016
IN
CRIMINAL APPEAL NO.266 OF 2016**

Annappa Ramchandra Hadpad	...Applicant.
VS	
The State of Maharashtra	...Respondent

.....
Mr Shyam Kalyankar i/b Rahul Vijaymane for the Applicant.
Ms A.A.Takalkar APP for the Respondent-State.
.....

CORAM : P.N.DESHMUKH, J.

03 OCTOBER, 2016

P.C. :

Heard learned advocate for the applicant and learned APP. This application is for suspension of substantial sentence of imprisonment imposed upon the applicant and for grant of bail. Learned advocate for the applicant had submitted that the applicant was on bail pending trial and has not misused the liberty granted to him and thus contended that the applicant be released on bail.

2 Learned APP, on the other hand, opposed the application saying that there is direct evidence establishing involvement of the applicant.

3 Perused the compilation of evidence on record and the impugned judgment. The applicant is found to be tried for the offence punishable under Section 376(2)(f)(i), 506 of Indian Penal Code and Section 5(m)(n) and 6 of the Protection of Children from Sexual Offences Act and is convicted under Section 6 of the Protection of Children from Sexual Offences Act, 2012 and is sentenced to suffer Rigorous Imprisonment for ten years and to pay fine of Rs.10,000/- i/d to suffer further R.I. for six months. The applicant is further convicted for the offence P/u/s 506 of IPC and is sentenced to suffer R.I. for two years and to pay fine of Rs.1,000/- I/d to suffer further R.I. for three months. Both the substantive sentences are directed to run concurrently.

4 Involvement of applicant is clearly established from the evidence of prosecutrix, who is 13 years, as stated to have been sexually exploited at the hands of the applicant from time to time prior to 4 January, 2014, on which date on information stated by her to her father, report came to be lodged. The applicant is real uncle of the prosecutrix and is found residing adjoining to the house of prosecutrix. Her evidence reveals that, he used to take her to his house forcibly and strip off her clothes, used to lay on her person and by threatening her not to disclose his act to her parents or else will finish her continued to sexually exploit the prosecutrix. She has further stated that the accused on all these occasions would insert his penis into her vagina and

continued such act till she disclosed about the act to her parents and was thereafter medically examined.

5 Medical evidence corroborate evidence of the prosecutrix, where it is stated by Dr. Jadhav that he did not notice injuries to genital/anus, the reason could be delay in reporting the matter, however has opined that evidence of sexual intercourse/ assault cannot be ruled out. It is material to note that according to Medical Officer's evidence, at the time of incident and on the day when the prosecutrix was examined, she had not attended menarche, however in spite of such fact, underwear of the prosecutrix which came to be seized within two days of lodging of report was found having bloodstained, which aspect *prima facie* links act of sexual assault upon the prosecutrix.

6 Having considered nature of evidence, age of prosecutrix and as the applicant is near relative of prosecutrix, the application is devoid of merits and the same is, therefore, liable to be rejected. The application is rejected.

(P.N.DESHMUKH J.)