

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**1 CRIMINAL APPLICATION NO. 1590 OF 2017
IN
CRIMINAL APPEAL NO. 195 OF 2017**

UMESH @ BAPU KHADTARE

VERSUS

THE STATE OF MAHARASHTRA

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Mrs. Rashmi Kulkarni, Advocate for
Applicant [appointed].

Mr. K.S.Patil, A.P.P. for Resp. - State.

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CORAM : V.L.ACHLIYA, J.

DATE : 1st AUGUST, 2017

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ORDER :

1. The applicant has moved this application seeking suspension of sentence and release on bail during the pendency of Appeal for the reasons set out in detail in the application.

2. Heard learned counsel for the applicant and A.P.P. for the respondent – State. Perused the record and proceedings.

3. Learned counsel for the applicant strenuously contended that there is no cogent, convincing and reliable evidence to sustain the conviction of the applicant u/s 376 (2) (f), 377 and 506 of the Indian Penal Code. By referring the testimony of the prosecutrix, learned counsel pointed out that in cross examination the prosecutrix has admitted that there was no sexual intercourse committed by accused with her. She further submits that medical evidence reflect that there was no sexual intercourse. Hymen was found to be intact. So also no serious injury suggestive of commission of such act can be inferred on the basis of report of medical examination of prosecutrix. She further submits that the complainant i.e. mother of the prosecutrix [P.W.3] has not supported the case of the prosecution and declared hostile. In the light of overall evidence, learned counsel submits that there is no evidence as such to prove the guilt of accused beyond reasonable doubt. She, therefore, urged to enlarge the applicant on bail.

4. On the other hand, learned A.P.P. opposed the application with contention that the prosecutrix has supported the case of prosecution. He further submits that looking to the age of prosecutrix as ten years, the

admission brought through her cross examination to the effect that there was no sexual intercourse needs to be appreciated in the light of overall evidence adduced by the prosecution. He further submits that the medical evidence reflects that there was injury to Labia Majora and Labia Minora. He, therefore, urged that looking to the nature and gravity of offence and accused being step father of the prosecutrix i.e. girl aged 10 years, the application be rejected. He further submitted that during the trial, the applicant was not on bail.

5. Having appreciated the submissions advanced in the light of evidence adduced by the prosecution and the reasons and findings recorded by the trial Court, I am of the view that no case is made out to entertain the application. Prosecutrix though given certain admission in the cross examination, but she has categorically deposed about the act committed by accused with her. Medical evidence prima facie show certain injuries were noticed on Labia Majora and Labia Minora. Therefore, considering the overall evidence, nature of offence, sentence awarded; I am not inclined to entertain the application. Accordingly, the application is rejected. However, the hearing of the Appeal is expedited. Trial Court is directed to expedite the

work of preparation of paper book and submit record and proceedings with paper book within eight weeks from the date of this order. Record and proceedings be sent back to the trial Court for preparation of paper books.

[V.L.ACHLIYA, J.]

KNP/Cr.Apln. 1590.2017 in Cr.A. 195.2017