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

***INTERIM APPLICATION NO. 1897 OF 2021
IN
CRIMINAL APPEAL NO. 61 OF 2021***

Upendra Mukhlal Sharma

... Applicant/Appellant

V/s.

The State of Maharashtra and Anr.

... Respondents

Mr. Vikas Shivarkar for the Applicant/Appellant

Ms. M.M. Deshmukh, APP for the Respondent – State

Mr. Amol Govind Mane for Respondent No.2

***CORAM : NITIN JAMDAR &
G.A. SANAP, JJ.***

DATE : 21 SEPTEMBER 2021

P.C. :-

This is an application for release of the Applicant/Appellant on bail pending the hearing of the Appeal and for suspension of sentence.

2. The Applicant/Appellant is convicted for offences punishable under Section 376(2)(f)(i)(n) of Indian Penal Code read

with Section 6 of Protection of Children from Sexual Offences Act, 2012 and is sentenced to undergo imprisonment for life.

3. The Applicant/Appellant is the father of the survivor girl. The First Informant - Respondent No.2 is her mother. The Respondent No.2 had informed the Police that on 17 May 2017, when the family members were sleeping in the house, she saw that her daughter was lying upon the Applicant/Appellant. Thereafter, on the next date when the Respondent No.2 – mother enquired with her daughter, she informed that the Applicant/Appellant was committing sexual intercourse with her for last 5-6 days. The girl was taken to the hospital. The members of the Non-Governmental Organization were made inquiries in the hospital and the report was lodged against the Applicant/Appellant. Upon trial the learned Sessions Judge found that the prosecution case is proved and the Applicant was convicted.

4. The learned Counsel for the Applicant/Appellant sought to contend that there is lacuna in the medical evidence which will show that the prosecution case is not believable.

5. Before the PW-1 – the survivor girl was examined, the learned Sessions Judge satisfied himself that she was having sufficient understanding and oath was administered. PW-1 deposed that her father used to hit her and get annoyed in small matters. She deposed

that he was committing sexual intercourse. She has narrated the incident details which are found in paragraph 2 of her deposition. When asked by PW-2 - the mother, PW-1 told her that her father was committing sexual acts with her. PW-2 – the mother deposed as to the incident. Her evidence was recorded In-camera. During her deposition she tried to resile from her statement given to the police and she was cross-examined by the public prosecutor. PW-3 Asha Rangari, Counselor working with a Non Governmental Organization deposed that PW-2 alongwith PW-1 had come to the hospital where she was on duty and PW-1 narrated that since 5-6 days the accused was committing sexual intercourse with her and the Counselor thereafter coordinated with the hospital.

6. Though the PW-2 has not supported the prosecution, there could be various reasons to do so and at this stage for consideration of bail, we do not find that deposition of PW-1 against her father, the Appellant can be discarded. PW-4 – the Medical Officer, upon examination, has opined that the possibility of sexual intercourse cannot be ruled out.

7. In these circumstances, no case is made out for grant of bail. The Application is rejected.

G.A. SANAP, J.

NITIN JAMDAR, J.

**JYOTI
PRAKASH
PAWAR**

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JYOTI PRAKASH
PAWAR
Date: 2021.09.23
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