

each others houses. At the relevant time the victim was studying in 8th standard. She was attending tuition with PW-5. On 1st April 2019 the victim girl and her friend who reside in the same building left for tuition. The friend of victim was told by the victim to wait below the building and the victim girl went to the house to get her pencil pouch and return shortly. Since the victim girl did not return, the victim's friend went to the house of victim to enquire whether she is coming for tuition. The complainant is the mother of victim. On enquiry by the friend of victim she got alarmed since the teacher of the victim had informed her that accused was inappropriately touching the victim. The complainant felt that victim must be in the house of accused. So she called neighbour (PW-9) who knocked the door of accused. The door was opened the door partially and accused informed that his wife is not at the home. The complainant heard sobbing voice of the victim coming behind the door of accused. PW-9 and the complainant found that victim was behind the door in the house of accused and she was crying and scared. The accused stated that victim does not want to go for tuition class and therefore she is sitting in his house. The victim on the next day revealed to the teacher that on the earlier day when she left for tuition, the accused met her down at the building. He forced and threatened her to come to his house. He forcibly removed her clothes and committed sexual intercourse. He also outraged her modesty. The victim also disclosed to her tuition teacher that accused had touched her inappropriately on two occasions in the month of March-2019. The teacher had noticed that victim was not paying attention to her studies. The victim embressed the teacher and started crying. The victim disclosed the acts committed by the accused. Thereafter they went to Police Station and lodged the FIR. The victim was sent for

medical examination. On completing investigation charge sheet was filed.

3. The prosecution had examined about 11 witnesses. By judgment and order dated 10th August 2021 the applicant-accused was convicted for the aforesaid offences.

4. Learned advocate for applicant submitted that the applicant has been falsely implicated in this case. He is in custody for three years. There are serious omissions in the version of victim and the complainant. Some of the witnesses have not supported the case of prosecution. The victim did not disclose the incident to her mother. The friend of victim did not support prosecution case. There is delay in registering the FIR. There were signs of injuries on the person of victim. There was suppression of fact that victim was initially treated by private gynecologist. The medical officer had opined that in the event some foreign article is inserted in the private part, there is likelihood that hymen would be torn. The evidence suffer from several improvements. The applicant is in jail for a period of three years. The appeal may not come up for hearing immediately.

5. Learned APP submitted that offence is of serious nature. The accused is immediate neighbour of victim. He is a married person. He took disadvantage of the relation between two families. The victim was continuously subjected to sexual assault. The victim was minor. The medical opinion indicate that there was tear in the hymen. The version of victim is corroborated by medical evidence. Other witnesses have supported prosecution case. The omissions did not affect core of prosecution case. There are three independent

witnesses. The victim had embossed her tuition teacher and disclosed the incidents of sexual assaults to her. The evidence of victim cannot be doubted. There were injuries on the person of victim. At this stage there is no reason to disbelieve the version of witnesses who have supported the prosecution case.

6. Learned advocate for respondent no.2 has supported submissions of learned APP. Reply has been filed on behalf of complainant opposing application for bail. Learned advocate for respondent no.2 has also filed written submissions on behalf of respondent no.2. It is submitted that there is sufficient evidence against applicant. The charge is proved against him. The victim was a minor child. There is no reason to discard her evidence at this stage. The testimony of victim is consistent during cross-examination. Her evidence is corroborated by documentary evidence. Medical report of victim shows 6 o'clock position tear of the hymen. The medical examination of accused reveals partially healed scratch, abrasion on left shoulder, on suprasternal notch, on left side of back, on left scapular region, on right scapular region. The forensic examination of accused proved that he was scratched by victim with her nails in desperate attempt to save herself. The medical evidence and evidence of other witnesses supports prosecution case. There is no reason to disbelieve the version of victim. The victim was repeatedly sexually assaulted by accused. Hence applicant for suspension of sentence and grant of bail may be rejected.

7. I have perused the evidence on record. Undisputedly the accused and victim are residence of the same building and residing

on the same floor. Both the families were acquainted with each other. The victim was less than 15 years of age at the time of incident. The accused is married person. The victim had disclosed the nature of sexual assault attributed to the accused. The tuition teacher disclosed the information provided to her by victim. PW-2 is social worker. PW-3 is maid of the victim. PW-5 is tuition teacher. PW-6 is friend of victim. Although there are some omissions in the deposition of witnesses, they are not fatal to the prosecution case qua the act of sexual assault committed by accused. At this stage it is difficult to discard or disbelieve these witnesses. Prima facie case for suspension of sentence and grant of bail is not made out. Hence I pass following order :

ORDER

- (i) Interim Application is rejected;
- (ii) It is made clear that observations made in this order are for considering the application for suspension of sentence and grant of bail during pendency of Criminal Appeal No.862 of 2021;
- (iii) Hearing of Criminal Appeal No.862 of 2021 is expedited.

(PRAKASH D. NAIK, J.)